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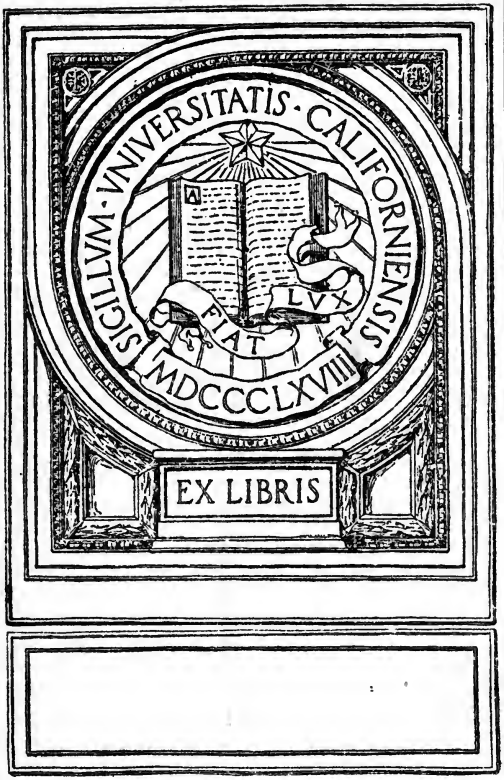
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ON THE

CONSERVATION OF NATURAL RESOURCES

COMPILED BY
C. E. FANNING

MINNEAPOLIS
THE H. W. WILSON COMPANY
1913

EXPLANATORY NOTE

Until a few years ago, the impression was prevalent that water, forests and the ores in the earth were abundantly plentiful and thus could be lavishly used. When the necessity of conservation was made evident, far-sighted men started a campaign of public education and the subject became suddenly prominent in the magazines. But like all schemes started in theory and later applied in practice, this one developed an unexpected phase, in this case the conditions in the newer western states determining its form. Out of this situation grew two plans of conservation, one under Federal control and the other under State control.

The issues are so well defined that the subject is an appropriate one for debate and in order to supply the needs of debaters, as well as general students, this volume has been prepared for the Debaters' Handbook Series.

In conformity with the series the book contains a brief based on the best arguments available, a bibliography, and articles reprinted entirely or in part and grouped into general, affirmative and negative sections.

January, 1913.

CONTENTS

BRIEF

Resolved, That the power of the Federal Government should be paramount to that of the States in the conservation of natural resources, limited to forests, water-power, and minerals.

Introduction

I. It is granted that our natural resources are the possession of all the people.

II. These resources should be developed for the benefit of the people and protected from monopoly by large corporations.

III. The question for debate becomes:
   - A. Has the State or Nation the paramount right to direct conservation?
   - B. Under which control is it more expedient to develop the resources?

Affirmative

I. Conservation is properly a function of the Federal Government
   - A. Resources belong to all the people of the Nation.
   - B. The Nation has the right to retain the control.

II. Conservation projects on rivers are often interstate questions.
   - A. The development of a water-power in one State may cripple a water-power in another State.
   - B. The developing of one water-power may be subject to conflicting State laws.
   - C. Reclamation projects often involve storing flood waters in one State to use in another.
   - D. The experience of Switzerland has proved that National control is necessary.

III. The Federal Government can more wisely supervise conservation.
   A. A uniform policy is needed.
   B. The majority of States have made a failure of conservation.
   C. Conservation can be more economically supervised by the Nation.
   D. Corporations can control State governments.

IV. States can disregard the interests of the Nation at large.

NEGATIVE

I. Conservation is a sovereign right of the State.
   A. Neither the Constitution nor Statutes give the power to the Federal Government.
   B. A State's powers are sufficient to handle conservation problems.

II. Conservation is a local question.

III. States are capable of wisely directing conservation.
   A. They know local conditions better.
   B. Several States have already successfully handled conservation problems.
   C. A State can guard the people's rights better than the Nation.
   D. The Federal conservation policy has not been a success.

IV. Federal control is unjust.
   A. It involves bureaucratic methods.
   B. It is taxing a few for the benefit of the many.
   C. The new States should have the same right to their resources as the older States had to theirs.

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Review of Report of the Commissioner of Corporations on Water-Power Development in the United States. 1912.

This significant report consists of a summary (34 pp.) and a detailed report in three parts: Physical conditions and economic aspects of water-power (58 pp.); Concentration of ownership and control (96 pp.); Water-power and the public (20 pp.). It is concerned with developed "commercial" power—power generated for sale—and presents the most complete and reliable information on the subject now available.

The Bureau of Corporations computed in June, 1911, a total developed water-power of 6,000,000 h. p., representing: "commercial" power, 2,961,549 h. p.; "manufacturing" power, 1,054,578 h. p.; total power developments of less than 1,000 h. p. each, 2,000,000 h. p. This 6,000,000 h. p. represents about one fourth the estimated minimum and one eighth the estimated maximum potential h. p. of the United States.

The Bureau finds a marked geographical concentration of developed water-power. Nearly fifty per cent of the "commercial" power is in five states (Cal., 14; N. Y., 13; Wash., 10; Penn., 6; S. C., 5) and nearly ninety per cent of the "manufacturing" power is in New England and four additional states (N. Y., 30; New England states, 36; Minn. and Wis., 17; S. C., 5).

The most significant findings of the Bureau are concerned with concentration of ownership and control of developed water-power.

In California the bulk of the power produced in the northern half of the State is controlled by a single interest, and that in the southern half by only two companies. In Montana two companies control 96 per cent of all the developed power of the State; and in Washington a single interest controls the power situation in the Puget Sound region, while another interest, more or less closely affiliated with it, controls the developed power elsewhere in the State. All the developed power in the vicinity of Denver, Colo., and nearly 70 per cent of the total developed power of that state is controlled by one interest. In South Carolina one corporation owns 75 per cent of the developed commercial power, while in North Carolina 45 per cent of such power, developed and under construction, is controlled by a single interest. One group of interests practically controls 58 per cent of all the commercial power, developed and under construction, in Georgia. In the lower peninsula of Michigan a single group owns 73 per cent of all such power. The great development of Niagara Falls on the American side is controlled by only two companies.

The local concentration of water-power, just described, by no means reveals the full extent of concentration of ownership. A few large interests have acquired such control over water-power as to bring about a still greater concentration. . . . This broader field of control has also included all sorts of public-service corporations regardless of whether these involve water-power or not.

Some idea of the extent of such concentration of control is found in the fact that of the total "commercial" water-power of 2,961,549 h. p., developed and under construction, in the United States . . . over 1,800,000 h. p. is controlled to a greater or less extent—but not absolutely in every case—by 10 groups of interests. . . . Seventeen interests or groups of interests control or strongly influence more than 2,000,000 h. p. of commercial water-power, developed and under construction, or more than 70 per cent of all such power in the United States.

These facts, the Bureau observes, present problems of vital importance to the public welfare, and demand a water-power policy involving three fundamental propositions: the best development of the resource; the protection of the consumer; the reservation, for the benefit of the whole public, of its proper share in the advantages inherent in the natural resource itself. The Bureau believes that it is impracticable to regulate the price of water-power by itself, and that the main problem of the public interest attaches to the power site.

H. S. PERSON.

Second National Conservation Congress, Proceedings.

Pages 14-34. William Howard Taft.

Suggestions have been made that the United States ought to aid in the drainage of swamp lands belonging to the

States or private owners, because, if drained, they would be exceedingly valuable for agriculture and contribute to the general welfare by extending the area of cultivation. I deprecate the agitation in favor of such legislation. It is inviting the general Government into contribution from its treasury toward enterprises that should be conducted either by private capital or at the instance of the State. In these days there is a disposition to look too much to the Federal Government for everything. I am liberal in the construction of the Constitution with reference to Federal power; but I am firmly convinced that the only safe course for us to pursue is to hold fast to the limitations of the Constitution and to regard as sacred the powers of the States. We have made wonderful progress, and at the same time have preserved with judicious exactness the restrictions of the Constitution. There is an easy way in which the Constitution can be violated by Congress without judicial inhibition, to-wit, by appropriations from the National treasury for unconstitutional purposes. It will be a sorry day for this country if the time ever comes when our fundamental compact shall be habitually disregarded in this manner.

However this may be, it is the plain duty of the Government to see to it that in the utilization and development of all this immense amount of water-power, conditions shall be imposed that will prevent monopoly, and will prevent extortionate charges which are the accompaniment of monopoly. The difficulty of adjusting the matter is accentuated by the relation of the power sites to the water, the fall and flow of which create the power.

In the States where these sites are, the riparian owner does not control or own the power in the water which flows past his land. That power is under the control and within the grant of the State, and generally the rule is that the first user is entitled to the enjoyment. Now, the possession of the bank or water-power site over which the water is to be conveyed in order to make the power useful, gives to its owner an advantage and a certain kind of control over the use of the water-power, and it is proposed that the Government in dealing with its own lands should use this ad-

vantage and lease lands for power sites to those who would develop the power, and impose conditions on the leasehold with reference to the reasonableness of the rates at which the power, when transmuted, is to be furnished to the public, and forbidding the union of the particular power with a combination of others made for the purpose of monopoly by forbidding assignment of the lease save by consent of the Government. Serious difficulties are anticipated by some in such an attempt on the part of the general Government, because of the sovereign control of the State over the water-power in its natural condition, and the mere proprietorship of the Government in the riparian lands.

It is contended that through its mere proprietary right in the site the central Government has no power to attempt to exercise police jurisdiction with reference to how the water-power in a river owned and controlled by the State shall be used, and that it is a violation of the State's rights. I question the validity of this objection. The Government may impose any conditions that it chooses in its lease of its own property, even though it may have the same purpose and in effect accomplish just what the State would accomplish by the exercise of its sovereignty. That is shown frequently in leases of houses containing a covenant against the use of the house for that which under the law of the State is an unlawful use; and nevertheless, no one has ever contended that that condition, though it be for the stricter enforcement of the State law, is without the power of the lessor as a proprietor of the land which he is leasing.

There are those (and the Director of the Geological Survey, Mr. Smith, who has given a great deal of attention to this matter, is one of them) who insist that this matter of transmuting water-power into electricity which can be conveyed all over the country and across State lines, is a matter that ought to be retained by the general Government, and that it should avail itself of the ownership of these power sites for the very purpose of coordinating in one general plan the power generated from these Government-owned sites. On the other hand, it is contended that it would relieve a complicated situation if the control of the water-power site and the control of the water were vested

in the same sovereignty and ownership, viz: the State, and then were disposed of for development to private lessees under the restrictions needed to preserve the interests of the public from the extortions and abuses of monopoly. Therefore, bills have been introduced in Congress providing that whenever the State authorities deem a water-power useful they may apply to the Government of the United States for a grant to the State of the adjacent land for a water-power site, and that this grant from the Federal Government to the State shall contain a condition that the State shall never part with the title to the water-power site or the water-power, but shall lease it only for a term of years not exceeding fifty, with provisions in the lease by which the rental and the rates for which the power is furnished to the public shall be readjusted at periods less than the term of the lease, say every ten years.

The argument is urged against this disposition of power sites that legislators and State authorities are more subject to corporate influence and control than would be the central Government. In reply it is claimed that a readjustment of the terms of leasehold every ten years would secure to the public and the State just and equitable terms. Then it is said that the State authorities are better able to understand the local need and what is a fair adjustment in the particular locality than would be the authorities at Washington. It has been argued that after the Federal Government parts with title to a power site it cannot control the action of the State in fulfilling the conditions of the deed, to which it is answered that in the grant from the Government there may be easily inserted a condition specifying the terms upon which the State may part with the temporary control of the water-power sites, and, indeed, the water-power, and providing for a forfeiture of the title to the water-power sites in case the condition is not performed; and giving to the President, in case of such violation of conditions, the power to declare forfeiture and to direct proceedings to restore to the central Government the ownership of the power sites with all the improvements thereon, and that these conditions may be promptly enforced and the land and plants forfeited to the general Government by suit

of the United States against the State, which is permissible under the Constitution. And that by such a provision, *in terrorem,* the edict of States and of the legislatures in respect to these lands might be enforced through the general Government.

I do not express an opinion upon the controversy thus made or a preference as to the two methods of treating water-power sites. I shall submit the matter to Congress with all the arguments, and urge that one or the other of the two plans be promptly adopted.

Second National Conservation Congress, Proceedings.

Pages 132-4. James H. Davidson.

They speak of four great water-power companies in California, and two water-power trusts. I thoroughly investigated that subject, spending over six months on it three years ago, and I found that water was king in California, yet the water is owned by these four imperial companies. One-half of my life and of my most valuable treasure is my son and his family, now in the San Joaquin valley; and every crevice and cañon, in the mountains, almost, has been pre-empted by these great water-power combinations, and it costs fifty dollars per horsepower per annum for the use of it for pumping or for any other purpose. If the State of California had been alert, and had had proper regulation, it would have seen to it that these monopolies could not take possession of all these cañons and control the water-power against the interests of the people.

North American Review. 188: 321-35. September, 1908.

The Constitution and the New Federalism.

Henry Wade Rogers.

A tendency has developed within a few years to increase the power of the Federal Government at the expense of the State Government, and in the Federal Government to enhance the power of the executive department at the ex-

pense of both the judicial and the legislative departments. A disposition has also manifested itself to ignore the canons of constitutional construction which heretofore have guided the courts of this country, and to establish a new theory which shall give to the Constitution that quality of elasticity which is the characteristic of the common law. There also appear an increasing antagonism to the courts and an attempt to create a feeling that they are anti-democratic and should be shorn of their power to nullify unconstitutional legislation. The Constitution is itself beginning to be regarded by some of our people as an antiquated document which has been outgrown, and which established a government that was democratic in name but anti-republican in fact. An antipathy is expressed to the limitations of power which the Constitution has imposed and which the Fathers reverenced and deemed necessary. These tendencies are found to some extent in both of the great parties and in all sections of the country. The tendencies are menacing and they should be earnestly opposed and strenuously resisted. It is not surprising that, among eighty-five millions of people, theories of government should be advanced which are false, visionary and mischievous. But the expression of such views need not occasion any serious apprehension. The American people, in their final judgment, are not likely to go wrong, or to consent that reckless innovation shall proceed unchecked. The foundation principles of our institutions are not to be undermined and destroyed.

The chief difficulty the framers of the Constitution encountered was in coming to an agreement as to the powers which relate to the maintenance of the Central Government, which are known as structural powers. A great diversity of opinion existed as to the structure of the new government. Should representation be in proportion to the population or should it recognize equality of the States? Should Congress be composed of two Houses or one? What regulation should be prescribed as to the time, place and manner of electing the members of Congress? Should the Executive be one or several persons? How should the Executive be chosen and for what term; and should he be eligible for re-election? Should the Executive be surrounded

by a council? How should the judicial department be constituted, and what should be its jurisdiction?

But less difficulty was experienced when it came to defining the functional powers of the Government. The whole history and experience of the country indicated very plainly the line of partition between the powers of the States and of the National Government. From the very beginning of our Government, we have recognized a partition of powers. Matters of Imperial concern had belonged, throughout the Colonial period, to the Imperial Government; while matters of local concern were regulated by each Colony for itself. The line of division separating these powers was not sharply defined by organic law, but it continued to exist down to the time when the Articles of Confederation were adopted.

The founders of the Republic established the Constitution upon the fundamental principles of the absolute autonomy of the States, except in respect to the interests common to the entire country. They realized to the full extent that upon no other principle would it be possible to maintain a republican government over a country even as large as ours then was.

Once the question was whether the States would destroy the National Government. Now the question seems to be whether the National Government shall be permitted to destroy the States. It was the fear that that question might sometime arise which led Samuel Adams and John Hancock in Massachusetts, George Clinton in New York and Patrick Henry in Virginia to withhold for so long their assent to the ratification of the Constitution. But, under the Constitution, the States are as indestructible as the Union. The Constitution looks to an indestructible Union composed of indestructible States. Actual abolition of the States is impossible. There are, however, forces in operation which seek to reduce the States to administrative departments like those of France. There is an increasing tendency to regard a State as a mere geographical expression, rather than as a political division of the country. There ought to be, in every part of our country, not only a revival of knowledge of the Constitution, but a careful study and weighing of the

opinions of the Fathers as they found expression in the debates in the Convention which framed the Constitution, and in the Conventions of the several States which ratified that instrument.

There is a constitutional and wholesome doctrine of State rights the maintenance of which is of the utmost importance to the continued welfare of the Republic. In the name of State rights certain extreme and disorganizing views were at one time promulgated, which the country received with disfavor. In our day, nullification is recognized as folly and secession as a crime. But it has been said that, because this folly and this crime were committed in the name of State rights, it would be folly to infer that the name may not have a good meaning and represent a useful thing.

If the Government is to endure, the people must steadfastly maintain two essential and fundamental principles: the first is, that the National Government possesses all the powers granted to it in the Constitution, either expressly or by necessary implication; and the second is, that the States possess all governmental powers not granted to the General Government or reserved to the people.

We are threatened with a revival of Federalism—a Federalism that is more extreme and radical than the leaders of the old Federal party ever countenanced. The argument proceeds on the assumption that the States have failed to perform their duty properly, so that great evils have grown up which the States cannot or will not remedy, and from which we should have been free if only the Federal Government had possessed the authority and not the States.

That the evils exist is conceded. That the States have not done their full duty also is conceded. But that the Federal Government would have done better is a mere assumption, and one I am not prepared to accept. Congress now has in the Territories and District of Columbia all the powers which the State Governments possess; yet the legislation respecting the corporations which Congress has enacted has not been better than the legislation of the States on the same subject. The laws of Congress have not secured publicity of accounts, nor prevented over-capitaliza-

tion and stock-watering, and an adequate system of inspection has not been established over Federal corporations. The Union Pacific Railroad, with which Congress has been concerned, had, upon its reorganization in 1897, a share capital of $136,000,000, which at market prices was worth only $54,000,000, showing an estimated over-capitalization of $81,330,000. Congress has provided for the examination of the National Banks. But the inspection of the National Banks is not superior to the system which Massachusetts has established for the inspection of its State banks. The law of Massachusetts regulating insurance companies is as good as, and in some respects better than, that which the advocates of a Federal law endeavored to get Congress to enact a year or two ago. And about the time the President was declaring in messages to Congress that the States were incompetent to deal with the problem of insurance, the State of New York, under the guidance of its present Governor, enacted an admirable piece of legislation, superior to that which a president of a New Jersey insurance company, himself a Senator, was seeking to impose upon Congress, under the fallacious assumption that insurance was interstate commerce, the Supreme Court of the United States to the contrary notwithstanding. During the present year, the same State, under the direction of the same Governor, has enacted a Public Utilities Law which, as a piece of constructive legislation intended to curb the public service corporations, is in advance of anything which has come from Congress respecting the corporations it has created, or over which it has control as the legislature for the Territorities and the District of Columbia.

That in times past State Legislatures have been under the control of special interests is too true. But, unfortunately, so has Congress. One evidence of it is seen in the tariffs established from time to time. Under the pretence of protecting labor, tariffs have been fixed, not merely high enough to cover the difference in the cost of labor here and abroad, but far in excess thereof, and so high that the great mass of the people of this country have been exploited that the privileged few might build up enormous fortunes. The legislation has not been in the interest of the working-man nor

for the benefit of the people as a whole, but quite the reverse. Those who have been benefited by such legislation have been certain privileged classes, the coal barons and the beef barons, the steel barons and the lumber barons, the sugar barons and tobacco barons of the country, who have been permitted by Congress to write the tariff laws of the United States.

Scandals there have been at times under the State Governments, and scandals likewise there have been under the Federal Government. Unfortunately, scandals are likely to arise under any government; for the men who are entrusted with public office are not always of high character or distinguished for probity. But the National Government has had its full share in the shame and disgrace occasioned by those who have betrayed their public trusts. Some years ago, Senator Hoar of Massachusetts, speaking in the Senate of the United States of a work authorized by Congress, said:

> When the greatest railroad of the world, binding together the continent and uniting the two great seas that wash our shores, was finished, I have seen our national triumph and exultation turned to bitterness and shame by the unanimous reports of three Committees of Congress—two of the House and one here—that every step of that mighty enterprise had been taken in fraud.

The fraud and corruption which have attended upon our dealings with the Indians extend through a century of dishonor. The memory of the Crédit Mobilier, of the Whiskey Ring and of the Star Route Ring has not faded out of mind. The revelation made a short time ago as to the corruption which existed in the Post-office Department and in the Agricultural Department are fresh in the public recollection, as are the frauds connected with the administration of the public lands. But recently, the President suspended the Public Printer on charges of maladministration.

The tendency to take their domestic affairs from the control of the State is shown by the agitation in favor of a national incorporation law. It is assumed that the power to regulate commerce includes the right to regulate the corporation which is engaged in commerce. But if, under its power to regulate commerce, Congress can assume control over all corporations which engage in interstate commerce, it is difficult to see why it has not an equal right to

assume a like control over all partnerships that do any interstate business, as well as over all individuals whose business is of a similar nature. In this way, Congress can take to itself jurisdiction over a very large part of the business of the country, withdrawing from the control of the States what always has been supposed to be within their peculiar province, and working a fundamental change in the character of the Government itself. It may be very seriously questioned whether the mere fact that a corporation or a partnership is engaged in interstate commerce affords any sound legal reason for assuming that Congress has the right to exercise an exclusive jurisdiction over every such corporation and partnership or individual who engages in interstate commerce, even though the interstate commerce may be but a part of the business of such corporation or partnership, as they may be likewise engaged in intrastate commerce. So that if the regulation of corporations is a regulation of interstate commerce it may be a regulation of intrastate commerce as well.

If Congress has jurisdiction over every corporation which to any extent engages in interstate commerce, what is there to prevent Congress from declaring that the vast properties which these corporations control shall not be taxed by the State Governments without the consent of Congress? The States cannot tax National Banks except to the extent authorized by the national banking law. If all corporations engaged in interstate commerce are to be compelled to incorporate under a national incorporation law, why may not Congress prohibit the States from taxing such corporations or the properties which they own? It is nothing to the purpose to say that Congress would never exercise the power. The fact that it could exercise the power, and might sometime do so to a greater or less extent, is one not lightly to be lost sight of, as these corporations own a very large proportion of the wealth of the country, the withdrawal of which from the taxing power of the States would be most mischievous, crippling the resources of the States and imposing new burdens of taxation on the individual citizen.

The disposition to extend the power of Congress beyond

its constitutional limits and unduly to diminish the proper legislative authority of the States is farther exemplified in the passage by Congress in 1906 of the Employers' Liability Act. Congress assumed that, under its power to regulate commerce, it could pass the Act and apply it to all employees of common carriers engaged in interstate commerce, even though such employees rendered no service in the transportation of interstate commerce, such as engineers of local trains, section hands, mechanics in car and machine shops and clerks in offices. The Supreme Court in the Employers' Liability cases declared the law unconstitutional and denied the contention of the Attorney-General that where one engages in interstate commerce one thereby comes under the power of Congress as to all his business and may not complain of any regulation which Congress may choose to adopt.

The extreme to which advocates of the New Federalism go is shown in the proposal to enact the Beveridge Child-labor Law and make it applicable throughout the United States. The Supreme Court has decided that the power to regulate commerce does not confer power to regulate manufactures, as commerce and manufactures are not synonymous. But the advocates of the Bill asserted that the Government has the power to shut out from interstate business any article manufactured in violation of the Act. To assume that Congress can do this is to assume that it can regulate the hours of labor, the wages paid and prices charged by any factory in the United States for goods which are to find their way into interstate commerce. To assume that the Congress has any such power is to assume that American statesmen and American lawyers for a hundred and twenty years have not understood the Constitution of this country aright.

The excuse made for bringing a bill of this kind before Congress was that the States had not discharged their full duty in the matter. But if half of the States have not enacted a Child-labor Law, they are no more delinquent than Congress. No one questions that Congress has a constitutional right to make such a law applicable to the District of Columbia and for the Territories. It has, however, never

done so, and the same condemnation which its advocates pronounce upon the States which have failed to enact such laws is as applicable to the Congress for a similar neglect within the limits of its unquestioned jurisdiction. Undoubtedly, there should be such a law in each State, and one already exists in a majority of the States.

Until recently, it had always been supposed that the Federal Government had no possessive title to the water flowing in navigable streams, nor to the lands composing their beds and shores. It had not been thought that Congress could grant any absolute authority to any one to use and occupy such water and land for manufacturing and industrial purposes. The theory has been that the Federal Government controlled navigable streams for the single purpose of preventing obstruction to navigation. The States have granted the use of these streams for power or irrigation purposes, and their action has always been understood to be subject to be reviewed by the Congress, but only to the extent of determining whether that which the States had authorized would constitute an interference with commerce. Now, apparently unmindful of an impressive line of decisions of the courts which assert the doctrine that the waters of a river and the waters of the arms of the sea belong to the States and not to the Federal Government, the President recently sent a message to the Congress asserting a right in the General Government to exact tolls for the use of the waters in navigable streams, and of his intention to veto all bills granting water-power rights which do not authorize the President or the Secretary concerned to collect such tolls as he may find to be just and reasonable. A Republican Senator properly characterized the doctrine as "the most far-reaching and over-reaching claim of power that ever was made in a government." And he added: "The Kings and Emperors claim no such rights in their lands."

The President of the United States has made known on various occasions his conviction that what the country needs is "through executive action, through legislation and through judicial interpretation and construction, to increase the power of the Federal Government." His distinguished Sec-

retary of State, one of the most eminent members of the American Bar, whose ability and patriotism no man calls in question, agrees with him. In one of his speeches, Mr. Secretary Root has said:

> It is useless for the advocates of State rights to inveigh against the supremacy of the constitutional laws of the United States or against the extension of national authority in the fields of necessary control, when the States themselves fail in the performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to refute any one's right to exercise a power which he fails to exercise. The governmental control which they deem just and necessary they will have. It may be that such control would be better exercised in particular instances by the government of the States, but the people will have the control they need either from the States or from the National Government, and if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised in the National Government.

In other words, centralization of power in the nation is to be accomplished not by amendment of the Constitution depriving States of the rights which now are theirs under the Constitution, but they are to be deprived of those rights by construction and interpretation. The revolutionary character of these utterances will be better understood if they are read in the light of the principles laid down by the leading authority on American Law. In his great work on Constitutional Limitations, Mr. Justice Cooley says:

> A Constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. . . . A Court or Legislature which should allow a change in public sentiment to influence it in giving to a written Constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty. . . . What a Court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a Court has occasion to pass upon it.

Another distinguished commentator on the Constitution, Mr. Tucker, says:

> The idea that usurpation, or necessity, or a supposed extension as the consequence of custom or progress of society, can make jural any power not constitutionally conferred is contrary to American political science, fatal to the liberties of the people and is only a wicked pretext for the violation of sworn obligations. Such an idea would really mean this—that persistent usurpation of power by a Government, acting under the prescribed limitations of a written Constitution, could amend and change that Constitution, which by its terms can only be amended by the body politic itself. It would make the Government a self-creator

of its own powers, instead of the creation of the body politic with only delegated powers. It would take sovereignty from the people and vest it in the Government; and transfer all political authority by flagrant usurpation from the body politic to the omnipotent Government. Written Constitutions would be destroyed, and the self-usurped omnipotence of irresponsible government would be enacted upon their ruins.

This, it should be needless to say, is the doctrine of the Supreme Court. That Court has lately said:

The Constitution is a written instrument; as such, its meaning does not alter. That which it meant when adopted, it means now. . . . Those things which are written within its grant of power, as those grants were understood when made, are still within them; and those things not within them remain still excluded. . . . As long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers.

To be told by men in high authority that the Constitution is to be changed by construction and interpretation, so that it shall mean something different from what it says and from what it has always been understood to mean, and from what it was intended to mean by those who framed and adopted it, is evidence of an extraordinary disregard of the accepted principles of courts and commentators.

The proposal to discard the idea that the Constitution always means the same thing, and to adopt the theory that the courts shall by construction make it mean what the people want it to mean or what the exigencies of the occasion may seem to require it to mean, is in effect to propose that the Supreme Court shall have the power, by a vote of five to four, to amend the instrument according to their views of what it is desirable it should mean. This power the courts are to have in order to give elasticity to the Constitution. The Constitution points out the method by which the people are to amend it when, in their judgment, it needs amendment. But, as the people have not made much use of the amending power, it is concluded that instead of requiring a change in the Constitution to be ratified by the Legislatures of three-fourths of the several States, as the framers provided, it will be much the simpler and easier way just to permit the Supreme Court to make the change by construction, even though it be by a five to four vote, so construing the words used in the instrument as to give them, not the meaning which those who framed and adopted

the instrument meant them to have, but the meaning which the majority of the Court may think that the people at that particular time most approve. To secure the approval of five of the judges of the Supreme Court may be less troublesome than to secure the approval of the Legislatures of thirty-four States. But any theory of construction which makes the Constitution mean what a majority of the people think at a given time it should mean, is certainly not in accordance with the law and the prophets. A Federal judge of an inferior court, in a paper read before the American Bar Association at Portland in August last, argued in support of this new theory. But, as Mr. Justice Harlan of the Supreme Court of the United States has said, those who hold to this theory are, "happily, few in number." Continuing, Justice Harlan declared that "such theories of constitutional construction find no support in judicial decisions or in sound reason, least of all in the final judgments of that tribunal whose greatest function is to declare the meaning and the scope of the fundamental law."

In weighing the arguments for National as against State control, it may be well to remember that a minority of the people not only may elect, but since 1856 more frequently have elected, the President. In the States, on the other hand, the Governors are more generally chosen by a majority vote of the electors. Including 1856, there have been thirteen Presidential elections, and in only six out of thirteen did the successful candidate secure a majority of the popular vote. On the other hand, during the same period the State of New York has held thirty-five gubernatorial elections, and the successful candidate obtained a majority of votes in all but five of them. Under our system, it has not only happened that during the past fifty years the President has generally been chosen by a minority of the people, but that the minority party has in some instances gained the House of Representatives and by a large majority. For example, in 1860 the Republican party elected its candidate for President although he had but forty per cent of the popular vote, and at the same time it elected sixty per cent of the members chosen to the House. In 1892, the Democratic party elected its candidate for President although he had

but forty-five per cent of the popular vote, and at the same time it elected sixty-two per cent of the members of the House. And it has happened, as in 1876, that one party elected the President and the other carried the House of Representatives. It is a fact, therefore, that under our system of elections the President and Congress are not as liable to represent the majority of the people of the entire country as are the Governors and Legislators of the States to represent the majority of the voters of their respective States.

The people of the United States cannot possibly act with the same promptness and directness as are possible to the people of a single State. It takes longer for public opinion to form and make itself felt among eighty-five millions of people, scattered over a continent and having interests widely dissimilar, than in a single State where the people are more closely associated and where their interests are less divergent. The ease with which a State Constitution may be amended and the difficulty which has been found to exist in amending the Constitution of the United States afford instructive illustration upon the point under consideration. The smaller the unit of government, the more prompt, direct and intelligent its action is likely to be.

Congress might enact legislation which may be injurious to particular sections of the country without responsibility to the States affected. An act may be passed which is harmful to the interests of New York, and which its representatives in the Senate and the House unanimously oppose, and the people of the State are absolutely remediless. If the same act had been passed by the Legislature of the State, those responsible for it could be turned out of power at the next election and the law repealed by their successors. But the Senators from Idaho and California owe no responsibility to any other Legislature than their own, and the representatives in Congress from Texas are accountable only to the people of Texas. For this reason it is of the utmost importance that the powers of Congress should be restricted to matters which affect all parts of the country alike. It should not be possible for other States to govern, say, New

York, except in those matters which are essential to the common welfare of all the States.

The American people, in their desire to remedy existing abuses and to avert the dangers which menace them, should not revolutionize the Governments which the Fathers established. The rights of the States, as well as the rights of the Nation, must be preserved.

The time is opportune to recall the opinion expressed by Mr. Justice Miller in his Lectures on the Constitution. That great judge said:

> While the pendulum of public opinion has swung with much force away from the extreme point of the State's rights doctrine, there may be danger of its reaching an extreme point on the other side. In my opinion, the just and equal observance of the rights of the States and of the General Government, as defined by the present Constitution, is as necessary to the permanent prosperity of our country, and to its existence for another century, as it has been for the one whose close we are now celebrating.

Speaking of State rights, Mr. Webster declared:

> It is this balance between the General and State Governments which has preserved the country in unexampled prosperity for fifty years; and the destruction of this just balance will be the destruction of our Government. What I believe to be the doctrine of State rights I hold as firmly as any man. . . . I say again that the upholding of State rights, on the one hand, and of the just powers of Congress on the other, is indispensable to the preservation of our free republican government.

A few years after the Civil War ended, Mr. Beecher, speaking for national unity, emphasized the importance of maintaining the rights of the States, and of the local Governments of the States. He said:

> New England, from her earliest Colonial days, with a fervor and intensity that have never been surpassed, preserved inviolate the one political doctrine which will enable this vast nation, if anything will enable it, to maintain Federal unity; and that doctrine is the rights of States. . . . This simple doctrine of State rights, not State sovereignty, will carry good government with it through all the continent. No central government could have sympathy and wise administrative adaptation to the local peculiarities of this huge nation, couched down between two oceans, whose southern line never freezes and whose northern boundary never melts.

And Mr. Justice Harlan in December last expressed the opinion that "The American people are more determined than at any time in their history to maintain both National and State rights, as those rights exist under the Union ordained by the Constitution." He added that if the trend in public affairs to-day is towards the centralization of gov-

ernmental power in the nation and the destruction of the rights of the States, it would be the duty of every American to resist such a tendency by every means in his power. He thought that a National Government for national affairs, and State Governments for State affairs, is the foundation rock upon which our institutions rest, and that any serious departure from that principle would bring disaster upon the American people and upon the American system of free government.

The writers on political institutions have pointed out many times the advantages of local government over centralized government. They have taught us that local self-government develops an energetic citizenship, and centralization an enervated one; that local self-government is conducive to the steady progress of society, and that centralization involves conditions which are unsound and do not make for the progress of society; that under local self-government officials exist for the benefit of the people, and that under centralization the people exist for the benefit of the officials; that local self-government provides for the political education of the people, and that centralization, based upon the principle that everything is to be done for the people rather than by the people, creates a spirit of dependence which dwarfs the intellectual and moral faculties and incapacitates for citizenship; that local self-government exerts an influence which invigorates, and centralization an influence which blights; that the basis of local self-government is confidence in the people, while the fundamental idea of centralization is distrust of the people; that local self-government fixes responsibility for wrongs and renders a redress for grievances practicable; that no responsibility anywhere exists under a system of centralization and that redress is difficult to obtain for acts of commission or omission; that under local self-government every individual has a part to perform and a duty to discharge in public affairs, while under a centralized government one's affairs are managed by others.

The noblest system of political institutions the world has known, and the most conducive to the happiness and welfare of mankind, is that of local self-government. It has

been said that "to centralize is the act and trick of despots, to decentralize is the necessary wisdom of those who love good government."

The preservation to the local community of the right to manage its own affairs must be recognized as essential to the permanent well-being of the Republic.

Local self-government has been described by a political philosopher as that "system of government under which the greatest number of minds, knowing the most, and having the fullest opportunities of knowing it, about the special matter in hand, and having the greatest interest in its well-working, have the management of it, or control over it." Centralization has been described as that "system of government under which the smallest number of minds, or those knowing the least, and having the fewest opportunities of knowing it, about the special matter in hand, and having the smallest interest in its well-working, have the management of it, or control over it."

An immense amount of wretched misgovernment might have been avoided, according to John Fiske, if all Legislators and all voters had those two wholesome maxims engraven upon their minds.

North American Review. 191: 465-81. April, 1910.

Other Side of Conservation. George L. Knapp.

For some years past the reading public has been treated to fervid and extended eulogies of a policy which the eulogists call the "conservation of our natural resources." In behalf of this so-called "conservation," the finest press bureau in the world has labored with a zeal quite unhampered by any considerations of fact or logic; and has shown its understanding of practical psychology by appealing, not to popular reason, but to popular fears. We are told by this press bureau that our natural resources are being wasted in the most wanton and criminal style; wasted, apparently, for the sheer joy of wasting. We are told that our forests are being cut at a rate which will soon leave us a land without trees; and Nineveh, and Tyre, and any other place far enough away are cited to

prove that a land without trees is foredoomed to be a land without civilization. (Farmer's Bulletin, No. 327, by Gifford Pinchot.) We are told that our coal mines would be exhausted within a century; that our iron ores are going to the blast furnace at a rate which will send us back to the stone age within the lifetime of men who read the fearsome prophecy. In short, we are assured that every resource capable of exhaustion is being exhausted and that the resource which can not be exhausted is being monopolized. Owing to the singular pertinacity of the sun in lifting water to the mountain tops, and of the earth in pulling that water back to the sea, even the disciples of conservation by scare heads can not say that in a few years we shall be a land without water power. But they say the next worst thing. From official bureau and lecture platform and from the hypnotized, not to say subsidized, press goes forth the cry that the water-power sites of the land are being hogged at a rate which will soon subject us all to the exactions of a cruel, soulless, grasping "power trust," the acme and consummation of all other trusts. (Farmer's Bulletin, No. 327, by Gifford Pinchot.)

For all these evils which make the future a thing to dread the remedy is "conservation." The "Government," that potent "conjuh word" of civic atavists and political theologians, must stint its natural and proper tasks to engage in the regulation of this, that, or the other industry, to "conserve" our resources. To "conserve" our timber, the wooded areas of the public domain, together with all lands touching on and appertaining to the wooded areas, and all other lands that might, could, would, or should bear trees and do not, must be segregated from ordinary use and put under despotic control as "national forests." (A forest officer defended to me the proposed inclusion of 94,000 acres of treeless land in the Gunnison reserve on the ground that the "abuse of land contiguous to the national forests has a detrimental effect on the forests themselves." Both the English and the logic are typical.) To "conserve" our coal supply, the coal lands must be kept from passing into individual ownership, and operated, if at all, by persons who lease the privilege from the National Government. To

"conserve" our water power the power sites must be treated as the coal lands and developed, if at all, as leaseholds. In a word, the Federal Government must constitute itself a gigantic feudal landlord, ruling over unwilling tenants by the agency of irresponsible bureaus, traversing every local right, meddling with every private enterprise, which seems to stand in the way of the sacred fetich of "conservation."

Only by such drastic means, we are told, can the rights of the people be protected, and the continued prosperity of the nation be assured. So persistently and adroitly has this view been urged by this press bureau that millions of people wonder, in their innocence, why anyone should object to so needful and righteous a work. Acting doubtless on the suggestion of the founder of the Ananias Club, the conservation press bureau has impugned the motives of all who disagree with it. If one objects to the inclusion of nonforest land within forest reserves he is ranked forthwith as a would-be robber of the public domain. If he doubts the propriety of the Federal Government setting up in business as a professional savior from imaginary ills, he is an "individualist"—that being the bitterest term of reproach in the "conservation" vocabulary. ("Conservation" for October, 1908.) If one objects to the leasing of the coal lands, he is plainly an undesirable citizen of some sort; and if he declares the proposed "conservation charge" for water power to be both unconstitutional and silly, he is marked at once as an emissary of that fearful "power trust" which is so unconscionably long a-borning.

Notwithstanding the ban thus threatened, I am going to enter the lists. I propose to speak for those exiles in sin who hold that a large part of the present "conservation" movement is unadulterated humbug. That the modern Jeremiahs are as sincere as was the older one, I do not question. But I count their prophecies to be baseless vaporings, and their vaunted remedy worse than the fancied disease. I am one who can see no warrant of law, of justice, nor of necessity for that wholesale reversal of our traditional policy which the advocates of "conservation" demand. I am one who does not shiver for the future at the sight of a load of coal, nor view a steel mill as the arch robber of

posterity. I am one who does not believe in a power trust, past, present, or to come; and who, if he were a capitalist seeking to form such a trust, would ask nothing better than just the present conservation scheme to help him. I believe that a government bureau is the worst imaginable landlord; and that its essential nature is not changed by giving it a high-sounding name, and decking it with home-made haloes. I hold that the present forest policy ceases to be a nuisance only when it becomes a curse. Since that forest policy, by the modest confession of its author, is set forth as the model to which all true "conservation" should conform, I shall devote most of my attention in this paper to the much-advertised "national forests" and their management.

According to the report of the forester for 1908, the "national forests" of the United States, excluding Alaska, covered an area of 155,822,030 acres, or 243,472 square miles —almost exactly the extent of the Austrian Empire. Nearly all this vast domain is located in the western third of the United States. My own State—Colorado—has 15,746,932 acres, or 24,604 square miles, in these "national forests." This is just a bit less than one-fourth the total area of the State, and about equals the combined area of Holland and Belgium. Yet Colorado ranks as a bad fifth in misfortune, coming after California, Montana, Idaho, and Oregon. Not more than 30 per cent of the forest-reserve area of Colorado is covered with merchantable timber; and about 40 per cent of that area has no trees at all. I believe a similar percentage holds true or very nearly true on the whole "national forest" area. It was Voltaire, was it not, who described the Holy Roman Empire as something neither holy, Roman, nor imperial? By the same token, nearly half our "national forests" might be defined as land locked up from the use of the Nation, and bearing no trees.

Legally, the Department of the Interior has entire jurisdiction over the management and disposal of the public lands. The Forest Service is a branch of the Department of Agriculture. But an agreement, or "treaty," between the Department of Agriculture and the Department of the Interior hands over the jurisdiction of the Interior Department

to the Forest Service, so far as the "national forests" are concerned. Here are the first four articles of that "treaty":

ARTICLE I. The acceptance of the Forester's finding of facts concerning land claims within the forest reserves.

ART. II. Definite notice to be given by the General Land Office to the Forest Service of a claimant's intention to make final proof.

ART. III. The refusal by the General Land Office to issue final certificate or allow final entry for any land claim within the forest reserve, against which a forest officer has protested, until full hearing before the local land officers.

ART. IV. The requirement of such stipulation and bond as the Forester may demand to protect forest reserve interests before the approval of any rights of way within the forest reserves. (Report of the Forester. 1906. The word "article" is mine.)

The most cursory examination of these four articles shows that they constitute the Forester all but a despot within the vast region of the forest reserves. His finding of facts is to all intents and purposes final; not one prospector or settler in fifty has the financial means to contest those findings. No one can slip by unseen; for the Land Office is pledged to warn the Forester whenever some miscreant manifests his treasonable intent of staking a homestead or patenting a mining claim. Only in rare and scattered cases can any part of the "national forest" area become individual property without the Forester's consent. How willingly he will be likely to give that consent appears on page 10 of his little book: "The Use of the National Forests":

"Under whatever law it is taken up, the land and all its resources pass out of the hands of the people forever."

If that means anything, it means that the people are somehow made poorer when any part of the national domain is settled and developed under private ownership. It would be interesting to carry back this idea, and see how sadly the people of the original 13 States have been impoverished by the settlement of the Mississippi Valley. For lack of space, however, we shall have to confine our investigations to the present.

The Forester, then, is absolute master of an area about 20 per cent greater than that of France. He has many times assured us that his mastery does not interfere with settlement. Let us see. Half the national forests are not forest land. Much of this nonforest area is desert, but much of it is very valuable for farming. Ours is a land-

hungry age. Every land drawing attracts from 10 to 20 times as many applicants for farms as there are farms to divide. Land once reckoned hopelessly arid is being settled and farmed—in a single "dry" county of Colorado, for example, in September, 1909, there were 101 new homestead filings. Yet in the entire year of 1908, on an area of possible settlement larger than Italy, only 1,181 homestead claims on the national forests were reported for favorable action. Almost as many, 1,057, were reported on adversely; and 80 claims got no report at all. In the same year, 1,675 "ranger's headquarters" were selected and withdrawn from entry. It is a common belief near the forest reserves that a "ranger's headquarters" bear a close resemblance to a desirable homestead. In the previous year, 1907, only 750 reports on homestead claims were transmitted to the Land Office by the Forester. How many of these reports were favorable he neglects to state; but he does tell us that in that year, 1,552 "ranger's headquarters" were picked out and set apart from the profane touch of the settler. If we allow the same proportion of favorable reports on homestead claims in 1907 that prevailed in 1908, we find that in two years the Forester gave his approval to 1,563 settler's homes, and established 3,227 "ranger's headquarters." In the light of this record of more than twice as many "rangersteads" as homesteads, the claim that a national forest does not interfere with settlement seems negligible.

To see how such a policy affects the community near which a national forest is located, one needs but compare the economic returns from the national forests with the economic returns from similar land handled by private individuals. The chief income of the Forest Service—always excepting congressional appropriations—is derived from grazing fees. The Forester estimates this income for the year 1908 to amount to $0.00573 per acre. Knocking off the last two decimal places for convenience and doubling the remainder we may say that the nonforested lands within the forest reserves yield a gross income of 1 cent per acre per year. In the spring of 1909 the State Agricultural College of Colorado planted ten acres of potatoes on land almost surrounded by national forests. The potato-patch

was 7,800 feet above sea-level, and differed in no particular from thousands of acres of national forest land near by. The potatoes yielded 100 sacks per acre, and the price on the ground was $1.50 per sack. Individual farmers in the neighborhood got even better returns. Land planted to cabbages gave a gross return at the rate of $450 per acre. Land planted to cauliflower gave returns which I am afraid to quote. Timothy hay was giving gross returns in that district of $20 per acre; and in another part of the State that return is deemed small. In still another valley, small fruits are bringing their cultivators from $300 to $1,000 per acre per year; while just across the imaginary line that parts "use" from "conservation," exactly similar land is yielding a penny per acre per year. The difference between double eagles and postage stamps is an understatement of the difference to a community between land settled and farmed by individuals and land "conserved" in the sacrosanct national forests.

State Senator E. M. Ammons, a trustee of the Agricultural College, can verify this statement, and supply similar ones.

Perhaps an instance will help to show how the national forests encourage settlement. Mr. Ira P. Hutchings, of Independence, Cal., applied for a homestead in one of the forest reserves of that State, under the so-called agricultural settlement act of 1906. He received the following answer:

Inyo National Forest,
Bishop, Cal., January 26, 1909.

Mr. Ira P. Hutchings,
Independence, Cal.

Dear Sir: Your application No. 10 for forest homestead * * * is on file in the office of the district forester. * * *

In order that the Forester may determine what land to recommend for listing it is desirable that a demonstration be made of its agricultural possibilities, and to this end I would suggest that you take out a special use permit for 40 acres of the tract applied for and experiment upon it. * * * It is believed that two years should be sufficient to demonstrate whether the land will produce farm crops of enough value to justify its listing for agricultural entry.

If results are such that your application is rejected, but if you still desire to continue occupancy of the 40 acres under special-use permit, you may be allowed to do so upon payment of the usual annual charges. * * *

A. N. Hegne, Forest Supervisor.

As a piece of unconscious humor, I have seen few things to equal that letter since the British war correspondents left South Africa. If Mr. Hutchings could prove that he could make a living on 40 acres, the 160 acres applied for might be considered worth listing for agricultural entry. If, on the other hand, the land was too poor for him to own, he would be permitted to occupy it as a tenant. It is well known, of course, that applicants for homesteads enjoy staking two years' time and labor against the caprice of an irresponsible official; that they are able and anxious to make "experiments" at their own expense for the benefit of a federal bureau; and as for renting land that isn't good enough to own, the homesteader has a perfect passion for it.

With mining as with agriculture, "the acceptance of the Forester's finding of facts" is the rule, and works out in pretty much the same fashion. The rangers, hired for a little more than cowboy's wages, and generally knowing nothing of mining, are required to examine and pass upon all mineral claims within the sacred boundaries of the national forests. The instructions printed in the Use Book for the guidance of the rangers in making these examinations are a standing joke in every mining camp in the West which has been unfortunate enough to hear of them. The Forester's definition of a "valid mineral claim" would have ruled out the "Independence" on that Fourth of July morning when its owner went to work because he didn't have enough money to celebrate. If the ranger reports adversely, the claim is lost; save in those rare cases where the claimant is morally and financially able to fight for his legal rights.

Such a fight occurred in what is known in Colorado as the "Roller case." A number of men, of whom Mr. W. W. Roller of Salida is one, held 11 claims which were located and partly developed before the ground was included in a forest reserve. The receiver of the land office issued his receipt for the purchase money of these claims February 24,

1906. On March 23, 1908, Mr. Roller and his companions were notified that a forest officer had filed charges against the validity of their claims, alleging that a sufficient amount of money had not been spent in development work, and that part of the claims were not mineral in character.

One would think that the presence or absence of minerals might be left to the men who were spending $50 per acre for the right to guess on that subject. The Forest Service and the General Land Office refused to furnish Mr. Roller with specific statements of the charges against his claims, and he was obliged to proceed in the dark. Luckily, he had means to make a fight. He proved that the lands claimed were mineral; and that, mineral or not, he had a right to them under the laws of his country. He proved that he and his companions had spent over $18,000 on the claims, instead of the $5,500 required by law. In the end he got his title. But in Summit County, Colo., a couple of poor prospectors were not so fortunate.

Nor is the forest policy more favorable to the harnessing of water-power than to other forms of industrial development. Indeed, it is less so. The theoretical friendliness which covers—in speech—the practical hostility of the Forest Service toward mining and farming becomes too thin for a veil when a power plant arrives on the scene. To be sure, a water-power plant is about the best example of real conservation that can be imagined; a waterfall harnessed is a coal mine saved. But the self-constituted guardians of the future are here dealing with the prospective units of the to-be-engendered "power trust"; and no mere matter of common sense is allowed to turn them from their stern duty. The power plant which comes in contact with the national forests learns that the way of the transgressor is hard even before he begins to transgress. It is offered a lease to the ground needed instead of a title. It is asked to pay an annual rental for the land covered by its storage reservoirs about equal to the price which the Federal Government asks for a clear title to similar land outside the forest reserves. It is dunned for the rent of its right of way. It is presented with a bill for the "conservation of water," the amount of the bill being determined by the

amount of power generated and the length of time that the plant has been in operation. On one contract which I examined—but which the company did not sign—the "conservation charge" would have amounted to nearly $50,000 per year before the expiration of the lease.

There is not the slightest basis in fact for the claim that the national forests conserve the water in any way that makes it easier for a power company to use. The only way to store water is to impound it in reservoirs. There is not the slightest basis in law for the levying of such a charge by the Forest Service, even if the claim of storage were well founded. The water of a nonnavigable stream belongs to the State in which it is located and must be taken and used under state laws alone. The act of 1897, which established the forest reserves, expressly recognizes this state control. But passing all questions of law or of fact, consider the injustice of thus levying a tax on the industrial development of the newer States, a tax from which the States with no forest reserves are free! To arbitrarily make electric power cost more in Colorado than in Pennsylvania is as unjust as to manipulate the price of bread in the same fashion. If the constitutional power existed, its exercise would be tyranny—and the constitutional power does not exist.

Even yet we have not taken the full measure of the Forester's zeal for "conservation." The Nevada-California Power Company supplies current to Goldfield, Nev. The Central Colorado Power Company generates power on the Grand River and carries it over half the State. In both these cases the filings on the water were made and the work of development well begun before the lands on which the power sites are located were included in the national forests. Yet in both cases the Forest Service tried to exact the "conservation charge"; in both cases the Forest Service bullied, threatened, cajoled; in both cases the Forest Service backed down when it encountered firm opposition and offered to settle for a sum much smaller than the one first demanded if the company would but come under the tents of "conservation" and admit the legality of the proposed tax. I am happy to add that in both cases—at least up to the

date of writing—the companies have stood on their legal rights and have politely invited the Forest Service to a region where the fuel supply, at least, has never been thought to need the labors of a conserver.

Here, then, we have a system which throughout its sphere of action hampers all forms of industrial development. We have an area larger than many a European kingdom put to its lowest, instead of its highest, economic use. We have a policy which is an absolute reversal of more than one hundred years of national habit and tradition; a policy which holds barrenness a blessing and settlement a sin; which fines, instead of encouraging, the man who would develop a natural resource; which looks forward to a population of tenants instead of to a population of proprietors; which seeks to replace the individual initiative that has made our land great by a bureaucratic control that has made many another land small. Surely, the danger must be imminent and terrible which is held to justify such a course.

The danger is said to be imminent, indeed. The conservation press bureau is strong on asserting. The picture of the lost and forlorn condition of the land ground under the iron heel of the coming power trust is calculated to move the faithful to tears; and the picture of the desolation which will follow the wasting of our natural resources is yet more harrowing. But somehow the details of these panoramas of terror are not quite convincing. It might be well to look up the models who sat for the various figures of "famine" which have troubled our rest.

Take the "coal famine" first. The United States Geological Survey gives the known deposits of coal in this country as holding 3,157,000,000,000 tons of coal. About half of this is easily accessible under present mining conditions. One-third can be profitably mined only when the demand grows greater or mining grows cheaper. One-sixth is composed of the lignite and subbituminous coals, easy of access, but recently coming into use. The coal consumption of the entire world is about 1,000,000,000 tons per year; that of the United States was 480,000,000 tons in 1907.

In a paper read before the Mining Congress in Joplin, Mo., in 1907, Mr. Edward Parker, of the Geological Survey,

analyzed the coal consumption and supply rather carefully. He pointed out that at the present rate of consumption the anthracite coals of Pennsylvania will be exhausted in about seventy or eighty years. The passing of anthracite means the passing of a certain luxury, to be sure; but the wheels of industry are turned by bituminous coal, and Mr. Parker's analysis of the bituminous situation is rather encouraging. To quote:

> If we can assume that the production will continue to increase with the decreasing percentage ratio, the production for the decade ending in 1915 would be 60 per cent over that of the decade ending in 1905 * * *; in the next ten years there would be an increase of 54 per cent. * * * If we prolong the curve in this way for another hundred and fifty years, we find that the production would become fairly constant between A. D. 2046 and A. D. 2055, with a production of approximately 2,300,000,000 tons a year. * * *
>
> If we estimate that by A. D. 2055 the production would amount to 2,300,000,000 tons annually, and the percentage of recovery remains the same (as now), the supply, in the light of present knowledge, would be exhausted in approximately seven hundred years. (Proceedings of the American Mining Congress, 1907.)

A famine which, at the very worst, is seven centuries away may be viewed with a certain equanimity. Mr. Parker further points out that the percentage of waste is already decreasing and states his belief that we shall soon recover from 90 to 95 per cent of the coal from each measure instead of 65 per cent, as now—an item which would add nearly a third to the estimated duration of the supply. He takes no account of lignite and subbituminous coals, which exist in quantities sufficient to postpone the evil day for a couple of centuries more. In a word, as soon as one drops scare heads and gets down to facts he finds that the coal famine is farther ahead than the battle of Hastings is behind. If William the Conqueror had tried to make plans for the life of the twentieth century, and had made those plans fast, would we thank him or curse him for his pains?

I can find no such analysis of the "iron famine" as Mr. Parker gives of the coal famine, but, on the face of things, the evidence does not greatly stimulate one's interest in the price of flint razors. Once more, quoting from the Geological Survey, we have in this country two great classes of ores, of which only the richest is in present use. Of these richer ores the known supply is something less than 5,000,000,000 tons; of the leaner ores, with which the iron business

in this country began and which are used to-day in every country but this, the supply is estimated at about 75,000,000,000 tons. We mined 52,000,000 tons in our banner year of 1907. Assuming that the ultimate iron production bears the same ratio to present production which Mr. Parker estimated for coal, our iron deposits will last but a paltry four centuries. I may add that there is no probability that iron production will increase in the assumed measure. Coal once used is gone, but iron once used goes back to be used over again. When the industrial world is once stocked with iron, and the world's population has become fairly stationary, we shall mine only enough ore to take the place of the comparatively small quantity that does not come back to the mills for renovation.

Next comes the most imminent and pathetic of all famines, the timber famine. This is usually scheduled to arrive in twenty years, though of late there has been a tendency to admit that the famine train may not be quite on time. When one tries to collect and analyze the figures on which the prophecy is based, he comes on a maze of contradictions. I quote here the table given in Forest Products of the United States, 1907, a publication of the Department of Commerce and Labor, compiled with the aid of the Forest Service and issued in 1909. These figures are by far the highest I can find. The table is in graphic form, and I may have made some errors in translating it into words. If so, the errors are very small, for the total thus reached checks exactly with the total given elsewhere in that publication.

Annual Wood Consumption of the United States

	Billions of cubic feet
Firewood	9.5
Lumber and shingles	9.0
Poles, posts, and rails	1.9
Hewed cross-ties	1.4
Other uses	1.2
Total	23.0

Observe that the estimated "drain on the forests" from firewood is greater than that from all sawn lumber and

shingles combined. To say that such an estimate is absurd is treating it far too mildly. It is nothing short of a direct insult to common sense and common information. Practically all the firewood consumed is either mill waste or comes from trees which could not produce sawn lumber, and are therefore not counted in estimates of the standing timber. The figures on posts and rails are purest guesswork. Half the terrors of our "timber famine" disappear the moment we realize that firewood is a by-product of lumber mill and farmer's wood lot, instead of a direct "drain on the forests."

Even so, there is no doubt but we have cut our trees faster than they have grown, and that our methods of lumbering have been designed to save labor cost rather than to save timber. But I wish to call attention to two items usually neglected when a "timber famine" is under discussion.

First. A large part of our original timbered area was deliberately stripped of its trees, not only to get lumber to saw, but to get land to till. This was the rule in most of the Atlantic States and in the timbered areas of West Virginia, Kentucky, Ohio, Indiana, Illinois, and southern Michigan and Wisconsin. In nearly all this region the timber was a secondary consideration, and in much of it the logs were dragged together and burned to get them out of the way. The loss of these forests has, therefore, no bearing at all on the timber supply and demand of to-day. If it be true, as is often stated, that the remaining forests are mostly on land good for little but to grow trees, one great factor in forest destruction is abolished forthwith.

Second. Our lumber consumption is decreasing. The National Lumber Manufacturers' Association estimates the production of 1908 to be 17.3 per cent less than that of 1907, and adds that 1909 will probably show a similar or greater decrease. (American Lumberman, July 24, 1909.) I believe the decrease began earlier. The figures for the cut of 1907 show an apparent increase of 8 per cent over the production of 1906. But the number of mills reporting was 29 per cent greater in 1907 than in 1906. The probability is therefore strong that the high tide in lumber cutting was passed at least three years ago and that we can look for a steady if slow decline for many years to come.

What this implies can be easily seen. The estimated annual forest growth in this country is 12 cubic feet per acre—one-fourth of that in the German imperial forests. The area on which this growth is taking place is given at 550,000,000 acres. One cubic foot is commonly taken to equal 6 feet board measure. This makes our annual forest growth come to 39,600,000,000 feet, board measure. The known drains of 1908 total up to a little less than 46,000,000,000 feet, board measure. An unclassified drain exists, of course, but it can not be very large. It will plainly take but a small shift in our national habits, a shift already begun, to make our annual forest growth meet our annual demand. And commercial forestry has just begun. Many railroads are planting trees for tie timber. Owners of timber land are adopting more careful methods of lumbering. Everything points to an early and spontaneous adjustment of our timber problem—everything but one. (The figures of annual growth and acerage are taken from Forest Service Circular No. 166, "Timber supply of the United States," by R. S. Kellogg. The figures for known uses are taken mainly from the American Lumberman.)

And that one constitutes an illuminating incident of the conservation scare. At the very moment when the heavens are rent with wild cries for the "conservation of our natural resources" the depletion of those same resources is being artificially hastened by the tariff, and no conservationist raises his voice against the monstrous absurdity. Only one-fifth of the standing timber in the land is included in the "National forests" and in the various parks and Indian reservations. To preserve this one-fifth the Constitution is used as a door mat, a bureaucratic despotism is called into being, the development of whole States is checked, the productiveness of vast areas is held down to the lowest notch, and the federal Treasury drained of millions of dollars per year. And all the time we are offering a direct bounty of $1.25 per thousand feet—it used to be $2—for the destruction of the other four-fifths of our timber supply. And the press bureau, which boasts of reaching 9,600,000 readers, has carried to none of those readers a protest against this national folly, this folly that would be a crime if there were any

appreciable percentage of truth in the tales told to justify "conservation." How shall we characterize that partisanship which can shriek disaster from the housetops, yet remain dumb in the face of the direct encouragement of that disaster?

Finally, let us inspect the bogy of the power trust. Without assuming to set metes and bounds for the activities of future captains of finance, there are many reasons why the talk of a power trust is sheer nonsense. No trust has ever gained dangerous proportions unless it has been granted some unfair advantage through government bounty or seized some unfair privilege through government neglect. The classical example of the advantage granted is the tariff; the classical example of the advantage seized is the railroad rebate. I can see no disposition anywhere to grant such favors to a prospective power monopoly, nor to sit by idly while such favors are seized. For at least seven centuries the water-power companies must be prepared to compete with coal, and it is not without bearing on this question that the sun motor and the wave motor are both accomplished facts merely awaiting commercialization.

The physical obstacles to a power trust are insuperable so long as the States insist on actual use being necessary to the ownership of water. Of the financial troubles of such a trust I will only say that Government "experts" estimate that it will take $23,000,000,000 to finance the water-power development of the United States. The likelihood of such an aggregation of capital under one control I leave others to consider.

Just one of all the scares adduced to justify the freaks of "conservation" has any basis in fact, and that basis rests on a legislative folly against which no disciple of "conservation" protests. The rest of the terrors are the unreal fabric of a bureaucratic dream. And if they were real the worst possible method of meeting them would be that scheme which is touted by the conservation press bureau as a piece of statesmanship so profound that its authors are appalled afresh each day at their own supernal wisdom. If the power trust were a real menace, how could its coming be hastened more surely than by cutting off from use

the supply of power sites? If a coal famine were impending, what could be worse folly than to put in charge of the coal mines an agency which can not even run a monopolistic post-office without a deficit? If the timber famine were as near and as fearsome as we have been told, who shall measure the criminal folly of taxing the people to "conserve" one-fifth of their timber supply and taxing them again to provide bounties to hasten the destruction of the other four-fifths?

The terrors from which "conservation" is to save us are phantoms. The evils which "conservation" brings us are very real. Mining discouraged, homesteading brought to a practical standstill, power development fined as criminal, and, worst of all, a federal bureaucracy arrogantly meddling with every public question in a dozen great States—these are some of the things which result from the efforts of a few well-meaning zealots to install themselves as official prophets and saviors of the future, and from that exalted station to regulate the course of evolution.

It is no more a part of the Federal Government's business to enter upon the commercial production of lumber than to enter upon the commercial production of wheat, or breakfast bacon, or handsaws. The Judiciary Committee of the Sixtieth Congress, reporting on the proposed Appalachian reserve, declared that the sole ground on which Congress could embark in the forest business was the protection of navigable streams. (Rept. No. 1514, 60th Cong., 1st sess.) Will any one pretend that a forest reserve on the crest of the Rocky Mountains, with the nearest navigable water a thousand miles away, can be brought under this clause? Even on the Pacific slope, I have not heard that the lumber mills of Washington have seriously impaired the navigability of Puget Sound; nor that the Golden Gate would shoal up if the cutting of timber in the Sierras were unchecked. And will the champions of "conservation" claim that the Federal Government has greater rights and powers in the newer States than in the older ones?

But the public lands belong to the whole people. Undoubtedly; but in what sense do they so belong? As a landed estate, from which to draw rentals, or as an oppor-

tunity to be used? Which interpretation of this ownership has prevailed in the past? Which doctrine caused the settlement of a region as large as half Europe within the lifetime of a single generation? And passing this larger aspect of the question, if the "people" do own the public lands, and especially the "national forests," in the sense of being possessors of a rentable estate, are they quite sure that it will pay to treat that estate in that fashion? The total receipts from the "national forests" in 1908 were $1,842,-281.87. The expenditures for the same year were $2,526,-098.02, leaving a deficit of $683,816.15. If the "people" really want that deficit and would feel robbed without it there might be less bothersome ways of supplying their need than the maintenance of a federal bureau. It might be cheaper to sell the estate on reasonable terms and trust to the patriotic endeavors of Congress to provide the indispensable deficit.

Our natural resources have been used, not wasted. Waste in one sense there has been, to be sure; in that a given resource has not always been put to its best use as we now see that use. But from Eden down, knowledge has been the costliest thing that man could covet; and the knowledge of how to make the earth best serve him seems well-nigh the most expensive of all. But I think we have made a fair start at the lesson; and considering how well we have already done for ourselves, the intrusion of a government schoolmaster at this stage seems scarcely needed. The pine woods of Michigan have vanished to make the homes of Kansas; the coal and iron which we have failed—thank heaven—to "conserve" have carried meat and wheat to the hungry hives of men and gladdened life with an abundance which no previous age could know.

We have turned forests into villages, mines into ships and sky scrapers, scenery into work. Our success in doing the things already accomplished has been exactly proportioned to our freedom from governmental "guidance," and I know no reason to believe that a different formula will hold good in the tasks that lie before. If we can stop the governmental encouragement of destruction, conservation will take care of itself.

To me the future has many problems, but no terrors. I belong to the generation which has seen the birth of the electric transformer, the internal-combustion engine, the navigation of the air, and the commercial use of aluminum, and I quite decline to worry about what may happen "when the world busts through." There is just one heritage which I am anxious to transmit to my children and to their children's children—the heritage of personal liberty, of free individual action, of "leave to live by no man's leave underneath the law." And I know of no way to secure that heritage save to sharply challenge and relentlessly fight every bureaucratic invasion of local and individual rights, no matter how friendly the mottoes on the invading banners.

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The A B C of Conservation. Gifford Pinchot.

The immediate interest attaching to the fundamental problems of conservation has led The Outlook to ask Mr. Pinchot the highest American authority on such questions, to send to it for its readers such positive and clear answers as would give the average uninformed citizen the reasons for this public interest. The questions asked were these: 1. What does conservation stand for? 2. What has conservation to do with the welfare of the average man to-day? 3. What is the danger to the conservation policies in the coming session of Congress? 4. Why is it important to protect the water powers? 5. How must it be done? 6. Does the same principle apply to navigable streams as to non-navigable? Mr. Pinchot's answers as contained in his reply will be found below.—The Editors.

The questions contained in your letter of November 18 are well worth answering, and I am glad to reply:

1. What does conservation stand for?

The central thing for which conservation stands is to make this country the best possible place to live in, both for us and for our descendants. It stands against the waste of the natural resources which cannot be renewed, such as coal and iron; it stands for the perpetuation of the resources which can be renewed, like the food-producing soils and the forests; and, most of all, it stands for an equal opportunity for every American citizen to get his fair share of benefit from these resources, both now and hereafter.

Conservation stands for the same kind of practical common-sense management of this country by the people that every business man stands for in the handling of his own business. It believes in prudence and foresight instead of reckless blindness; it holds that resources now public property should not become the basis for oppressive private monopoly; and it demands the complete and orderly development of all our resources for the benefit of all the people instead of the partial exploitation of them for the benefit of a few. It recognizes fully the right of the present generation to use what it needs and all it needs of the natural resources now available, but it recognizes equally our obligation so to use what we need that our descendants shall not be deprived of what they need.

2. What has conservation to do with the welfare of the average man to-day?

Conservation has much to do with the welfare of the average man to-day. It proposes to secure a continuous and abundant supply of the necessaries of life, which means a reasonable cost of living and business stability. It advocates fairness in the distribution of the benefits which flow from the natural resources. It will matter very little to the average citizen when scarcity comes and prices rise, whether he cannot get what he needs because there is none left or because he cannot afford to pay for it. In both cases the essential fact is that he cannot get what he needs. Conservation holds that it is about as important to see that the people in general get the benefit of our natural resources as to see that there shall be natural resources left.

Conservation is the most democratic movement this country has known for a generation. It holds that the people have not only the right but the duty to control the use of the natural resources, which are the great sources of prosperity. And it regards the absorption of these resources by the special interests, unless their operations are under effective public control, as a moral wrong. Conservation is the application of common sense to the common problems for the common good, and I believe it stands nearer to the desires, aspirations, and purposes of the

average man than any other policy now before the American people.

3. What is the danger to the conservation policies in the coming session of Congress?

The danger to the conservation policies in the coming session of Congress is that the privileges of the few may continue to obstruct the rights of the many, especially in the matter of water power and coal. Congress must decide at this session whether the great coal-fields still in public ownership shall remain so, in order that their use may be controlled with due regard to the interest of the consumer, or whether they shall pass into private ownership and be controlled in the monopolistic interest of a few.

Congress must decide also whether immensely valuable rights to the use of water power shall be given away to special interests in perpetuity and without compensation, instead of being held and controlled by the public. In most cases, actual development of water power can best be done by private interests acting under public control, but it is neither good sense nor good morals to let these valuable privileges pass from the public ownership for nothing and forever. Other conservation matters will doubtless require action; but these two, the conservation of water power and of coal, the chief sources of power of the present and the future, are clearly the most pressing.

4. Why is it important to protect the water powers?

It is of the first importance to prevent our water powers from passing into private ownership as they have been doing, because the greatest source of power we know is falling water. Furthermore, it is the only great unfailing source of power. Our coal, the experts say, is likely to be exhausted during the next century, our natural gas and oil in this. Our rivers, if the forests on the watersheds are properly handled, will never cease to deliver power. Under our form of civilization, if a few men ever succeed in controlling the sources of power, they will eventually control all industry as well. If they succeed in controlling all industry, they will necessarily control the country. This country has achieved political freedom; what our people are fighting for now is industrial freedom. And unless we win our in-

dustrial liberty we cannot keep our political liberty. I see no reason why we should deliberately keep on helping to fasten the handcuffs of corporate control upon ourselves for all time merely because the few men who would profit by it most have heretofore had the power to compel it.

5. How must it be done?

The essential things that must be done to protect the water powers for the people are few and simple. First, the granting of water powers forever, either on non-navigable or navigable streams, must absolutely stop. It is perfectly clear that one hundred, fifty, or even twenty-five years ago our present industrial conditions and industrial needs were completely beyond the imagination of the wisest of our predecessors. It is just as true that we cannot imagine or foresee the industrial conditions and needs of the future. But we do know that our descendants should be left free to meet their own necessities as they arise. It cannot be right, therefore, for us to grant perpetual rights to the one great permanent source of power. It is just as wrong as it is foolish, and just as needless as it is wrong, to mortgage the welfare of our children in such a way as this. Water powers must and should be developed mainly by private capital, and they must be developed under conditions which make investment in them profitable and safe. But neither profit nor safety requires perpetual rights, as many of the best water power men now freely acknowledge.

Second, the men to whom the people grant the right to use water power should pay for what they get. The water power sites now in the public hands are enormously valuable. There is no reason whatever why special interests should be allowed to use them for profit without making some direct payment to the people for the valuable rights derived from the people. This is important not only for the revenue the Nation will get. It is at least equally important as a recognition that the public control their own property and have a right to share in the benefits arising from its development.

There are other ways in which public control of water power must be exercised, but these two are the most important.

6. Does the same principle apply to navigable streams as to non-navigable?

Water power on non-navigable streams usually results from dropping a little water a long way. In the mountains water is dropped many hundreds of feet upon the turbines which move the dynamos that produce the electric current. Water power on navigable streams is usually produced by dropping immense volumes of water a short distance, as twenty feet, fifteen feet, or even less. Every stream is a unit from its source to its mouth, and the people have the same stake in the control of water power in one part of it as in another. Under the Constitution the United States exercises direct control over navigable streams. It exercises control over non-navigable and source streams only through its ownership of the lands through which they pass, as in the public domain and national forests. It is just as essential for the public welfare that the people should retain and exercise control of water power monopoly on navigable as on non-navigable streams. If the difficulties are greater, then the danger that the water powers may pass out of the people's hands on the lower navigable parts of the streams is greater than on the upper non-navigable parts, and it may be harder, but in no way less necessary, to prevent it.

These answers to your questions will, I hope, give you the information for which you wrote. It must be clear to any man who has followed the development of the conservation idea that no other policy now before the American people is so thoroughly democratic in its essence and in its tendencies as the conservation policy. It asserts that the people have the right and the duty, and that it is their duty no less than their right, to protect themselves against the uncontrolled monopoly of the natural resources which yield the necessaries of life. We are beginning to realize that the conservation question is a question of right and wrong, as any question must be which may involve the difference between prosperity and poverty, health and sickness, ignorance and education, well-being and misery, to hundreds of thousands of families. Seen from the point of view of human welfare and human progress, questions

which begin as purely economic often end as moral issues. Conservation is a moral issue because it involves the rights and the duties of our people—their rights to prosperity and happiness, and their duties to themselves, to their descendants, and to the whole future progress and welfare of this Nation.

Review of Reviews. 41: 14-7. January, 1910.

Is there a "Power Trust"?

A great deal of discussion has been current in newspapers and periodicals regarding the so-called "power trust" that is said to be buying up all the principal opportunities in the country for water-power development. Some writers are so mysterious and vague in their allusions to this "trust" that the reader who is familiar with practical business affairs might naturally wonder how so large an enterprise could be carried on without a proper name, a business office, or even a post-office address. When some of those who speak of water-power trusts are asked to be specific, they do not seem to know the names of any power companies, nor the geographical location of any water powers, unless it be Niagara Falls. Those more exactly informed point to the General Electric Company and the Westinghouse Company,—both of which manufacture electrical machinery and appliances on a vast scale,—as the chief culprits in this "octopus" game of gathering in all the water-powers.

There are certain facts, easily ascertained, that the fair-minded reader ought to understand. In the first place, the development of a large water-power is a very expensive undertaking, usually costing much more than the sum originally estimated, and requiring a long period of waiting before the investment makes return in dividends. Such enterprises cannot properly engage the savings of small investors, nor can they look to the resources of people of wealth who prefer safe and stable opportunities for the use of their capital. The reason why the same names appear in the directorates of a number of different water-power and electric companies is because certain men of large re-

sources have specialized in that kind of business, and have initiated or financed different power enterprises in various parts of the country. To assert that these gentlemen are doing harm rather than good, would seem to us a highly fanciful and quite topsy-turvy way of dealing with the facts. There is hardly any other respect in which capitalists can so much help a particular region directly,—and our country itself indirectly,—as in finding a great water-power running to waste and harnessing it for the purpose of supplying electric light, electric transportation, and the power that operates factories and mills. To do this work is beneficent because it saves the waste of fuel from our coal beds, which are being too rapidly exhausted; of wood from our forests, which are being too rapidly swept away; of petroleum from those hidden reservoirs that are all too soon pumped out, —besides lessening the toil of thousands of men, women, and children, and relieving other thousands of patient horses from the drudgery that was theirs before the electric age. Indeed, it is a work of saving all around.

If the General Electric Company and the Westinghouse Company have become interested in the development of power and electric plants where water can be made to operate dynamos they would seem to us to have been showing commendable enterprise. It would be easy, however, to show that in a good many cases this connection has been reluctant rather than eager. These great companies have had to protect their sales of machinery and supplies by taking part payment in bonds or stocks or by subsequent acquisitions of title due to the inability of local companies to go on with unfinished projects. The Westinghouse Company itself could not escape a receivership in October, 1907,—although perfectly solvent and doing the largest business in its history,—because so many of its customers had paid in stocks and bonds. That these properties were justified by a real public need was later demonstrated, and the receiver was discharged on December 5, 1908. But in the interval the banks had been unwilling to carry the load. When such instances are looked into it will appear that these great companies, and certain bankers and financiers in our large cities, far from having insidiously

grabbed the water-powers of a given State or community, have earned the thanks of the localities they have entered by their usefulness in financing and engineering projects that have been of great benefit to the communities within reach of the electric transmission of power. No one can object to inquiries, conducted by the Bureau of Corporations, into the ramifications of water-power control by affiliated corporations or associated groups of capitalists. But we ought in this country to rid ourselves of a very petty and antiquated sort of prejudice against the large way of doing business.

Ours is a large country, with a vast development of wealth. This wealth is so massed and specialized that it can bring to pass great and beneficent results. The remedies against the dangers of monopolistic tendency do not lie in the disintegration of capital, or in attacks upon large associated enterprises. The remedy lies rather in direct regulation and control in the public interest. Let those who have the capital and the ability develop our water-powers. The rivers will continue to flow in their natural channels, and the cataracts cannot be removed bodily to Wall Street. The water-power company will always be dependent upon the patronage of the region tributary to the particular water-power in question, even more than the community will ever be dependent upon the company that develops and sells the power. If Mr. Ballinger's principles of regulation and control are accepted by Congress, as they ought to be in the present session, we should have an end of the talk about a "power trust" invading the public domain. If the principles that the New York State Commission proposes to practice, with the sanction of the Legislature, should go into effect, a fine example would be set that other States could follow. Every State for itself would have it in its power from time to time in the future to protect its people from any possible encroachment by a trust or combination exploiting the power of streams as a commercial resource.

At the present time, generally speaking, water-powers have very little value beyond that which the developing companies create by risking the capital necessary for de-

velopment and by large outlays for machinery and plants. Any future "unearned increment" appertaining to the monopolized control of water-power is always within grasp of the community itself through the principle of taxation. If, in addition to the principle of taxation, the National or State government uses the principle of the lease with periodic revaluing, there can be no possible danger to the general interest. The conservation of so many other things depends upon our utilizing water-power that the burden of proof should be wholly upon those who would do anything to check or retard the building of dams and the electrical transmission of power.

AFFIRMATIVE DISCUSSION

Annals of the American Academy. 33: 566-82. May, 1909.

The Scope of State and Federal Legislation Concerning the Use of Waters. Charles Edward Wright.

One of the leading defects of the confederation of the American Colonies, after the accomplishment of independence, was the want of power in the congresses to regulate commerce, and this, as much as any single cause, "conduced to the establishment of the Constitution," as Mr. Justice Story says in his "Commentaries on the Constitution." The power "to regulate commerce," conferred on the Congress of the Federal Government by the eighth section of Article I of the Constitution embraces the exclusive control of navigation. (Gibbons *v.* Ogden, 9 Wheat. 1.) The organic source of federal authority in the control of waters is in this section; the limitation of its power is that farthermost bound which marks the beginning of things not well within operation of a regulation concerning commerce among the states or with a foreign nation or an Indian tribe.

All that absolute right to regulate commerce and navigation carried on within their waters, or to improve navigation on intra-territorial streams, as well as such power over non-navigable waters, as existed in the government of the mother country, passed to the several colonies upon the acknowledgment of their independence. Title to the water and to the subjacent soil belonged to these several states, subject to the local laws and usages governing riparian rights, and was not surrendered at the adoption of the Constitution. The Federal Government, for purposes of commerce, merely acquired a paramount right to control all waters, intra- or inter-state, capable of supporting navigation among these units of the Union. In theory, it has

power to conserve the public usufruct in waters so far as navigation is concerned—its jurisdiction ceasing at this point. The mode of the exercise of this power is left to the Congress with no limitation beyond that suggested by the purpose of the grant—to regulate commerce. Congress has the right to improve navigation; it may do this by dredging or by the erection of dams with locks, or by either; or, it may do all things necessary to induce or regulate suitable stream flow through storage or head-waters, and it is believed, through the conservation of those reservoirs established by nature, the forests. Any and all methods which have the primary purpose of aiding or facilitating transportation by water are within the scope of federal legislative power.

While this power of quasi-sovereignty over navigable waters was transferred from the crown to the colonies, and afterward delegated by the latter to the National Government, the common law definition of a navigable watercourse, for a very obvious reason, was not a part of the acquisition. In the mother country, the ebb and flow of the tide constituted the determining factor, while here it is always a question of fact whether a stream be navigable or otherwise. Such great natural waterways, extending their courses hundreds of miles from the sea, like the Mississippi or the Ohio, were unknown in England; and to such conditions, the common law doctrine was plainly inapplicable.

Over those streams or bodies of water incapable of use for the purposes of trade or commerce in any way, the United States has no jurisdiction except in a single respect later to be mentioned. Of course, in those parts where the territorial form of government still exists, the Federal Government is both sovereign and proprietor as to such waters. It has the *jus publicum* and the *jus privatum*. Upon the admission of territories to statehood, this dual right is relinquished to the state subject to such prior grants as the Federal Government has made and generally upon the condition that the waters shall remain highways free to the citizens of the United States. The new states acquire the same rights, sovereignty and jurisdiction as were reserved to the thirteen original states at the adoption of the Con-

stitution. (Pollard *v.* Hagan, 3 How. 212.) Generally speaking, then, each state has absolute sovereignty over non-navigable waters within its boundaries, as well as title to and dominion over navigable streams qualified only by the prerogatives surrendered to the Federal Government—the paramount control of the waters for navigation purposes. To the latter, all else must yield.

Aside from the adaptability of waters to the transportation of commerce, streams are mainly valuable as a source of power production and domestic water supply, and, in the arid regions, for irrigation purposes. The state, generally, has control of the use of water in these respects, so far as any *jus publicum* is concerned.

The eastern seaboard states inherited the common law rule of riparian rights. A grant of land bordering on a non-navigable watercourse carried ownership to the centre or thread of the stream, subject to the public easement. That is, the title to the river bed *ad filum aquae* is in the riparian proprietors, not in common, but in severalty. Each proprietor has an equal right to the *use* of the water which flows in the stream adjacent to his land, as it was wont to run, without diminution or alteration. He has no property in the water; only a mere usufruct as it passes. He may not detain it, or divert it to the prejudice of other proprietors, up stream or down, save in some cases where he has a prior right or title to some exclusive enjoyment. He may divert it or a part of it provided he returns it to its usual channel as it leaves his estate. But the maxim usually applicable is *"Aqua currit et debet currere ut currere solebat."*

Ownership of lands upon the borders of a navigable stream, at common law, involved another rule: the boundary of the grant was the high water mark. The rule, however, is not applied in all the states. In some states it is held that riparian proprietorship extends to low-water mark, while in many the rule is the same as to both navigable and non-navigable streams—ownership of the bed of the stream *ad filum aquae,* subject to the public easement in the waters. Where the riparian's line extends to high or low-water mark, title to the river bed is in the state. As to the water itself, the state, whose interest is that of a sovereign, holds

the property in the stream as a trustee for the public, subject to the rights of the United States, if it be a navigable stream, and to the rights of the riparian proprietor. The rights of the latter, however, must yield to the exercise of the police power of the state when the public welfare and health are in jeopardy. Aside from navigation, then, the state and the owners of the land by which it passes are the only parties which have an interest in such waters. Disputes between riparians are settled in the state courts. Needful regulations concerning pollution, etc., are within the scope of the legislative powers of the state, as are also mill acts, the maintenance of ferries, the erection of bridges, etc. It is even competent for a state, in the absence of adverse action by the Federal Government, to improve navigation in those streams which are clearly, in that respect, within the federal jurisdiction. Likewise, and under such conditions, prior to federal legislation on the subject, the state could authorize the construction of dams or bridges. Of course when either interfered with navigation, the United States could order the removal of obstructions; and this without compensation. Under existing acts of Congress, however, dams, and other structures which may menace navigation, may not be erected in a navigable stream, even if it be wholly intra-state, unless the location and plans thereof be approved by the Secretary of War and the Chief of Engineers of the Army. That is, while the state still may authorize such a construction, the authorization is ineffective until the location and plans are approved in the manner stated; and by the Act of June 21, 1906 (34 Stat. 386), these officers, in approving the plans and location of a dam, the construction of which is authorized by Congress, possess the power to impose such conditions and stipulations as they may deem necessary to protect the present and future interests of the United States.

In some of the western states, the ancient riparian doctrine yields to the rule of prior appropriation for mining and irrigation. The requirements of mining invoked this rule, which is rather of a "first come, first served" nature. For mining purposes, it is necessary to divert water from the natural course of its flow some distance to the mineral

in situ. The first appropriator has the better right, and so on. The protection of these rights gave rise to numerous regulations and customs, which have been recognized by the state courts. Similar conditions in the arid regions induced the abandonment of the riparian doctrine—although in some of the states there is a mixed application of the old and new rule.

The adjustment of all these rights is the subject of state control. The Federal Government is a bystander unless interference with navigation is threatened or unless, as it may be, it is a riparian proprietor or appropriator itself; in which latter event its interest is merely that of any private owner.

Conflicting water rights are fruitful sources of local litigation; flowage, diversion, nuisances, etc. Here, the state, through its courts, is the adjuster. Through its legislature, it may regulate just so far as regulation does not involve the abrogation of vested rights. The public interest is fundamental and the "private property of riparian proprietors cannot be supposed to have deeper roots." (Hudson Water Co. *v.* McCarter, 209 U. S. 349.) Nevertheless, private ownership is often the stumbling block in the way of legislation that would promote the interests of the people as a whole, because the line where the state's police power, exercised without compensation, properly ends, and where its exercise of eminent domain, with compensation, must begin, is not always perspicuous. The circumstance of owning land bounded by a stream gives the owner an advantage —a right—in that which should be the property of all alike, and which in some states is declared to be the property of the state: as, for instance, in the Constitution of Wyoming:

> The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are [*sic*] hereby declared to be the property of the state.

The Constitutions of Colorado and North Dakota contain similar provisions, and the Constitutions of California and Washington declare the use of waters for irrigation, mining and manufacturing purposes to be a public use; but this is one of the very few subjects not covered by the Constitution of Oklahoma.

Yet even where declared to be "the property of the

state," the appropriator of the water acquires a distinct title; not perhaps as a mere incident to the soil, as in the case of a riparian owner, but still a distinct usufructuary estate based upon the actual appropriation; a property right which may not be taken or damaged for public or private use without just compensation.

The same basic principle exists in the Australian Commonwealth of Victoria; but there it is carried out to its legitimate conclusion. No one may permanently divert water; a license is granted for a limited period. And no diversion is free. Every user pays for what he uses, the charges being apportioned to the amount diverted and the value of the diversion to the user. For the development of hydro-electric power, for instance, the annual charge is about five dollars per H. P. A large revenue is thus produced, relieving the general taxpayer. The justice of this plan is apparent; he who enjoys pays therefor, and he who has an equal right in the water but cannot use it, is indirectly the beneficiary of the rental paid by the user; for general taxation is reduced. Moreover, the user has an economic reason for avoiding waste; he must pay for what he diverts. Every user is a conservator. During the last decade there has not been a single lawsuit over water rights in Victoria. Furthermore, the Commonwealth reserves the right at any time to apply the water to a paramount use whenever the necessity arises. Naturally there are no "vested rights" to figure largely in the matter of compensation. There is no such thing as a riparian right in this progressive British colony. On substantially all streams a frontage of from four to eight rods is reserved as public land. This solves the pollution problem and in other ways simplifies the conservation of the public's rights in the water.

As far as the rights of the American public in the free navigation of its streams are concerned, they are happily conserved because they are paramount and supersede any right in the private owner of the adjacent banks. But the country is now at the threshold of a wonderful development of its unused water power to be transmuted into electrical energy at the mill site, and thence transmitted hundreds of

miles to a hundred uses: power, traction, lighting, heating, and the multifarious modes of employing this convenient form of energy. With this possibility of conversion and conduction, there is, at strategic points throughout the country, potential water power sufficient to replace every other form of power now in use in manufactures, transportation, and domestic economics. Of this, but a small fraction is now utilized—about 5,300,000 H. P. Some 1,400,000 H. P. runs to waste over government dams. Far-sighted captains of industry, realizing what the next generation will bring forth—reduction in the fuel supply with its complement, an enhancement of cost—and anticipating the advancement that will come in the art of utilizing hydro-electric power, have already seized advantageous points, and even now a small group of "interests" controls a third of the present water-power production; that is, produces power the equivalent of that proportionate part.

With this portentous concentration of power production, the states, in part, must contend. In those states where, in the substantive law the waters are the property of the "state" or the "people," the problem may be more easily solved than in those older commonwealths where the mill sites are in individual ownership—if the interests of the public are to be conserved. This, and preceding generations, have realized the significance of monopoly in those things which are vital factors in the lives of all consumers, whether it be heat, light, food products, or transportation. Yet all these united must be multiplied to be tantamount in power to the monopolistic Colossus which is yet but a suckling, nurturing itself at the breast of its foster-parent, the public. For heat, light and transportation, and the power that turns the spindles and grinds the corn, will be the product of transmuted water power within the lifetime of our children.

While the state should promote the development of its resources and encourage enterprise in the individual, the superior right of all the citizens should be guarded by such stipulations and conditions in every grant of franchise as will prevent consolidation of control in a few and anything like perpetuity in enjoyment of this privilege. The life of a franchise should be limited in all cases, to a fixed term of

years, say forty or fifty years, irrevocable save for breach of conditions, unless the state must take the water for a higher use in which event compensation must be paid. As the grant of a franchise proceeds from the many to a few who thus acquire special interests in the common property, the many should be recompensed by the payment of annual charges and by a limitation upon the price at which power may be sold.

While these things fall mainly within the scope of the state's power to legislate, the field of federal authority is much greater than its mere interest in navigation would suggest. Aside from the fact that in improving navigation on certain water courses, it develops incidentally a vast water power, it also has control of the location and construction of all dams across navigable streams, whether interstate or intrastate. Nor is this all; as the owner of lands bordering on a stream, it has all the rights of a riparian proprietor in those states where such rights are recognized; and, in its duty to conserve navigability of waterways, its jurisdiction is not necessarily limited to the navigable portions thereof, but may extend to the headwaters and those tributaries which supply or augment its flow. That is, if the diversion or appropriation to any inferior private or even public use of the waters of a tributary impairs or menaces the navigation of the main stream, Congress has power to check or regulate or prevent such use. No state may so legislate as to the appropriation of waters within its boundaries, even of non-navigable tributaries which unite into a navigable water course, so as to destroy or interfere with the navigability of that water course in derogation of the interests of all the people of the United States. This was settled by the Supreme Court in United States *v.* Rio Grande Dam & Irrigation Co. (174 U. S. 690).

A notable instance of the exercise of the federal power is found in the creation of the California Debris Commission (27 Stat. 507), in 1893. The navigation of two rivers, each within the State of California, the Sacramento and the San Joaquin, was threatened, in part, practically destroyed by hydraulic mining operations carried on in the territory drained by their tributaries. Congress declared such min-

ing to be unlawful, unless the persons desirous of engaging therein obtained a permit from the Debris Commission, and assented to be bound by federal law and regulation. The Commission had full power to prescribe rules, to locate debris reservoirs, impounding dams, storage sites in the tributaries, either for debris or for water, and to do all things needful to restore and maintain the navigability of said rivers, to deepen their channels, and even to protect their banks. These operations mainly affected the feeding streams, but the power of Congress nevertheless existed and was upheld by the Circuit Court of Appeals in North Bloomfield Gravel Mining Co. *v.* United States (99 Fed. Rep. 664). These were operations not necessarily in a stream, but by a stream, whereby silt and other debris were carried by the tributaries into the navigable rivers and therein deposited. The act not only affected those who contemplated the establishment of such mining, but also the owners of then existing impounding works. The court said:

> Congress has the power and authority to control commerce and navigation on the navigable portion of the Sacramento and San Joaquin Rivers *and their tributaries*, and to prevent any obstruction on such streams, or the performance of any act, by any person or persons which would tend in any manner to interfere with interstate or foreign commerce.

While the Federal Government is not authorized by the Constitution to create a water power for commercial purposes, although it undoubtedly has a right to do so for its own purposes, it is inevitable that in improving inland streams by a series of dams and locks that water power will thus be created. Indeed, nearly 1,400,000 H. P. is now running to waste over government dams, constructed with no other view than that of aiding navigation. The government may not own the water, but it certainly owns the *power* it thus creates. Water power is not water; it is energy produced by the combination of running water and a suitable fall. Conceding that the *corpus,* the water itself even in a navigable stream, is the property of the state through which it passes, and that the Federal Government has no title to it, still it does enjoy the use and supreme control of it under its power to regulate commerce. In the use of it for a constitutional purpose, it may bring into existence that which was not there before—a form of en-

ergy. It owns what it produces and it may sell or lease the right to utilize its creature; and it would certainly be anomalous if it could not exact a consideration and impose a condition in making a sale or a lease. A sale is out of the question, for that would involve an investiture of rights which might later embarrass the government in the discharge of its duty respecting navigation. But the disposition and utilization of this power by the grant of a leasehold interest is not only a lawful, but a business-like exercise of federal power. Leases imply a termination of the lessee's interest at a definite time as well as a charge regularly to be paid. Just as I may impose conditions on my lessee restricting his use of my property or confining it in legitimate channels, so may the government restrict its grant in a manner to avoid monopoly. The charge it may impose may be devoted to general governmental purposes to the relief of taxation or be expended in the further development of navigation.

So, again, where the government by storage reservoirs, artificial or natural, expends money to conserve the flow of streams, it creates a condition of value in the production of power. By a natural storage reservoir about the headwaters of a stream, I mean a forest. Where the government has reserved a great forest for national purposes, expending money in its protection and the reforestation of its desolated areas, it is contributing as effectually to the perpetuity and uninterrupted development of power in a water course whose sources are protected by these national forests, as it would by the providence of artificial storage. The rivulets and creeks which spring from these forests unite to make in whole or part the navigable watercourse. A corporation is granted the right by the state legislature or by Congress to erect a dam on such a stream for the purpose of developing hydro-electric power. Under the federal law, it may not proceed until the Secretary of War and the Chief of Engineers approve not only the location, but the plans. Under the Act of June 21, 1906, already noticed, these federal officers are authorized to impose such conditions and stipulations as they may deem "necessary to protect the present and future interests of the United

States." This power may include the condition that suitable locks to conserve the navigability of the stream shall be constructed and maintained by the licensee. But "conditions and stipulations" need not and should not stop here. Not only should a definite term for the enjoyment of the privilege be fixed, but an annual charge should be exacted, apportioned, as in Australia, to the horse-power production or, better yet, on the basis of the converted power reckoned in kilowatt hours. Why not? A special privilege in what all the public possess rights is enjoyed by the beneficiary. The public indirectly contribute of their money to maintain the permanence and relative regularity of the stream-flow, on which power in part depends, through its maintenance and care of those great natural conservators of moisture, the forests. The effect may be great or slight, proximate or remote. But it is there—a tangible asset of measurable value to the producer of power. In proportion to its value, the charge is capable of adjustment.

Aside from this, another reason for an annual charge is suggested by the existence of the lock; and in a navigable stream blocked by a dam, a lock is a necessary part of the structure. In the discharge of its duty to regulate commerce, the government should not delegate its obligation to operate such a lock to the power producer. Congress representing the public and using its money must provide an operator to tend the lock and to expedite the transportation of commerce. The lock is there because the dam is there; the dam is there that an individual, a person or a corporation, may enjoy certain privileges in what, of right, belongs to the public. Should the public pay the cost of operating an artificial device for the passage of commerce-laden vessels, occasioned by the obstruction of a natural course for the special benefit of one? Should I pay the expense of a gatekeeper required by my gratuitous grant of a right of way to another across my premises? The charge is not only legitimate and within the power of Congress to impose, but it is right and proper that he who enjoys the public's property should render recompense exactly as he would to the private owner.

Where the Federal Government creates the power in

whole or in part, there is little opposition to the imposition of charges. Despite the attitude of a recent Congress in passing an act conferring special privileges upon an individual in a certain navigable waterway in the West, without any provision as to the payment of an annual charge, after the President, in vetoing a similar measure, had announced that he would sign no bill that did not thus provide; the same Congress later conceded the point in a case where the development of the power itself is the direct result of the government's operation. The recent Act of March 3, 1909 (Public, No. 317), provides in part that the right to the flow of water, and riparian water power and other rights now or hereafter owned by the United States in the Saint Mary's river, Michigan, "shall be forever conserved for the benefit of the Government of the United States, primarily for the purposes of navigation and *incidentally for the purpose of having the water power developed*, either for the direct use of the United States, or by lease or other agreement, through the Secretary of War . . . *Provided*, That a just and reasonable compensation shall be paid for the use of all waters or water power now or hereafter owned," etc. The act limits the term of the lease to thirty years and provides for the readjustment of compensation at periods of ten years, and again, doubly to assure, states that no such rights shall be granted "without just and adequate compensation."

The act expresses what I urge is well within the constitutional field of federal legislation: the right to dispose by lease of a water power created by the United States in the course of operations having the primary purpose of improving or conserving navigation. The language is a little startling in its ingenuous avowal that a part of the purpose, although incidental, is "having the water power developed." The Congress has no authority deliberately to create a water power for the purpose of disposing of it by lease; but if in the discharge of its duty to aid navigation, it unavoidably brings into existence such a power, it has the right of any private owner in disposing of its property, subject always to the superior right of the public in the free navigation of the stream. The Congress may not *purposely* develop a water power save for national needs;

but it may purposely do things in aid of navigation which it well knows will incidentally result in the creation of such a power. It may not build a storage reservoir for the purpose of maintaining the stability of water power; but it may do so under the guise of regulating commerce. It may not acquire from private owners a great forest about the headwaters of a stream for the purpose of conserving stream flow in aid of power development; but it has plenary authority so to act if the avowed purpose and certain effect are to assist navigation. Many peculiar things are done in the name of liberty; a few have been done in the name of the Constitution.

But there is another and a larger class of improvements; a class including water power developed in a navigable stream, under a federal or local franchise, with the consent of the Federal Government. Under the law already noticed, the owner of the franchise may not build his dam until the Secretary of War and the Chief of Engineers have approved the location as well as the plans; and in the act of approval they may impose conditions and stipulations "necessary to protect the present and future interests of the United States," where the authority to build the dam proceeds from Congress. In these instances, the Government does not build the dam or create the power. Perhaps it has done naught in aid of navigation on that stream. The water, in theory, is the property of the state and not of the nation. The fall is provided by nature and by the work of man—the individual rather than the public. The two elements which make the power are there without the aid of the Federal Government; the latter owns nothing—merely owes a duty. How, then, can it impose a charge? Yet President Roosevelt, in two sturdily patriotic messages vetoing bills granting such franchises, declared that he would sign no bill unless the same provided, among other things, that "There should be a license fee or charge which, though small or nominal at the outset, can in the future be adjusted so as to secure a control in the interest of the public."

In certain quarters, it is denied that the United States has power to impose a charge in such a case. It is argued that the charge would be either a direct tax or in the nature

of an impost or excise tax. If the former, it must be apportioned among the states rather than levied directly by the Federal Government itself; if the latter, it must be uniformly levied on every dam and water power in the entire country.

The latter objection, however, is not altogether sound. Uniformity, in the sense of the constitutional provision respecting taxation, means a geographical uniformity, the tax operating on all similar properties. That is, in every instance where the Federal Government approves the location and plans of a dam, thereby authorizing its construction, whether in a navigable waterway east, west, north or south, the tax must be uniformly laid. But a water power developed on a non-navigable stream, without let or license from the National Government, would stand in another category. Any rule of conformity would not necessarily involve the inclusion of such dams or water power privileges; it would merely require the levy of such a tax upon every power privilege similarly authorized or confirmed by the Federal Government.

Recurring to the act of Congress establishing the California Debris Commission, already noticed in part, we find provisions for a "tax" which applies with no "geographical uniformity" throughout the country, but is restricted in operation to only a part of the State of California.

Briefly: The hydraulic process in mining may not be employed about the tributaries of certain navigable streams in that state without permit from the commission, the permit to be granted upon petition and hearing. The license, if granted by a majority of the board, embodies directions and specifications in detail as to the manner in which operations may proceed; what restraining or impounding works shall be built and maintained, and where they shall be located; "and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers, and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof *and the payment of taxes on the gross proceeds of the same. Provided,* That all expense incurred in complying with said order shall be borne by the

owner or owners of such mine or mines." (Act of March 1, 1893, Sec. 13.) The "taxes on the gross proceeds" are imposed by the twenty-third section of the act, which provides that the operators of the mines affected by the act "shall pay a tax of three per centum on the gross proceeds" of the mine so worked, said "tax" to be ascertained and paid in accordance with regulations to be adopted by the Secretary of the Treasury and to be paid into the Federal treasury to the credit of the "Debris Fund," which shall be expended by said commission under the supervision of the Chief of Engineers and direction of the Secretary of War in the construction and maintenance of restraining works and settling reservoirs in aid of the purpose Congress had in mind in passing the act.

This act had been held to be constitutional, as already noted. Yet in terms it provides for the collection of a "tax" which is neither "apportioned" among the states nor is levied by any rule of uniformity. Rather than a general excise law, it is one of special and circumscribed application. Still, the charge imposed is christened a "tax." If it were a tax, there can be little doubt of the unconstitutionality of the act. Wherein does such a "tax" differ from that to be charged upon the grant of special privileges for power purposes in a navigable stream? Both find their reason for existence in the conservation of navigation, although the miners may be required to pay for privileges connected directly with non-navigable intra-state tributaries, while the power producers operate directly in the navigable stream itself.

But the charge is not a "tax" in the constitutional sense; it is of the nature of a license—the according of a special right or privilege to do a thing, which, without permission, would be unlawful. It is leave and liberty enjoyed as a matter of indulgence at the will of the Federal Government. For, if the latter were to withhold permission, the dam might not be erected. And, in this connection, it may now be noted that there is no power to compel the Secretary of War and the Chief of Engineers to approve any location or plan. The writ of mandamus would not lie to compel approval, for the function of these officers is not ministerial,

but entirely discretionary. Congress placed no limitation upon their power to impose conditions and stipulations as to dams it authorizes, except that the aim must be to protect the present and future interests of the United States; the officers to be judges of the necessity and wisdom of the terms.

The power to charge for a special privilege is not necessarily an exercise of the power to tax. It is rather the right to exact a *quid pro quo*. Public interests are bound to be jeopardized, even though certain advantages to a locality accrue from the establishment of the power plant. One has already been suggested—the operation of a lock; for the very fact that gives the Federal Government any measure of control—viz., the navigability of the stream—involves the conservation of navigation through artificial means. The charge imposed liquidates this that otherwise would be a burden in the nature of a tax upon the public. Aside from this, another potential element of cost to the public is involved—the possibility that the Government may be obliged to remove the obstruction caused by the building of the dam at its own cost. Ordinarily this has been guarded against by the exaction of a bond in a large penal sum, the burden of carrying which is an annual charge upon the owners of the franchise. What vital objection can there be to the adoption of a plan whereby the licensee, in lieu of annual tribute to a bonding company, pays such premiums into the federal treasury—a measure of insurance against the loss that might be occasioned were the franchise holder bankrupt and the needs of navigation were to require the removal of the dam? The fund created by the payment of these charges may be either devoted directly to the betterment of navigation, particularly in the removal of obstructions, or turned into the Treasury as a part of the general fund, indirectly serving the same purpose by relieving the taxpayer. If the Federal Government has the power to withhold approval, it has power to bestow approval upon such terms as it may deem necessary to impose in order to protect the present or future interests of the United States. If it has the power to exact a bond to protect the public against loss when, in the interest of navigation, it

becomes necessary to remove the obstruction, it has the power to create a fund for the same purpose. If the public in general contribute to that fund, their contributions are in the nature of a tax. If, however, the special beneficiaries of the granted permission contribute to establish such a fund, it is not a tax, but a license charge, the sole similarity being that both are a rendering to Cæsar of the things that are Cæsar's.

Moreover, it is entirely competent for Congress to insist that no privileges affecting navigable streams shall be granted to any corporation unless said corporation operates under a federal charter. The United States has authority to create a corporation as a means of carrying into effect any of its sovereign powers. (McCulloch *v.* Maryland, 4 Wheat. 316, 411.) Such a corporation may be authorized to construct a dam and lock in aid of navigation, and the incidentally developed power may be disposed of by the creature as well as by the sovereign itself—under such terms and conditions as Congress sees fit to impose. This would bring every power company using the navigable waters of the nation directly under the visitorial control of a federal commission, the Interstate Commerce Commission, for instance, with power to regulate charges and to prevent the formation of unlawful or monopolistic combinations. It is only natural that such companies should receive their corporate animation from the power which controls and regulates interstate commerce, because the ulterior purpose of their being, thus created, would be the production and transmission of power, in itself a feature of commerce which, in its development and utilization, will acknowledge no state bounds. In the incorporation of such companies, coupled with the grant of these privileges in the waterways of the nation, the imposition of charges, the tribute that the creature pays to its creator, will follow easily, logically, and lawfully.

In conclusion: With non-navigable streams, three parties are concerned, (1) the riparian, or appropriator, who has a peculiar property interest therein, and (2) the state, which may have certain police duties to perform in the conservation of public welfare, and (3) the Federal Government,

whose interest is strictly confined to such streams as are tributaries of a navigable watercourse and then only when the navigability of the latter is threatened. With the single exception just noted, the state has exclusive jurisdiction in the realm of legislative activities affecting such streams.

With navigable streams, the same parties are concerned, but in reverse order: (1) the United States, with the paramount duty of improving and maintaining navigation, preserving a superior use in the water, but without ownership thereof or of the subjacent or adjacent soil except in the occasional instance of riparian proprietorship; (2), the state, whose interest is a derivative of its sovereignty, holding its property therein as trustee for all public uses save navigation, subrogated to the superior rights of the Federal Government and of such rights as the riparian owner or appropriator may possess; and (3) the riparian owner or appropriator himself. The National Government has legislative control of all matters affecting navigation primarily and, to the extent already discussed, of the power development incidentally, when the latter affects the former; and in theory it is not easy to divorce the twain. All else is within the scope of state legislation.

The federal power proceeds from its obligation to regulate commerce, of which navigation is but a part. The prospective power development through hydro-electric agencies will be the solution of many existing problems involving the transportation of interstate commerce. The fundamental physical power, to be changed into an easily transmissible form of energy, will, in the future, be found in the greater waterways of the country—the navigable streams. The requirements of navigation and power development must be nicely adjusted; the latter not to interfere with the former; the former not to prevent the latter. The state may not oust the jurisdiction of the Federal Government in the regulation of the former. If the latter is exclusively a matter of state regulation, there will be conflict in adjustment. The public welfare of the whole nation is involved; not that of one state. Any uniform rule in the grant of power franchises which will abort monopoly by restricting the term of the grant to a definite time coupled

with the exaction of a charge adjustable occasionally as the country's welfare may demand, and with a provision for revocation in the event of any attempted combination of interests which would effect a restraint of trade, must, and I believe constitutionally can, find its origin in an act of Congress.

Conference of Governors, Proceedings.

Pages 179-83. James R. Garfield.

Trade itself has wiped out in many ways the State lines. The use of our natural resources and their preservation must necessarily wipe out for some purposes the State lines.

That does not for one moment mean that these great political sovereigns, the States, are losing anything of their inherent rights. It does not mean that the Federal Government, in the exercise of the powers given it under the Constitution, shall infringe upon the political or the industrial or the personal rights of those within these States; but it does mean that in the progress of our country we have found that the powers given the Federal Government must be used to develop those natural resources for the greatest good to the greatest number which do not lie simply within one State but extend into several States, and which, as in the case of water, must be considered as for the use of all the States within the given watershed rather than for the special States through which the water runs or in which the water rises.

It has been suggested that in the forest reserves the plans which have been adopted by the Federal Government may not be along the right line. We do not for a moment maintain that the final word has been said, that the ideal law has been passed, or that the regulations adopted can not be improved. But let me ask this question in answer to the question put by the Governor of Montana—I believe something to this effect: "Why should the Federal Government charge for the general use of the Government those people who are using the forests; why should not that work be paid for by the Government as a whole rather

than impose a charge upon those people who have used those special reserves?" I ask, as an answer to that question, Why should a great resource owned, as the Gentleman admits, by the People at large, be used by private interests, by somebody who is looking only to his own benefit, and not to the benefit of the people of the country? The principle applies not only in the forest reserves, so far as grazing is concerned; it applies equally well to the use of the water powers of this country, in the conservation first, and afterward in the use of those water powers.

Electrical World. 56: 651. September 22, 1910.

State or National Conservation?

There seems to be a general agreement that our natural resources are in sad need of conservation, but the friends of the conservation policy are apparently becoming divided into two hostile camps, one holding to the idea of National control, the other utterly repudiating it and insisting that the States, and the States only, have a right to deal with the matter. It is the old doctrine of States' rights in another of its innumerable phases. A letter from Mr. Percy H. Thomas in the current issue brings to notice an interesting situation which seems not unlikely to arise at any time and which has an important bearing on the question of responsibility in conservation. The hypothetical case is that of the conflict of hydraulic rights on an interstate stream. Suppose under State authority vested rights had been secured and development had been made near the State border. Next, assume a later development with large storage capacity a short distance upstream, but over the border of the State. It is perfectly clear that the later upstream plant in utilizing its storage could practically cripple the older plant further down, and in the normal course of operations, without any malicious intent, would be very likely to do so. We call to mind several streams in which this situation is very likely to arise. Now, if the hydraulic laws in the respective States happen to be identical, the rights of the parties would be very easily deter-

mined, but if they were materially different questions would probably arise which could be solved only with great difficulty, particularly if the stream did not happen to be a navigable one.

Rights of interstate streams have been from time to time before the courts in long-drawn litigation, but there is not yet any body of precedent which seems to be capable of dealing with perfectly possible cases of interference which are very likely to arise. Congress undoubtedly has authority to legislate on the subject under its general interstate authority, even if the stream is not a navigable one; but unless it does so a situation might arise at any time which would be perilously acute, if, following a line of development which is now well marked out, the upstream plant in our supposed case should be owned by the State and leased to an operating company. The private corporation downstream would then find its path through the courts blocked in a conflict with a sovereign State. Such possibilities point strongly toward the Federal control in spite of the very natural tendency to depend in such cases on the police powers of the State and local self-government. There are many streams along the Appalachian and Rocky Mountain watersheds which might become involved in the situation that our correspondent considers.

In still other ways, interstate difficulties may be found in the conservation situation from the hydraulic standpoint. It may be necessary or desirable to safeguard the watersheds of one State in order to protect the water-powers of another, a situation in which National control would be effective, while action by the States would probably be very difficult to secure. These facts bear heavily against State control, even supposing that efficient State action in protection of the rights of its own citizens could readily be obtained. There is grave doubt in the minds of many whether State governments as a whole are not more readily influenced by large private interests than is the National Government. We could mention several States in which it is generally understood that many bills have to receive the assent of influential railway presidents before they are permitted to become law. Influences so potent as these

may be exercised in favor of conservation or they may not; and while powerful influences are constantly at work on Congress, we have faith to believe that their authority seldom or never extends so far as we have just intimated. The interests of all people, irrespective of their residence in any particular State, will be affected by the conservation policy carried on within the boundaries of the United States; and long previous experience in this country with State legislation indicates that where general interests are involved, uniformity of action throughout the territory of the United States is the only means by which effective action can be attained.

Congress has been cautious and properly so in taking important action under its general right to protect the public welfare, but it looks very much as if, in the matter of conservation, a point had been reached when such action would become highly desirable. State control, if prompt and effective is perhaps to be preferred on general principles to National control, since the general theory of our Government is based on the preservation to the fullest practicable extent of local rights. Yet in cases of possible or probable conflict between local rights it is the general tendency to harmonize the differences through Congressional action, for which there is ample though somewhat ill-defined authority in the Constitution. Certainly in the important issues of conservation that are now under discussion there are so many features involving interstate rights that dependence solely upon State action would appear to be chiefly effective in promoting litigation.

Forestry and Irrigation. 14: 419-24. August, 1908.

Plea for Nationalization of our Natural Resources.

H. Riesenberg.

F. H. Newell, Chief Engineer of the United States Reclamation Service, states, "The matter of the development of the West is not a State question. We must conserve forests in Wyoming to benefit the arid plains of Idaho. In western Kansas there is the greatest interest in irriga-

tion, and although there are no forests, the rivers that come into Kansas, as the Arkansas, depend for the continuity of their flow on the proper treatment of the woodlands on the mountains in the central part of Colorado," and so forth, "ad infinitum."

The foregoing is sufficient to prove to the unbiased mind that a national agency is absolutely essential to carry on the work of conservation in this country. If we agree on this, the question naturally arises, what national agency is better qualified to take up and carry on the work than the National Government.

It is almost certain, judging the future by the past, that the States cannot, and individuals and corporations will not, adopt a uniform plan for the conservation of our natural resources, a plan that will work the greatest good to the greatest number. The States cannot be expected to do the essential part of this work; it involves absolutely uniform national activity.

Literary Digest. 42: 932. May 13, 1911.

Federal Conservation Clinched.

Conservationists of the Roosevelt and Pinchot stamp are pictured as feeling a thrill of satisfaction at the sight of their particular brand of conservation marked with the indorsement of the United States Supreme Court. For, as the newspaper editors see it, the court of last resort has now forever settled the question of Federal *vs.* State conservation in favor of the National Government. As summed up by the Philadelphia *North American,* this unanimous decision handed down at Washington last week means that "the Federal Government, without consent of the State affected, may set aside vast areas of public lands as a forest reserve, and that such reserve is not subject to the State fencing laws." Most of the editors express a hearty approval of this outcome, and the Omaha *Bee* even discovers "an element of singular satisfaction" in the fact that it is Justice Lamar who writes the opinions in the two cases involved. For, says *The Bee,* "Justice Lamar is a scion of

one of the old families of the South, in whose traditions the issue of States' rights has always been preeminent."

It seems that a certain cattleman in Colorado, and certain sheepmen in California had made free to pasture their herds and flocks on forest reserve land in their respective States, without making any effort to secure permits from the proper Federal authorities. The plaintiff in the Colorado case contended that the lands in question were unfenced, and that under the State law damages could not be collected from the owners of cattle trespassing thereon. This point Justice Lamar answers as follows:

> Even a private owner should be entitled to protection against wilful trespasses, and statutes providing that damages done by animals can not be recovered unless the land had been enclosed with a fence of the size and material required do not give permission to the owner of cattle to use his neighbor's land as a pasture. They are intended to condone trespasses by straying cattle; they have no application to cases where they are driven upon unfenced land in order that they may feed there.
>
> Fence laws do not authorize wanton and wilful trespasses nor do they afford immunity to those who in disregard of property rights turn loose their cattle under circumstances showing that they were intended to graze upon the land of another. This the defendant did under circumstances equivalent to driving his cattle upon the forest reserve.

But there was a broader question involved, and the defense proceeded "to unmask its guns and attack the Forest Reserve Law and all departmental regulations made by authority thereof." And, as the Philadelphia *Record* notes further in its review of the case:

> To this attack the Attorney-General of Colorado lent the support and countenance of the State. It was asserted that no provision of the Federal Constitution empowered the Government to "conserve the national resources"; that the reservation of vast tracts in Colorado was a denial of equality with the older States, which had been allowed to exercise dominion over all the territory within their boundaries.

But the Supreme Court riddled this argument by proceeding upon the basic principle that "the nation is an owner and has made Congress the principal agent to dispose of its property."

Thus the highest authority of the land has at last disposed of that "curious notion that the United States of America own lands for the sake of giving free pasture to any cattle-owners or sheep-owners who happen along," remarks the Philadelphia *Record*. This is a "sound decision," according to the Brooklyn *Times*, and it "comes

opportunely," adds the Pittsburg *Dispatch.* "Great is the Supreme Court of the United States," exclaims the New York *Press,* for "out of a volume of muddy arguments bewildering to the average layman, and arousing false hopes in the minds of misguided litigants, it distills the simple truth and then enforces what every one recognizes as justice, exhibiting the result in words that a child who runs may read." The New York *Evening Post* finds "solid satisfaction" in the Court's dictum. And the Chicago *Inter Ocean,* a paper which has consistently opposed Mr. Roosevelt and the "Roosevelt policies," has no fault to find. The Chicago paper has a word to say, however, about the men whose acts have made necessary the new attitude now upheld by the Supreme Court:

Many fortunes have been built up in our trans-Missouri regions by mere occupation of the public lands for grazing. The men who did this in the earlier days, before population began to press upon natural resources, are not to be vilified as "grafters" because they did it, as is the habit of our over-zealous "conservationists." The lands lay idle and they put them to uses which increased the nation's wealth as well as their own. They employed labor and cleared the way into the wilderness for those who were to come after them. . . .

The trouble with many trans-Missouri and Rocky Mountain communities is that they have been slow to see that what could be permitted forty, thirty, and even twenty years ago can not be safely permitted now. . . .

The Supreme Court's clear-cut definition of the law should show to these communities their error and move them to closer study how natural resources may be used without abuse.

Second National Conservation Congress, Proceedings.

Pages 82-93. Theodore Roosevelt.

Take the question of drainage, which is almost as important to the eastern States as irrigation is in the western States: Where the drainage of swamp and overflow lands in a given area is wholly within the lines of a particular State, it may be well, at least at present, to leave the handling of it to the State or to private action; but where such a drainage area is included in two or more States, the only wise course is to have the Federal Government act; the land should be deeded from the States back to the Federal Government, and it then should take whatever action

is necessary. Much of this work must be done by the Nation, in any case, as an integral part of inland waterway development, and it affords a most promising field for co-operation between the States and the Nation.

We, the people of the East, our State Governors—I have been a Governor of an eastern State myself—showed that the States in the East couldn't do the work as well as the National Government and we are now getting the National Government to take, at large cost to itself, these lands and do the work the public good requires. When we are now doing that in the East, it seems to me the wildest folly to ask us to start in the West to repeat the same blunders that are now being remedied. My language shall at least be free from ambiguity.

If any proof were needed that forest protection is a National duty, the recent destruction of forests in the Rocky Mountains by fire would supply it. Even with the aid of the Army added to that of the Forest Service, the loss has been severe. Without either it would have been vastly greater. But the Forest Service does more than protect the National forests against fire. It makes them practically and increasingly useful as well. During the last year for which I have figures the National forests were used by 22,000 cattlemen with their herds, 5,000 sheepmen with their flocks, 5,000 timbermen with their crews, and 45,000 miners. And yet people will tell you they have been shut up from popular use! More than 5,000 persons used them for other special industries. Nearly 34,000 settlers had the free use of water. The total resident population of the National forests is about a quarter of a million, which is larger than the population of some of our States. More than 700,000 acres of agricultural land have been patented or listed for patent within the forests, and the reports of the forest officers show that more than 400,000 people a year use the forests for recreation, camping, hunting, fishing and similar purposes. All this is done, of course, without injury to the timber, which has a value of at least a thousand million dollars. Moreover, the National forests protect the water supply of a thousand cities and towns, about 800 irrigation projects, and more than 300 power projects, not counting the use

of water for these and other purposes by individual settlers. I think that hereafter we may safely disregard any statements that the National forests are withdrawn from settlement and usefulness. One of the most important Conservation questions of the moment relates to the control of water-power monopoly in the public interest. There is apparent to the judicious observer a distinct tendency on the part of our opponents to cloud the issue by raising the question of State as against Federal jurisdiction. We are ready to meet this issue if it is forced upon us, but there is no hope for the plain people in such conflicts of jurisdiction. The essential question is not one of hair-splitting legal technicalities. It is not really a question of State against Nation, it is really a question of the special corporate interests against the popular interests of the people. If it were not for those special corporate interests, you never would have heard the question of State against Nation raised. The real question is simply this, Who can best regulate the special interests for the country's good? Most of the great corporations, and almost all of those that can legitimately be called the great predatory corporations, have interstate affiliations; therefore they are out of reach of effective State control, and fall of necessity within the Federal jurisdiction. One of the prime objects of those among them that are grasping and greedy is to avoid any effective control either by State or Nation; and they advocate at this time State control chiefly because they believe it to be the least effective. If it grew effective, many of those now defending it would themselves turn around and declare against State control, and plead in the courts that such control was unconstitutional.

In the great fight of the people to drive the special interests from the domination of the Government, the Nation is stronger, and its jurisdiction is more effective than that of any State. I want to say another thing, which the representatives of those corporations do not at the moment believe, but which I am sure that in the end they will find out; because of its strength, because of the fact that the Federal Government is better able to exact justice from them, I also believe it is less apt, in some sudden gust of

popular passion, to do injustice to them. Now, I want you to understand my position—I do not think you can misunderstand it. I will do my utmost to secure the rights of every corporation. If a corporation is improperly attacked, I will stand up for it to the best of my ability; I'd stand up for it even though I was sure that the bulk of the people were misguided enough at the moment to take the wrong side and be against it. I should fight to see that the people, through the National Government, did full justice to the corporations; but I don't want the National Government to depend only upon their good will to get justice for the people. Now, most of the great corporations are in large part financed and owned in the Atlantic States, and it's a rather comical fact that many of the chief and most zealous upholders of States' rights in the present controversy are big business men who live in other States. The most effective weapon is Federal laws and the Federal Executive. That is why I so strongly oppose the demand to turn these matters over to the States. It is fundamentally a demand against the interest of the plain people, of the people of small means, against the interest of our children and our children's children; and it is primarily in the interest of the great corporations which wish to escape effective Government control.

And I ask you to consider two more things in this connection: Waters run; they don't stay in one State. That fact seems elementary, but it tends to be forgotten. I have just come from Kansas. Practically all the water in Kansas runs into Kansas from another State, and out of it into other States. You can't have effective control of a watershed unless the same power controls all the watersheds, as the water runs not merely out one State into another but out of one country into another. One of the great irrigation projects of Montana has been delayed because the waters that make the Milk river rise in Montana, flow north into Canada, and then come back into Montana. You can't settle that matter excepting through the National Government; the State can't settle it. So much for what we see here. Now, take the experience of other Nations—of the little Republic of Switzerland. It actually tried what

some of our people ask to try; it actually tried the experiment of letting each Canton handle its own waters, and a conflict of jurisdiction arose, and the squabbling and the injustices became such that about nine years ago the National Government of Switzerland had to assume complete control of all the waters of Switzerland, on the explicit ground that all of the waters belonged to all the citizens of the Swiss nation. Now, I am not asking that we go ahead recklessly; I am only asking that we do not go backward where other countries have gone ahead.

Second National Conservation Congress, Proceedings.

Pages 320-1. William Douglas Johns.

I wish to tell the Delegates here, for the purpose of showing the necessity of Federal control, how the water-power sites of the State of Washington—the greatest of them—have passed from the hands of the State within a few months, under the administration of Land Commissioner Ross, who has made himself so pro ainent here this evening. Two corporations have filed on the lower waters of the mighty Columbia, a railroad and water corporation with steamboats plying 100 miles above and carrying freight and passengers, and an irrigation corporation below, using half of the waters of Columbia River, and all the State of Washington got was filing fees; and Governor Hay wants us to give the balance to him in the same way—the other half of those great waters of the mighty Columbia. The lands secured by the railroad corporation within a few months on the shore—lands worth millions of dollars—were sold by Governor Hay and Land Commissioner Ross for $10,000, and Governor Hay wants us to turn over more to him for the same purpose. The waters of Chelan River in the Cascades James J. Hill secured (125,000 horsepower) by paying filing fees to the State. No wonder, in his speech, he favored State control!

A few days before I left Washington a dispatch came from Port Townsend to the Seattle papers—making a glori-

ous spread—saying that the water-power company, capitalized at a million or two, was going to put in a 6,000 horsepower plant to supply Port Townsend and the neighboring country—and then boasted of the country to show what a good thing it was to invest in. They said the company had secured every water-power site on the river, right up to its eternal glaciers, and that they had been twenty years in securing those sites. Were they doing it for development? Never! They were going to take one lower fall and develop it, and sell the power at a high price. They had secured all the other sites along that river—and for what purpose? To prevent competition until the country grew up by paying taxes simply, holding a water-power site that amounted to nothing until the people were prepared to pay an immense revenue to them. So much for their plea of Governor Hay that he wanted the State developed. The Olympia National Forest, reserved by President Cleveland, was opened in response to a similar complaint as that made by Governor Hay, "You are driving settlers to British Columbia." It contains some of the richest timber lands in the State of Washington and on the Pacific coast. What was done with it? Part of it was covered by scrip, a few quarters were taken by war settlers, the balance by speculators. They sold at from $600 to $800 per quarter, a few holding on until within the last few years; and the result was that it has passed into the hands of the corporations. Since the Milwaukee built out there, they burned up much of it; and today you can go into great tracts of that land (I have been through it) and you would never know that a human foot had stepped there—it is as wild as it was before Vancouver sailed along the coast on his voyage of discovery. If the National Forests of the State of Washington were turned over by the United States Government to the State of Washington and its officials, and the tender mercies of Land Commissioner Ross, they probably would go just exactly as the Olympia Forest went—into the hands of speculators, not to be settled up, not to bring wealth and people and glory to the State, but to be held until timber is valuable, to be kept in primeval wilderness.

Outlook. 92: 910. August 21, 1909.

Forests and Water Powers: Oregon.

Many of our rivers are inter-State. Hence no one State's control will be sufficient even to control its own waters. The next step is to secure uniformity in the laws of the different States. The Oregon Legislature's laws might be taken as examples in other States. But conditions are different in different States. Even if they were alike, it would be doubtful, in our opinion, whether uniformity of State legislation could be secured in this domain more than in any other. Hence the conservation and wise use of water resources will, we believe, never be accomplished until the whole country submits to a Federal administrative system. Some kind of Federal commission must be created with power to determine, enforce, and protect inter-State rights. For instance, it ought to be possible either for the Government's Reclamation Service or for private capital to store the flood waters in Colorado for use in California at the mouth of the Colorado River. Surely there can be no coordination of all the advantages of water on inter-State streams until intelligent Federal supervision is provided.

Outlook. 94: 975-6. April 30, 1910.

Save the Nation's Property.

Millions of acres of swamp and overflowed lands once belonged to the Nation, but a generation ago they were handed over to the States, and are now in the hands of a few big interests. Thousands of acres of grazing lands are now virtually useless to the settlers, because swamp lands which furnish the only water for cattle on these grazing lands are held in private ownership. The history of swamp lands must not be repeated with water power sites.

The Nation can afford much better than any State to carry out a broad and statesmanlike water power policy, and is much stronger than any State as protector of the consumer.

It is because the Nation is strong that special interests

are seeking to have the ownership of water power sites transferred to the States. A special interest can control a State Legislature much more easily than it can control Congress. Moreover, it can disregard the protest of the whole Nation if the State has sole control; but if the Nation has sole control, it will have to be subject to the Nation's scrutiny.

In spite of the vigorous campaign on the part of interested concerns and individuals, the people of the United States can, if they will, retain these water power sites in the ownership of the Federal Government.

Outlook. 95: 57-9. May 14, 1910.

National Conservation.

National conservation means two principles: First, that the National domain belongs to the people and is to be administered for their benefit; and, second, that there is power in the National Government under our Constitution so to control that administration as to make it of benefit to the people.

To this second policy of national conservation there are numerous opponents. It is opposed—

By the special interests: the men who have the energy and enterprise, or think they have the energy and enterprise, to get possession of a considerable share of the National domain and make in the future fortunes out of it as fortunes have been made in the past.

By the traditionalists: the men who fear any departure from the creeds, the policies, and the methods of the past; who believe in the motto, Let well enough alone, and prefer to suffer the ills of the present than to fly to ills they cannot clearly foresee and prevent.

By the individualists: the men who do not believe that the public domain belongs to the public; who believe that the sole function of government is to preserve order while mankind engages in a free competitive struggle for the world's wealth, which should be distributed upon the principle, First come, first served.

By the political skeptics: the men who do not believe in the competence of the people to protect their interests; who believe that if Government undertakes to regulate the administration of the public domain in the public interest, enterprise will be stifled, industry paralyzed, corruption and waste increased.

By the anti-Federalists: the men who do not believe that our Federal Government has, under the Constitution, the power to do this work of regulation, or is by its nature fitted to undertake it, and who would therefore leave the public domain either to the unregulated control of private enterprises or to regulation by the States.

We do not impugn the motives of any of these men. We do not even discuss the wisdom and weight of their objections. We only affirm that they are not national conservationists. No man believes in national conservation unless he believes that the National domain belongs to the Nation, and that from this time forth the Nation should see that it is administered under the control of the Nation and for the benefit of the Nation.

Outlook. 95: 94-5. May 21, 1910.

Water Power: National versus State Control.

It would be useful to have the control of the land and the water in one sovereign, but since that one sovereign cannot be the Nation (for the States cannot be expected to give up their control of the water) it would be much better to leave the control divided as it is now. If the Nation allows the ownership of the land to pass into other hands, it cannot regain it; if the Nation retains the ownership, it can develop a consistent, uniform, and wise policy for the development of the water power. The land now belongs to the whole American people, and there is no reason why it should be given over to a part of the people. Familiarity with local conditions and sensitiveness to local necessities too often operate to the neglecting of broad National conditions and the necessities of the whole people.

Provisions that control which has once been given up shall be reasserted, if certain conditions are not complied with, are notoriously difficult of enforcement. It is highly improbable that control once given up by the Nation could be, to any large extent, regained, even under the provisions of the Smoot bill. The conservation of those natural resources which still remain in the ownership of the Nation is one of the most important duties of the Federal Government as trustee for the American people. The way to secure that conservation is not by attempting to shift that duty to the States, but by adopting a broad and wise policy in which the public interest shall be paramount.

Outlook. 98: 131-2. May 27, 1911.

A Victory for Conservation.

The conservation policy as established under the Roosevelt Administration and administered by Mr. Garfield in the Interior Department and Mr. Pinchot in the Forest Service was, of course, the object of attack by those who found that it interfered with their profits or their privileges. There were many grounds on which this attack was made. Of these at least two were of great importance. One of these was that the Federal Government, in its carrying out of its conservation policy, was invading the Constitutional rights of the States. The other was that the administrative officers of the Government, in making and enforcing Conservation regulations, were usurping the prerogatives of the legislative branch. Both these objections have received a heavy and, we should conclude, a mortal blow from the Supreme Court of the United States. In one case the States' rights refuge is closed to the enemies of conservation. This is a case in which Fred Light was enjoined from turning out his cattle so that they should graze on the Holy Cross Forest Reserve. The cattleman appealed to the Supreme Court on the ground that the public lands were held in trust for the people of the several States, and that the proclamation that created the Forest Reserve without the consent of the

State was in violation of this trust; and that the United States did not observe the Colorado statute requiring an owner, if he is to be sustained in asking damages for injury by straying animals, to fence his property. The Supreme Court decided that this cattleman had no ground of complaint against the injunction. In the opinion of the Court, delivered by Justice Lamar, "the United States can prohibit absolutely or fix the terms on which its property may be used. As it can withhold or reserve the land, it can do so indefinitely." As for the fact that the public lands are held in trust for the people, the Court declares that "it is not for the courts to say how that trust shall be administered. That is for Congress to determine." The Court declined to enter into the question how far the United States would be required to fence its property according to State law, because, as a matter of fact, "fence laws do not authorize wanton and willful trespass," and it is willful trespass that the cattle-owner wishes to indulge in. The other objection was disposed of in a similarly summary manner. This objection was set forth in two cases (that of Grimaud and Carajous and that of Inda), the two being considered as one. In this case the defendants were charged with driving and grazing sheep on a reserve without a permit, contrary to the rules and regulations of the Secretary of Agriculture. After indictment these men demurred on the ground that the law which made it an offense to violate the rules of the Secretary of Agriculture was an attempt by Congress to delegate its power to an administrative officer. The Court says that Congress cannot delegate legislative power, but that there are certain powers which it can either exercise or delegate, and that when it does delegate these powers it does not change their character from administrative to legislative by making their violations punishable as a public offense. In this case the Supreme Court reversed, in the other case it sustained, the lower court; in both cases it upholds as constitutional the policy of conservation. It is hard to see how in the light of these two decisions the authority of the Federal Government over water power in the National domain can be questioned.

Outlook. 102: 935-44. December 28, 1912.

Shall the States Own the Forests? Henry S. Graves.

During the last three years the proposal to turn over the national forests to the States has been urged with increasing insistence. It has been advocated at frequent gatherings in the West, by a portion of the press, and by various members of Congress. Legislative measures proposing such a transfer have been framed. Debate on one of these measures clearly showed an astonishing amount of support to the idea that transfer to the States would be the ultimate disposition of the remaining public lands, the national forests included.

Whether the State or Nation should own and administer these public resources is a question thus definitely presented to the American people.

The national forests have been repeatedly charged with blocking the development of the West. Nothing could be further from the facts. Lands chiefly valuable for agriculture are available for settlement. Approximately 1,250,000 acres of such lands have been classified and listed for entry by the Forest Service, to the benefit of 12,000 settlers. Prospecting and bona-fide mining on the national forests are unrestricted. Sales of mature timber are encouraged by every possible means consistent with businesslike administration. Over fifty-six hundred timber sales are made yearly, ninety-five per cent of them of small amounts for local use. Free timber is granted annually to over forty thousand settlers and prospectors for developing homes or mines. Water power development is encouraged as far as practicable under the present inadequate laws. Some two hundred power companies are now using or developing sites within the national forests. The only restrictions imposed upon this widespread use of the national forests are those required to maintain the permanency and value of the resources and to prevent monopoly.

The national forests are the most significant and concrete expression of the principle of conservation. That principle has been very commonly misrepresented as a policy

of present non-use for the sake of future generations. Its true purpose is twofold—to prevent monopoly of public resources, and to secure their greatest use, both present and future, by scientific development. The stewardship of the Forest Service seeks, as to the national forests, first, use of present resources; second, permanency of such resources; and, third, greater and more valuable resources for the future.

The States have many legitimate interests in the national forests. The administration of the national forests recognizes fully all of these interests. As a matter of fact, the greatest direct benefits of public control are received by the communities nearest to them. The Forest Service is committed to the settlement of lands in the forests chiefly valuable for agriculture. The timber needs of local residents, communities, and industries are amply provided for by free use privileges and local sales. No timber is sold for shipment to the general markets of the country unless there is more than enough to supply both present and future local needs. A similar policy governs the distribution of grazing privileges and the use of forest lands for water development. Charges for any of these resources are made only when the use is distinctly commercial in character.

As rapidly as it can the Forest Service is opening up the inaccessible mountainous regions which make up the bulk of the national forests. Many settlements have been helped to secure an outlet to town, railway, or market by trails, roads, bridges, and ferries built by the Forest Service. Much of this work has been done in co-operation with counties or communities of settlers. The appropriation act this year made available ten per cent of the gross receipts from the national forests for building roads and trails needed for the development of the country. This is aside from the regular appropriation for permanent improvements needed primarily for the protection and administration of the forests. Under the new clause, $200,000 is available for the current year.

The Forest Service recognized at the start that its local personnel must not only be familiar with the regions in which they worked, but must also be in sympathy with the problems and interests of the people. An early provision

of law required the selection of supervisors for the respective forests from residents of the States concerned as far as practicable. This has been scrupulously followed. Furthermore, the regulations governing the national forests provide for the adaptation of administrative measures to the varying needs in different localities.

Loss of local taxes to State and county has been met by legislation giving the county road and school funds twenty-five per cent of the national forest gross receipts. This is entirely distinct from the ten per cent already mentioned. On the more inaccessible and undeveloped forests the returns to the State under this provision are not yet great. From other forests the amounts now received by the counties form no inconsiderable part of their revenue. During the year ending June 30, 1911, the Bitter Root National Forest, Montana, paid $15,000 into the county treasury; the Deer Lodge National Forest, in the same State, $19,400; and the Coconino National Forest, Arizona, $12,800. The revenue derived from the Deer Lodge by Montana is greater than if the entire area were taxable and assessed as timberland of the first class under the Montana laws—a class which, in fact, would include less than a third of the area. The returns in these instances indicate what is approaching on all of the forests as the demand for their resources becomes more general.

Of still greater moment to the national forest communities, however, is the development and maintenance of stable industries. The national forests are capable of producing indefinitely over six billion feet of timber each year. This may be increased to eight or ten billion. Every thousand feet of such timber which is cut pays to the community at least $8 in wages and $2 or more for merchandise. When market conditions make it possible to utilize the full annual yield of these areas, the industries which it will support will distribute at least sixty million dollars every year for labor and supplies in the communities in and near the national forests. Furthermore, this industrial development will be permanent.

Oftentimes local communities are practically the sole beneficiaries of this policy. The sparsely timbered forests

of southern California are maintained almost exclusively for the protection of streams used for local irrigation and power development. This protection is known to the people of that region to be vital to the maintenance of the water upon which practically their entire agriculture and horticulture depend. Many areas are held in the national forests, at the request of local communities, primarily to protect municipal water supplies. On some of them the sparse forest growth is being extended by artificial planting. The broad principle of public control of resources to accomplish objects which could not be accomplished under private control is being applied.

It would seem, therefore, that all of the legitimate needs of the western communities are provided for, and that the transfer of ownership of the forests from the Government to the several States cannot be justified on the ground of discrimination against the latter or injury to their interests.

The various grants of public land to the States total nearly 185,000,000 acres. The largest grants have been made to promote education, as vital to the maintenance of democratic government and free institutions. Other grants have been made for public buildings and penitentiaries, still others to promote military training and the construction of post roads. The eleven States west of the one hundredth meridian, which contain most of the national forests, have received nearly 77,000,000 acres. The average grant to the national forest States is therefore 6,985,000 acres, against 2,920,000 acres to each of the other States. The westernmost States have received sixty per cent of the land granted for education, maintenance of public institutions, and other special purposes, and all of the land granted under the Carey Act for the promotion of irrigation. Aside from the swamp land grants, which benefited particularly the southern States, the national forest States have received, State for State, nearly six times as much public land as their eastern sisters.

Without begrudging this liberal use of public resources to aid the development of the western States, it must be emphasized that the aim of every grant has been to promote the

public welfare, judged not only from a local but also from a National standpoint. The transfer of the national forests would be a further gift of 187,000,000 acres, chiefly to the same States.

The protection, administration, and development of the national forests involve financial burdens which the individual States cannot carry. The regular expenditures on the forests during the fiscal year 1911 were over $3,400,000. The receipts for the same year were about $2,000,000. Few, if any, of the national forest States would have been willing to appropriate the amounts necessary to cover the regular expenditures. To meet the additional burden of emergency fire protection would have been impossible. In Montana the emergency expenditure was over $400,000, in Idaho $350,000, and in Oregon over $100,000. If the amounts needed had not been available at the time of critical danger, a vast part of the public wealth in the forests would have been lost.

The foregoing does not include any overhead charges. The national forest States are grouped in six districts, each with a supervising and inspecting staff. The splitting of the six administrative units into twenty would double, if not treble, the overhead charge. In the same way there would be waste and ineffectiveness in the conduct of scientific work. Good forestry, like good farming, must apply scientific knowledge. This knowledge the Government is now gathering in connection with national forest administration. In developing American forestry it has built up a strong technical staff and instituted far-reaching studies and experiments. That the States would sufficiently provide for the cost of such work is improbable. If they did, the cost would be greater, the results smaller, and poorer forestry would result.

Moreover, the forests are still largely undeveloped wilderness. Although nearly 10,000 miles of trail, 7,000 miles of telephone lines, and over 1,000 cabins and other structures have been built, 80,000 miles of trail and 40,000 miles of telephone line are still needed to complete the primary fire protective system. These improvements will cost not less than $8,000,000.

These expenditures are not excessive for an area equivalent to the New England States, New York, New Jersey, Delaware, Pennsylvania, Virginia, West Virginia, and Ohio, in the most rugged and inaccessible parts of the West. The present cost of administering and protecting the forests, supervision included, amounts to little more than two cents an acre annually; or, as insurance on the property protected, two mills on the dollar. It is less than a number of lumber companies are now expending solely for protecting their lands from fire. It is less than one-third the cost of the public forests of British India, which are administered far more cheaply than those of any other foreign nation. But the States are not ready to assume such financial burdens. If they attempted it, the forests would either be inadequately protected and administered or they would be managed with a view to greater immediate money returns. Destruction of the forests by fire or trespass or unrestricted and unscientific methods of cutting, rapid depletion of their timber by overcutting, and private exploitation of their resources at much less than their actual value would be the inevitable results. Few of the States have as yet met their responsibilities in the protection of forest lands now owned by them or their citizens.

Administration by the Federal Government means greater stability of policy. Stability in the policies governing the use of the national forests is a necessity of axiomatic character. Their waterpowers can be developed only under plans made for long periods. Much of their timber can be utilized only under contracts for cutting and removal extending over fifteen or twenty years. Sudden shifts or changes in the policy or methods of administration would be fatal. In the administration of the national forests a clear-cut, uniform policy has been developed and applied by the Nation. Its results are known. It has been in force for years. Transfer the forests to the States, and twenty separate and distinct policies must be developed, tested, and tried out.

It must be conceded, furthermore, that the Federal Government has higher and more stable standards of civil service. The management of the national forests under its di-

rection has been free from political consideration. Every position on the rolls is under the Civil Service Law. It is fair to raise the question whether similar standards of civil service and similar freedom from political considerations could be expected under twenty different State Governments. The people of one of the great eastern States have so distrusted its governmental machinery and have been so fearful of political manipulations that fifteen years ago they forbade the cutting of any timber in the State forests. The more far-sighted citizens and officials of many western States have been sorely handicapped in their efforts to bring about conservative, businesslike handling of the lands which those States now own. Political considerations are openly of controlling weight in the organization of the land and forestry departments of a number of the States. Few of them have stable civil service regulations governing their employees. The temptation to use patronage for political purposes is the dead weight to-day on the administration of the game laws in very many of the States. With its broader responsibility, its more stable civil service regulations, and its openness to more searching public scrutiny, the Federal Government is a far safer custodian of the public interests involved than would be provided by a large number of individual States.

The States cannot resist the influence of great business interests, either in making or executing laws, as effectively as the Central Government. The difficulty of even the strongest States in withstanding the constant pressure of such interests through long periods of years has been demonstrated over and over again. Many States have been absolutely dominated by them. Monopolies of National scope have been developed or are in the making through the opportunities which such interests formerly had to acquire public resources. Each additional foothold obtained by them in the national forests of a single State would strengthen such monopolies. But its effect upon the prosperity and happiness of the people would not be confined to the State immediately concerned.

After everything else has been said, the fundamental fact remains that public control of the resources contained in the

national forests can be assured only under Federal ownership. The transfer to State ownership is now, in purpose, and would prove in effect, the breaking up of public control of any kind.

The amendment offered to the last Agricultural Appropriation Bill provided that, after the national forests are acquired by the States, "thereafter the lands so conveyed shall be the property of such State, and shall be held, administered, settled, and disposed of by such State in accordance with the laws of such State." And, further, "that after the transfer of such lands to the State, they shall be opened to settlement and sale under the laws of said State." In plain terms, the abandonment of public control altogether and opening the forests to acquisition by individuals is proposed. And the significant fact is that this disposition of the forests appeared to have the support of a majority of the Senators who discussed the bill.

The history of the movement for State ownership supports this belief. Its most earnest advocates are the very interests whose unrestrained exploitation of public resources was stopped by the creation of the forests. The water power corporations have been its foremost champions. Their acknowledged representative spoke in its behalf at the Conservation Congress at St. Paul in 1910. The Public Lands Convention, which met at Denver in October, 1911, composed of the elements in the West which have always fought the reservation of these areas from private acquisition, went on record in support of State control. The forces which opposed the national forests at their inception now attack by this means, not any given agency of administration or any theoretical usurpation of local rights by the Central Government, but the fundamental principle of public control in any form.

A number of the western States themselves, by official acts, have shown the same purpose toward the resources contained in the national forests. The Legislature of the State of Washington passed a resolution in 1903 requesting that 58,240 acres of very heavily timbered land, set aside for forest reservation purposes, be thrown open to entry. In February, 1911, the Legislature of that State, by joint resolution,

requested Congress and the President to open to entry 114,000 acres in the Columbia National Forest unfit for agriculture. On February 15, 1911, the Legislature of Idaho requested the President to eliminate 46,000 acres from the Cœur d'Alene National Forest in that State, which contained scarcely one hundred acres of agricultural land. The same State requested on March 3, 1911, the elimination of portions of three townships containing similar land in the Pend Oreille National Forest.

The movement for State ownership is thus largely, if not wholly, a movement for the abandonment of public control. It is a thinly disguised attack upon the integrity of the forests, and, through them, upon the whole conservation policy. Whether private acquisition of these resources is proposed by all advocates of State ownership or not, such would be its practical effect.. It is believed that the people have not changed their conviction that public control is necessary. The question becomes, then, simply, What governmental agency is best equipped to exercise this control for them? There can be but one answer to this question. For the strongest, most stable, and most effective administration of these resources for their own good the people must continue to look to the Federal Government.

NEGATIVE DISCUSSION

Conference of Governors, Proceedings.

Pages 168-71. Frank R. Gooding.

Idaho has given a practical demonstration of what a State can do for the development of its own resources, in the reclamation of its desert lands, and the storage of its flood waters, under the law known as the Carey Act, passed by Congress in 1894, giving to each State in the arid portion of America a million acres of land to be reclaimed under State supervision. Idaho has demonstrated beyond the question of a doubt that the people of a State are best fitted for the development of their own resources. The work of reclamation of arid lands by the general Government and by the State lie side by side in Idaho, where the Government has done a great work, for which we are all thankful; yet, valuable as this work is, the State, in the same length of time, and under the same conditions, has brought about a state of development many times as great as that accomplished by the general Government. Idaho has constructed under the Carey Act the largest irrigation canals in the world, with the exception of those built by the British government in India and Egypt. The State has built and has under construction irrigation works that will reclaim more than a million acres of desert land, and is now asking the general Government for two million acres more, under the Carey Act, to continue this work of home building.

Idaho is justly proud of her great development under the Carey Act. Within the last four years we have turned water on more than 300,000 acres of what was then a barren waste, and transformed it into fields of beautiful grass and waving grain. We have made possible the building of homes for more than 60,000 people, and have created a new wealth for the State of more than $50,000,000. Yet in this

work of home building, the State has only made a beginning. Within the next five years Idaho will have completed all of its irrigation works for the first million acres of Carey lands, thus giving an opportunity for homes for more than 250,000 people, and creating wealth in excess of $500,000,000. The State of Idaho will continue this great work until all its arid lands are reclaimed and every acre made available and beneficial to mankind. When the story can be written of Idaho's development by irrigation it will tell of the reclamation of more than 5,000,000 acres of as rich land as can be found anywhere in the world. It will be land that will equal in productiveness 20,000,000 acres in the eastern States, for under irrigation there are no failures or half-crops, but every year a full harvest for the man that tills the soil.

Idaho is especially fortunate in its natural waterfalls. I feel that I can say we have more opportunities for the development of power than any other State in the Union. The work of developing our water power by the construction of great plants is going hand in hand with the reclamation of our arid lands. The State is not only reclaiming its arid lands, but has entered into contracts for the construction of large storage reservoirs that will control the flood waters of some of our rivers. Within the next ten years my State will have under control all of its flood waters, which will be used for reclaiming our desert lands. This will be a great relief to the people who live in the lower valleys through which these rivers empty into the sea.

What Idaho has done and is doing in reclaiming her arid lands and controlling the flood waters of the State, it can do in the protection of the forest and the range. The people of Idaho fully understand the importance of the forests. They know that the forests conserve the waters that are as the life blood of the State, and if they are given an opportunity they will conserve and protect the forests for all time—consistent with an intelligent use by the people. Idaho has already passed a law for the protection of her forests on State lands. The law provides that, wherever the land is more valuable for forest than for home building, the timber shall be cut under State supervision, looking to

the protection of the young trees, and throwing such other safeguards around it as will insure its success as a State forest. In my judgment, the interests of the whole country would be best served if Congress would turn over to the States all of the public domain, under proper laws looking to the protection of the forest and the range, to be administered and developed by the citizens of those States. I have become very much alarmed of late at the public sentiment growing against the administration of the national reserves in my State, for I know their administration can not be successful without the support of the people. There are good reasons for this adverse public sentiment, for at times proper consideration has not been given the rights of the people. Great tracts of land have been included in the reserves upon which there is no forest, nor ever can or will be a forest.

More of the area of my State is in national forest reserves than that of any other State or Territory in the Union. Forty percent of my State is today in national forest reserves, an area greater in extent than is embraced within the States of Massachusetts, Connecticut, Rhode Island, Maine, Vermont, New Hampshire, New Jersey, Delaware, and the District of Columbia. In all the national forest reserves in the United States we have an area almost as great as was embraced within the thirteen original States. These great reserves extend from the borders of Mexico on the south to the British possessions on the north. The varied conditions that of necessity exist over this vast extent of territory make it impracticable, in my judgment, to accomplish the best results by its administration here in Washington.

The man is not yet born that can prescribe rules and regulations for the successful administration of so vast a territory as this, for in no two States in the union are conditions the same. What might be practical in one State might be ruinous in another. I have seen much of the administration of the national forest reserves in my State during the past few years. I have been its friend. I have given it my support, hoping it meant something for the advancement and development of Idaho; but after more

than three years of close observation, I am forced to the conclusion that the theory is all wrong, and that the work the Government is trying to do properly belongs to the State.

I have a high regard for the Chief Forester. He is trying to do a great work, a work that must be done, but it never will be successful until the States are made interested parties in the development of their own resources. I know of no reason why the States should not be entrusted with the protection and development of all the natural resources that lie within their borders. The West is not lacking in intelligence, in courage, in patriotism, or in appreciation of the marvelous resources that a kind Providence has given us with so generous a hand. Idaho is asking for an opportunity to develop her own resources. We desire the assistance of the general Government, not its guardianship. Idaho is asking for the same spirit of the Constitution that has been given to all the States east of the Rockies, and her citizens will demonstrate to the whole world that she is worthy of Statehood.

Congressional Record. 45: 265-70. December 20, 1909.

F. W. Mondell.

That the Federal Government owns the public lands as a proprietor and not as a sovereign, and that such ownership by the Federal Government can not be used to establish regulation and control over the waters within a State, has not only been settled in principle by numerous Supreme Court decisions, but is self evident, else the people of the public-land States would not be secure in the enjoyment of equality of sovereignty and opportunity with the people of the other States, which is their right.

This is not the first time we have had to meet a demand for Federal control over the use and distribution of water within the Western States. When the national reclamation law was being framed the question arose and was presented and pressed in a variety of forms, but Congress and President Roosevelt indorsed the view of those who stood for a

full recognition of the right of the States to control in the appropriation and distribution of water, and that doctrine was written in section 8 of the act, as follows:

SEC. 8. That nothing in this act shall be construed as affecting or intending to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State. . . .

Congressional Record. 45: 417-22. January 8, 1910.

Sylvester C. Smith.

As to the fifth proposition, the control of these public-service corporations by national authorities, I take it that no one who has ever read the Federal Constitution will contend that such control may be exercised as a matter of sovereignty. That power resides in the States. The law of the case is simple and easily within the grasp of the lay mind. At the outset the colonies or original States each possessed all of the inherent powers of sovereignties. For sufficient reasons these sovereign States formed "a more perfect union," and by the Constitution of the United States they gave to the new government certain enumerated powers. But they were careful to say that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people." Nowhere in the Constitution can be found any delegation of authority over the affairs of public-service corporations doing business wholly within a State. This is elemental and not disputed in any quarter that I know of.

But some are contending that such a power may be created in the National Government by the contract granting the easement; that is to say, it is claimed by a few that the Government might say, "We will give you the right to cross public land if you will agree to charge consumers only such rates as some federal official shall name." A more extraordinary proposition has seldom been presented, nor one more offensive to the sovereign States. It means that the people, acting through their state and local governments,

can not be trusted to care for themselves; the protecting wing of some federal official must be spread over them. Who has a right to say, judging by past experiences, that the people, in their local governments, are not to be trusted? Or that the States should abdicate their prerogatives in favor of some bureau chief here at the national capital? The suggestion is offensive. It indicts either the integrity or the sanity of the people in their local affairs—the same people, by the way, from whom springs this much-vaunted federal superiority.

I want to be put down as one who does not hold this low estimate of the State Governments.

But any attempt to run local affairs from Washington must prove futile. The rights and powers of a State can not be taken away from it either by act of Congress or by a contract to which the State is not a party, or by contract at all. Let us suppose a very plain case.

Suppose the Federal Government, by due enactment, should decree that the price of power in a given community should be $30 per horsepower year. Suppose the consumers, being dissatisfied, appeal to their State for relief, and the latter, upon inquiry, says the rate should be $25 or $28. Or suppose the power company, claiming the national rate was too low, should seek protection from the State and the latter should find that the rate should be $32 or $35. Does any one doubt what would become of the federal rate? If we can not do this work thoroughly and effectively, we had better leave it alone. Any attempt to deal with the subject here might be used to defeat necessary state legislation, and thus do much harm and no good in the end.

It should be borne in mind that to give the Federal Government power to regulate prices charged the public for power would not be creating a new power of protection to the people; it would only be changing this power from the hands of local authorities to the authorities at Washington. At the present time city or town trustees have as much power to regulate prices charged by power companies within their respective fields of authority as the Federal Government could ever acquire. Outside the cities and towns the county authorities have this power.

Now, supposing that there is a plan on foot to bring all the power companies of the Nation together in a gigantic trust. Which would suit this trust better, to have the authority to fix its charges divided among several thousand local officials, each of whom is closely in touch with the people whom he represents and to whom he must look for a continuance of his authority, or to have the power to fix charges throughout all the Nation concentrated in the hands of one federal executive officer who owes no direct responsibility to the people and is not selected by them? Assuming that the majority of public officials are corruptible, which would be the cheapest for the supposed water-power trust to buy, one Cabinet officer, bureau chief, or department clerk, or all the city and town trustees and all the county supervisors in all the States interested?

Assuming that only a few public officials are corruptible, which would offer the trust the greatest chance of securing an unfair advantage—to have one office or one commission to fill with purchasable material, or to be obliged to control the elections in every town and county in the Nation?

This is the gist of the question: Is it safer for the people to keep the authority to superintend these public affairs in the hands of their own neighbors—men whom they meet socially and in a business way and to whom they can go at any time with their protests—or to put it in the hands of an unknown man at the national capital whom they probably could not see if they took the trouble to go to Washington, and who, in the nature of things, could know nothing, either at first, second, or third hand, of the local conditions? Who would really do the work under federal supervision? The President could not, for he is already overworked. A Cabinet officer or bureau chief could not handle the thousands of cases for the same reason. The real work of investigating the facts, as to the actual amount of capital invested in each case, the cost of operation, amount of depreciation, and needs for betterments, would be done by some subordinate whose name even is not known throughout the floor on which he works. I do not mean to cast any aspersions on this class of workers as a class, but I assert that it is preposterous to say they can

better be trusted to guard the interests of the people than town and county officials when the attacking party is the "power trust," of which we have heard not a little.

A man very prominent in water-power affairs in the West said to me not long ago that if Congress would only give some bureau chief authority to grant permits for a definite term of years they would be satisfied. He rested easy that they could make satisfactory terms in due time.

But whether we will it or not, the States will have a large part in the construction and operation of these great agencies. It so happens that there are certain constitutional restraints placed on the actions of Congress and certain powers reserved to the States, powers amounting to duties, powers which can not be laid down or surrendered, and powers which the people directly affected will certainly call into action. Before we assume to do too much here in this body, let us note what some of these powers of the State are. It is within the power of the State—

To incorporate a company to build the plant.

To limit its capitalization—a matter of the very first importance in connection with rate making.

To make rules governing the construction of dams, pipe lines, and so forth, even on the public domain.

To protect the plant from injury by the mischievous or evil-minded.

To make rules for the distribution of the current, so that the consumer may not be oppressed.

To fix the price at which the current shall be supplied.

To enforce the payment of the lawful rate and prevent the collection of a higher one.

These powers can not be taken away from the States, and these duties can not be performed by the Federal Government if the States assert their rights.

Congressional Record. 45: 1349-54. February 1, 1910.

Edward T. Taylor.

With all due respect to everyone, I can not appreciate the brotherly spirit exhibited in some of these measures

presented by Members coming from the States that have been settled and built up by the leniency of this Government; States that had not one-tenth the hardships that the present frontier States have to endure, and that have been made rich by settlement and development during the past hundred years, and which now seek to hamper and place unwarranted burdens upon the new and needy States of the West. Moreover, it is also passing strange that none of these proposed measures for encroachments upon our rights, as I view them, come from people who are familiar with our conditions. To me these paternalistic and centralizing tendencies appear little short of national bureaucracy run mad. It would be no more unfair, unconstitutional, or illegal for the National Government to commence taxing and proceed to derive an enormous revenue from the use of navigable rivers and harbors, upon the theory that it retains a certain interest therein. Why does not some of the muckrakers work up a scare about an impending monopoly of the power sites of the streams of the East? Why does not some one discover the secret formation of a gigantic trust composed of all the navigable waters and frantically appeal to the Government to take them all over and charge the users of them $1,000,000,000 a year royalty for their conservation and preservation for the national good and for the welfare of future generations, and incidentally for a large number of new offices? I am heartily in favor of conservation, and I would especially like to see some conservation of law and of the constitutional rights of the people of the West. I want to see the conservation of a little old-fashioned honesty and fair dealing.

It has been one of the important rights and privileges of the settlers of every State in this Union for a hundred years to use free of charge the public domain for the grazing of their stock, and why should not our cattle be allowed to eat government grass which would otherwise go to waste? It did not cost Uncle Sam a dollar, and why should the Government, now for the first time in a century, inflict a tax upon the people of the West for the grazing of that grass? And why should it be a criminal offense for a settler's cow to stray onto a forest reserve? I do not

believe this great Government needs the 60 cents; nor do I believe it is justified in collecting that sum from the struggling settler for what grass each head of his stock can find on the arid public domain during each short summer.

But, in brief, we insist that the policy of this Government, ever since the adoption of our Federal Constitution, has been that each State was entitled to and has always enjoyed the benefits of the natural wealth and resources and climatic conditions within its borders. We simply ask at your hands and of this administration the application of that same principle to the States of the West that has always prevailed in and been accorded to the older Commonwealths. Moreover, the legitimate and practical regulation and control and safeguarding of the resources of each State should be within the province of the state government, and whatever revenues are derived therefrom should pass into the state and county treasuries.

American citizens do not take kindly to absentee landlordism. We do not relish tyrannical interference with our local affairs. We do not like bureaucratic rule. We prefer to be governed by law and by our own people. We want the laws intelligently framed in the light of the welfare of the government, as well as of the governing body. We do not consider an officer's proclamation of his own virtue a sufficient reason for setting aside the Constitution of the United States, or even the acts of Congress. We do not want to have to go to the Land Office and the office of the forest supervisor every morning to learn what the law is.

The inhabitants of the Alps of Switzerland, the Highlands of Scotland, and the mountainous regions of the earth have always been the most intensely patriotic and liberty-loving people, and the citizens of the West now are, and the succeeding generations will be, a perpetual exemplification of this rule. We are 2,000 miles away, but we are your younger brothers still. Do not impose upon us because you have the power to do so. Let us develop our own resources, and we will soon become a storehouse of wealth to this Nation.

Congressional Record. 45: 1476-7. February 4, 1910.

Letter of Arthur J. Shaw to Senator Wesley L. Jones.

My Dear Senator: I trust that you will not think it impertinent on my part to express my views to you concerning the national resources on the public lands of the United States. As you know, I have for many years been employed in the government land service, and have been a resident of Idaho and Washington for twenty-seven years.

Before the Federal Constitution was adopted by the legislatures of the 13 original colonies all the lands and water thereon and natural resources—such as timber, coal, minerals, and water power—were declared to be the property of the people of the respective colonies. After the adoption of the Constitution all the lands within these colonies and the lands constituting the States of Kentucky and Tennessee were owned, controlled, and sold by these respective States. All the remaining outlying lands constituted the public lands of the United States.

From the 20th day of May, 1785, to June 30, 1909, under the various acts of Congress, there was received from the sale of the public lands and converted into the general fund of the Treasury of the United States $423,135,507.90. Nearly every settler who has contributed his earnings to this amount has had to borrow his proportion of this money and pay interest thereon. It is not an unreasonable estimate to make when it is stated that the public-land owners of the South and West have been obliged to earn and pay $1,000,000,000 to secure title to their homes. The new States now constitute more than two-thirds of the United States of America. Is there any valid reason why these new States should be required to pay nearly half of a billion dollars into the general fund of the Public Treasury when the original States were not required to pay a single dollar? If this can only be answered in the negative, why should the public-land States continue to pay annually $9,000,000 from the sale of lands into the Treasury?

Not only the lands of the original States, but all of their "natural resources" were and are owned and utilized locally, and, under the Federal Constitution, it is not within the

power of this Government to control them, except by purchase. Under the circumstances there is nothing to prevent the predatory dollar, the trusts, the syndicate, the Morgans, or the Rockefellers from absorbing everything in this unfortunately unprotected portion of the United States.

When the public surveys—no public surveys were ever made in the original States—were to be extended over government lands, it was provided by statute that the lines of survey should not be extended over navigable or tide waters of the United States. The banks and beds of streams, together with the waters therein, were reserved from sale, and when the new States were admitted to the Union these banks and beds of streams and all the waters within those states were declared to be the property of the respective States. State control and State ownership has always been exercised over this class of property, subject to the right of Congress to regulate commerce. Under these circumstances it may be a matter of doubt as to whether the Federal Government has a right to charge for the use of water within a State. The various States have, through their legislatures, declared title to all waters within the States and have provided statutory ways and means by which title can be acquired for irrigation, mining, and manufacturing purposes.

In 1877 (see discussion in Congressional Record, 44th Cong., vol. 5, pt. 3, pp. 1966 to 1968) Congress passed an act which provided that "the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights." Thus the non-navigable waters in Territories and navigable and non-navigable waters in States are held free for a useful purpose, subject to existing rights. In order to give force to this statute existing rights must clearly mean existing appropriations of water for a useful purpose. The statutory authority to hold the water "free for public appropriation" must necessarily abrogate the old common-law riparian ownership on all government lands and on all lands purchased from the Government since the passage of this act.

This statute is the only safeguard for the Reclamation Service in the West. But for it the riparian owners along the streams and lakes wherein water is diverted for irrigation and other purposes could maintain innumerable suits for damages, and thus hamper and possibly prevent the diversion of water for the useful purposes named in this statute. This statute was enacted for the benefit of the people, and it should never be repealed.

If Congress should change the rule of property rights in water and charge a nominal fee per horsepower, as has been suggested, what would be the result? The longest electrical-power line in the world is less than 200 miles in length. If a train upon a track electrically equipped should be started with hydro-electrical power, furnished from the greatest power-producing plant in the world, it would become stalled for want of power within a radius of 200 miles from its starting point. Thus the patrons within this small radius of territory would be obliged to pay the federal tax per horsepower for water used for power and lighting purposes. Is there any equitable reason by the people of the South and West should pay a consumers' tax on water power that is not paid by the consumer living in the first States constituting this Union?

Within the Pacific Coast States in the near future will be built an empire equal to the Atlantic coast empire. To encourage its upbuilding it should have all the natural power and fuel at its command at a minimum cost. Instead of saying to the investing dollar, you shall not develop these national resources without paying a bounty, concessions should be made in aid of their development. In the sparsely settled sections of the West and South it is very difficult to interest capital in the development of hydro-electrical power, for the reason that a million dollars or more is required to construct and install a power plant. If a government tax is added the investing dollar will naturally be located in one of the original States, which will, to that extent at least, retard the manufacturing industries of the South and West.

It is also suggested that a tax be paid on every ton of coal that is mined from the public domain. Coal is valuable

for the units of heat it will produce. When its cost of production and its cost of transportation equals its value in units of heat the extent of the area in which it can be marketed is determined. If a tax is added, which will increase the cost, the area will be lessened to that extent, and the consumers within that area must pay the added tax.

Nearly all the producing coal mines in this country are owned and operated by railway companies. If a royalty is levied upon coal mined upon government land, it will permit the railway companies, as competitors, to charge the consumer so much more for coal and thus place millions of money in the pockets of the coal barons at the expense of the consumer. Coal is usually sold at the mine at a very small profit per ton. The large mines of Ohio and West Virginia are leased upon a royalty of 10 cents per ton. Under like conditions in the west a nominal government royalty, necessarily small, would constitute a large portion of the profit.

It costs about $200,000 to develop and equip a coal mine, and it is doubtful if any company could be found willing to undertake the task of mining coal on leased lands in competition with the old companies, with a government bounty as a handicap.

The various kinds of coal found in the Territory of Alaska have never been marketed, because of the excessive cost of development and the lack of transportation, and it is very doubtful if this so-called and misnamed "great Alaskan wealth" will ever materialize without government aid.

The steam locomotive is the great consumer of the world's supply of coal. A 250-ton locomotive will pull 60 carloads of freight from New York to the foothills of the Rocky Mountains. When this point is reached double-header locomotives are used for a distance; then the train is cut in two and two double-headers are supplied. Just before the last steep climb is made to the mountain tunnels, which are nearly a mile above the level of the sea, a large locomotive is added to push each train through the tunnels. Thus six times as many units of heat are consumed in

transporting freight over the mountain ranges of the West as is required on level territory.

Coming down the sides of these mountains, from snow-capped peaks, are thousands upon thousands of tons of water capable, if harnessed into electrical power, to carry a much greater tonnage over the great western divides without consuming the local coal reserves. Instead of levying a tribute for this power, and thus raising the freight rates proportionately for the consumers of the West, it would seem to be a wise precaution in the exercise of economy in our political housekeeping to encourage, and, if necessary, compel the great railway companies to use hydro-electrical power wherever possible and thus conserve for public use the coal reserves of this country. Such a policy would naturally reduce the consumption of coal and lessen its cost to the consumer.

A large portion of the timber reserves of this country have passed beyond federal control. When the States of Washington, Idaho, and Utah were admitted to the Union their estimated wealth in timber was a very attractive feature. Settlers came from all parts of the United States, knowing how valuable an asset timber lands would soon become, made filings, and prosecuted their claims to patent in the shortest time possible. Large tracts were combined and sold to sawmilling companies. Some of these companies attempted to enlarge their holdings by securing dummy entrymen to make final proof upon lands adjacent to their mills. When Judge Ballinger was appointed Commissioner of the General Land Office special agents were appointed by him to inspect all entered lands and ascertain the good faith and compliance with the statutes of the entryman before final proof was made. This wise precaution is in practice to this day, and it is now virtually impossible for an applicant to obtain title to land through fraud.

When the forest reserves were extended over the great land grants of the continental roads of the West, the railroad companies owning these granted lands at once applied for and received land scrip in lieu of the lands thus taken into the forest reserves. That the reader may fully under-

stand where valuable timber is found on mountains it will only be necessary to state that the action of the rains and melting snows washes the rich soil to the foothills and valleys, where the heavy growth of timber is found at a comparatively low altitude. Upon ascending the mountain the trees diminish in size until the timber line is reached, where the climate is so cold that nothing will grow.

From this it will be seen that these railway companies had many thousands of acres within their land grant, extending across the mountains, that were absolutely worthless. To place or extend a forest reserve over these granted lands could only result in a gift of millions of dollars in script to the railway companies. This script was at once sold to large mill companies, who located all the valuable timber lands along the foothills and valleys of the mountains accessible to transportation in the States above named. When these States were admitted to the Union, Congress very properly, in view of the fact that the 13 original States owned and utilized all their land, donated to each of these new States 200,000 acres of land for school and capitol building purposes. The governors of these States have not to this day been able to locate the whole amount of these donated lands, for the reason that script locations have been made in advance of the government surveys. In the meantime, the prospective settler is crowded back upon the mountain sides within the forest reserve, where little of value is found. Could it be possible for the people of these respective States to have squandered their greatest wealth if they had originally owned these lands? Does conservation conserve?

If there is anything of value left, would it not be wise to let the people of the land-grant States, who understand local conditions and values, own and control their own natural resources without the burden of additional taxation? It is only through their work and enterprise that these resources have been made valuable, and why should the people of other States share in the fruits of their labor?

There is not a single owner having large holdings in sheep or cattle who has been able to obtain a favorable lease to the exclusion of the local settler at a nominal figure

on the forest reserves, for a stock range, who does not favor the present plan of the conservation of natural resources. There is not a single owner of timbered lands who expects to purchase the small amount of timber now remaining on the forest reserves at a nominal figure who does not favor the reforestation plan proposed by the Government. It is natural that this should be the case. But how about the interests of the people who have made these natural resources valuable? They would like to share some of the beneficial results of their labor and self-sacrifice.

If hydro-electrical power is to be the substitute for the power now generated from the vanishing supply of coal and wood, then it will soon be necessary to construct power plants on nearly all of the navigable rivers throughout the United States. Applications may soon be made to Congress for authority to construct perhaps 20 or more (or as many as the natural fall of the river will permit) generating stations on the Hudson River to furnish light, power, and heat for the people of New York City and the surrounding country. Will the people of this metropolitan city vote to pay an additional federal tax every time they press the button? The voters of this country might be induced once to cast their ballots for the proposed plan for the conservation of natural resources, but when they understand that by so doing they must pay the additional tax, no Member of Congress could expect to be elected on that issue a second time.

Mr. Lincoln once said that "You can fool all the people some of the time and a part of the people all of the time, but you can't fool all the people all the time."

Congressional Record. 45: 4254. April 5, 1910.

Attitude of Seattle Chamber of Commerce on Conservation.

[Report unanimously adopted March 22, 1910.]

To the President of the United States,
Members of the Senate and House of Representatives,
and representative commercial organizations:

After more than three months of careful study and consideration of the subject of conservation and analysis of

conditions, past, present, and future, involving not only the Pacific Northwest, but the entire United States, the committee on national affairs complied with the request of the Seattle Chamber of Commerce for the submission of recommendations on the question now commanding so much public attention.

The report appearing hereafter was prepared and presented by the chairman of the committee, Hon. Thomas Burke, former chief justice of the territorial supreme court, and concurred in by other members, including Hon. John H. McGraw, former governor of the State of Washington; W. D. Wood, former mayor of Seattle and president of the Trustee Company; Rev. M. A. Matthews, pastor of the First Presbyterian Church, Seattle; and Hon. C. H. Hanford, judge of the United States district court.

The report was unanimously adopted as expressing the sentiment and convictions of the people of this community and reflecting the views of the citizens of the Pacific Northwest. It is as follows:

Precautions Against Monopoly

March 21, 1910.

The Seattle Chamber of Commerce, Seattle, Wash.

Gentlemen: Your committee on national affairs, to which was referred the subject of conservation, begs leave to report as follows:

The changes which have taken place in this country in the last thirty years have given an importance to coal and water power not dreamed of forty years ago. This is especially so in the case of water power, the use of which has been so greatly extended by means of discovery and invention in the domain of electricity. In order to meet these new conditions in such a way as, while affording to incoming settlers every facility and encouragement for developing the great natural resources of the undeveloped West, shall prevent a monopoly in such of them as might be thus controlled, your committee believes that hereafter in the disposal of public lands controlling water power or containing deposits of coal a power to protect the public against unreasonable prices should be reserved to the State where the

land is within a State and to the Government where the land is within a Territory and to pass to the future State when organized.

Reserve Control to State

It seems to us that this could best be accomplished by a law which should provide that in every sale of public land controlling water power or containing coal the right to regulate the price of the coal and water power should be reserved to the State within which they are situate, and when within a Territory to the United States, to pass to the State to be created out of such Territory. In case of a dispute as to what constituted a reasonable price, a court of competent jurisdiction could be called upon at the instance of any interested party to determine the question. This, with appropriate National legislation where Congress has the power, and State legislation within the State's jurisdiction, forbidding overcapitalization would, we submit, be an effectual safeguard for the public, while not preventing the needful and desirable development of the natural resources of the country.

Conservation Results from Use

The people of the Pacific Northwest who, by making their homes here, by their sacrifices, energy, and industry in building up the country, have made these lands and mines and water power worth while, have a vital interest in the early development and utilization of the natural wealth of the country. The home seekers who are now coming here in ever-increasing numbers, attracted to this part of the country by its climate and its diversified natural resources, have an equally deep interest in having the public lands open to development upon just and equal terms that will assure the speedy growth and prosperity of the country. It is only by development and use that the land can be settled and improved and towns, cities, and Commonwealths built up. Any policy, therefore, that would seal up or unnecessarily retard the use of nature's wealth not only would be of no benefit to the present or to future generations, but would be a positive injury to both. Full and free develop-

ment under wise and effectual regulation against the abuses of monopoly is the true policy for this country.

Government Ownership Opposed

We are opposed to the plan of government ownership and operation, either directly or upon the landlord and tenant system. It would be wasteful, and sooner or later would lead to favoritism in leasing and to corruption in the public service. It would tend to block the development of the country without any compensating advantage. The tenant of the coal mine, for example, would naturally take out the coal easiest to mine; that is, in mining parlance, he would rob the mine; he would be less careful in other respects in working it, and the result would be waste instead of conservation. An elaborate system of government supervision might, to some extent, prevent such wasteful operation, but in that case the Government would practically have to go into the coal-mining business.

Under the government ownership or landlord and tenant plan it is proposed to charge an annual rental or royalty, which is to go into the Government Treasury. As these public lands are all in the West, including Alaska, this would amount to a discrimination against this part of the country. It would be a tax, not upon the people of the whole country, but upon the people of the West, where these natural resources are situate, and who are largely consumers of these products. Obviously the consumer must bear the burden of such rent or royalty. If, therefore, a royalty is to be charged, it should go to the State in which the water power is situate. Should the policy of charging a royalty on water power be adopted by the older States, the revenue arising therefrom will not go into the Government Treasury, but will be kept in the State where the water power is found, for the benefit of the people of such State. We see no good reason why the newer States should not be upon the same footing in this respect as the older ones.

Provision of State Constitution

Long before public attention throughout the country was called to the question of the conservation of water

powers the State of Washington adopted a constitution which contains this wise provision:

"The use of the waters of this State for irrigation, mining, and manufacturing purposes shall be deemed a public use."

This brings every water power in this State within reach of public control.

The success of the conservation movement—that is, conservation with use—will, in the long run, depend more upon the States than upon the General Government, because, in the nature of things, the people of a State are better fitted by local knowledge and experience to look after the public interests of their community than government officials, however honest and well meaning, in Washington City, thousands of miles away. A wise cooperation of the General Government with the state governments will produce the best results.

Instead, therefore, of making the General Government a perpetual landlord over all the remaining public lands containing coal or controlling water power, their management to be directed by bureau clerks in Washington, thousands of miles away—a system certain to give rise to wastefulness and corruption—we would favor the sale of such lands under laws which reserve the right to regulate the price of coal and water power and in that way protect the public from imposition.

Encouragement to Alaska

Under such laws and local laws conceived in this spirit, home-building Americans will seek Alaska and, with those already there, do what the pioneers of an earlier generation did in Oregon and Washington—build up two great States to become the home of millions of contented, self-reliant, self-respecting, and prosperous American citizens. This would be a real and wise conservation with use.

No American territory was ever hampered by such vexatious and obstructive regulations as Alaska. The freedom which was considered the birthright of the pioneer in other days is unceremoniously denied to the Alaskan. The bureau clerks in Washington seem to have a strangle-hold on that

Territory. It should be clearly understood that the Alaskans are building, as the pioneers of the West have always done, for the future, for their children and their children's children, as well as for the present, and are perfectly willing to cooperate with the Government in all reasonable measures looking to the conservation of our natural resources, a conservation with use which regards and conserves the interest of the present as well as of the future and robs neither.

Protect Forests, Home Seekers, Water Sources

Your committee favors the principle of forest reserves, including reservations from sale of public forest lands where necessary for the protection of the sources of water supply or desirable for national parks. But there should be no withdrawal or diminution of the lands granted to the State for the support of the public schools. Nor should lands naturally adapted to farming be withheld from the settler and home seeker to be included in a forest reserve.

Outlines Conservation Policy

This subject is so important from every point of view, the difficulty of treating it wisely and justly is so great, and there is so much danger at this time to the public interests from hasty, passionate, or inconsiderate action in and out of Congress, that it seems to your committee that after passing an act empowering the President to make temporary withdrawals of land from sale pending action by Congress, provision should be made for the appointment of a commission of able and experienced men to investigate the whole subject and report to Congress at the earliest possible moment a basis for land legislation which, while protecting the public against the wasteful use of our natural resources and against monopoly, will put every acre of good farming land at the service of the settler and the home builder, not as a tenant of the Government, but as an owner in fee of his own home, and which, as regards coal and water power, while carefully protecting the public against imposition and unreasonable prices, will encourage the discovery, opening, and working of coal mines and the

development of water power, a policy absolutely essential to the growth and prosperity of these western communities and, indeed, to the prosperity of the whole country.

The reclamation of our arid lands by the General Government is a public service of the first importance and deserves the hearty support of citizens in every part of the country.

All of which is respectfully submitted.

THOMAS BURKE, *Chairman.*

Concurred in by—

M. A MATTHEWS.
JOHN H. MCGRAW.
W. D. WOOD.
C. H. HANFORD.

Unanimously adopted by Seattle Chamber of Commerce, March 22, 1910.

C. B. YANDELL, *Secretary.*

Congressional Record. 45: 8509-30. June 20, 1910.

William E. Borah.

I believe in the regulation and control of power plants for the development of our power sites, and the only question which I desire to present is the question which sovereignty shall do the work, whether it shall be done by the Federal Government or by the State Government. The State alone, in my judgment, can deal properly with the subject-matter both as a practical proposition and as a legal proposition.

In addition to the legal proposition it is essentially a local matter. It is one of those things which belongs peculiarly to the locality in which the power sites are physically located.

In England and at common law the bed and shores of all navigable streams were vested at first in the Crown, and anciently it was in the power of the King to convey the title to private parties. But this power was taken away from the King by Magna Charta, and it now rests with Parliament. The sovereign right of Parliament with refer-

ence to this subject-matter was transferred to the respective States at the close of the American Revolution and the acquisition of independence on the part of American States.

The States had the same control, the same authority, over the subject-matter, the beds and shores of the navigable streams and the water as had Parliament prior to the independence of the States. I think I might submit here, without hazarding a successful contradiction or any contradiction that the States have never transferred any part or parcel of that sovereignty to the National Government, save and except the right to control the streams for the purpose of protecting navigation. Outside and except the proposition of the power of Congress to deal with the subject of interstate commerce, and to keep the streams open for the purpose of protecting interstate commerce, the Congress of the United States has no control over the streams of my State, or of your State, or of the beds and water or water courses and streams in the respective States. When Congress has kept those streams open and usable for interstate purposes in the way of commerce, it has exhausted its power, and in undertaking to control them under the guise of regulating commerce, which does not have the purpose and legitimate object of regulating commerce, is to undertake to accomplish under the guise of a constitutional provision that which does not legitimately belong to the power.

I do not mean to be understood that I am opposed to control and regulation; I am specifically in favor of it. What I mean to say is, that it is a matter which belongs to the State, which the State alone can control, that it is essentially local, and should be placed under the jurisdiction and control of the State. As I propose to show in a few moments, the State which I have the honor in part to represent has devised and has in force the most complete and perfect system for the control and regulation of these power sites that to my mind could be conceived of, and one which could not be invoked or utilized by the National Government, for the reason that it has not the legal power to deal with the subject-matter.

The National Government can not under the guise of regulating commerce effect objects and purposes not author-

ized by the Constitution of the United States. Justice Marshall said:

> Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land.

The modern idea that the United States can hold its public lands and property as the monarchs of Europe may do is foreign to our theory of government. In the case of Van Brocklin *v.* Tennessee the court said:

> The United States do not and can not hold property as monarchs may for private personal uses. All the property and reserves of the United States must be held and applied as the taxes, duties, imposts, and excises must be laid and collected to pay the debts and provide for the common defense and general welfare of the United States.

This power (to regulate commerce), which comprehends the use of and passage over the navigable waters of the several States, does by no means impair the right of the state government to legislate upon all subjects of internal police within its territorial limits which is not forbidden by the Constitution of the United States, even though such legislation may indirectly and remotely affect commerce, provided it does not interfere with the regulations of commerce upon the same subject. * * * Much less can that power impair the right of state governments to legislate in such manner as in their wisdom may seem best *over the public property of the State and to regulate the use of the same where such regulations do not interfere with free navigation of the waters* of the State for commercial intercourse. * * * The grant to regulate commerce contains no cession, either expressed or implied, of territory or of public or private property.

Palmer *v.* Com. (3 McLean, 226):

> A dam may be thrown over the river, provided a lock is so constructed as to permit boats to pass with little or no delay.
>
> A State, by virtue of its sovereignty, may exercise certain rights over its navigable waters, subject, however, to the paramount power in Congress to regulate commerce. * * * In regard to the exercise of this power by the State, there is no other limit than boundaries of the federal power.

United States *v.* Bridge Company (6 McLean, 517), by Judge McLean:

This action was upon the part of the United States to prevent a company from constructing a bridge over the

Mississippi River under the authority of an act of the Illinois legislature.

The points decided were—

The State may use the navigable rivers and construct bridges over the same, if in so doing interstate commerce is not interfered with.

When Congress has navigated commerce—kept the streams free for navigation—it has exhausted its power over the rivers and streams in a State.

Within the limits of a State Congress can, in regard to the disposition of the public lands and their protection, make all needful rules and regulations, but beyond this it can exercise no other acts of sovereignty which it may not exercise in common over the lands of individuals.

The proprietorship of lands in a State by the General Government can not, it would seem, enlarge its sovereignty or restrict the sovereignty of the State.

The Government is simply a proprietor, with the right of control and sale of its own holdings.

I submit that, out of the wisdom of these old pioneers, came the first great conservation principle; and no one connected with the fight has ever added anything either to the wisdom or to the practical proposition involved in the statesmanlike theories of those old men.

The United States Government has, however, recognized, both by acquiescence and by statute, the right of a settler to appropriate the waters flowing over the public lands, and this right is valid both against the Government and any subsequent grantee of the Government.

One of these statutes is found in the desert-land act of 1877 and has not been given sufficient consideration. This statute provides—and I ask my friend from Nevada to listen—

That the right to the use of water by the person so conducting the same on any tract of desert land of 640 acres shall depend upon bona fide prior appropriation, and such right shall not exceed the amount of water actually appropriated and necessarily used for the purposes of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the waters of all lakes, rivers, and other sources of water supply upon the public land and not navigable shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights.

Mr. President, under that statute what riparian right has

the National Government by reason of owning the public land? What right has the National Government to ask that the streams which flow by public land shall continue to flow there as they were wont to flow?

Long ago, back in 1866, followed by the act of 1870 and by the act of 1877, the United States Government abandoned, in my judgment, in the arid-landed States the doctrine of the common law, and declared that the doctrine of riparian rights should hold no longer, and that all water flowing upon the public domain controlled by lakes and rivers and situated upon the public domain should be open to appropriation; and the result of it was that the doctrine of riparian rights ceased to be a doctrine even of the National Government in those States where prior appropriation was necessary to use the water.

This statute has received a very clear and conclusive construction by a decision rendered by Judge King, of the supreme court of Oregon, in the case of Hough *v.* Porter. This statute has also been construed by the Supreme Court of the United States.

Those of us who are familiar with the Colorado-Kansas case—and we all are, especially those of the West—know that Judge Brewer, in that very able opinion, declared that it was within the sovereign power of the State to fix the rule for the use of waters within the State, and that whether it should be riparian rights or prior appropriation was a matter for the State to determine. The court also laid down the doctrine that the Government was simply a proprietor and that as the owner of land within a State was the proprietor the same as any other proprietor.

I submit, if that be true, if it be true that the State of Idaho may fix the rule as to prior appropriation and riparian rights, and if it be true that the United States Government is simply holding the land as a proprietor, then what riparian rights has the Government by virtue of owning public land within a State?

In the case of Kansas *v.* Colorado, to which I have referred, the syllabi reads as follows:

While Congress has general legislative jurisdiction over the Territories and may control the flow of waters in their streams, it has no power to control a like flow within the limits of a State,

except to preserve or improve the navigability of the stream; that the full control over these waters is subject to the exception above named, vested in the State.

In the body of the opinion the court says:

It (the State) may determine for itself whether the common-law rule, in respect to riparian rights or the doctrine which obtains in the arid regions of the West of the appropriation of waters for the purpose of irrigation, shall control. Congress can not enforce either rule upon any State.

Congressional Record. 46: 4016-20. March 2, 1911.

Edward T. Taylor.

I can not resist the feeling that some of these days the American people are going to wake up to the fact that these forest reserves are a pretty expensive luxury, the way they are being administered.

When this forest-reserve policy was first started, the country was assured that after four or five years the Forest Service would not only be self-supporting, but would make large contributions to the Treasury of the United States. In 1900 Congress appropriated $48,520; in 1901 the appropriation was doubled; in 1902 that appropriation was again doubled, and since that year the appropriations have been as follows:

1903	$291,860
1904	366,864
1905	545,282
1906	1,642,000
1907	2,757,000
1908	2,304,000
1909	3,989,000
1910	4,682,000
1911	5,051,000

And we are now in this and other bills appropriating over $7,000,000 for the Forest Service for 1912, $900,000 of which is for the deficiency, which the service expended last year over and above the appropriations allowed them by law. I realize that that excess expenditure was, in view of the forest fires, humane, and so far as I know, necessary; and I have not opposed it. But in view of the former rep-

resentations that this service was to be self-supporting and produce a revenue to the Government, it does seem to me that it is our duty to call the situation to the attention of the public and inquire when this doubling-up process is going to stop. Personally, I do not see any indications of any cessation in this constant increase.

I do not know how many employees there are in that service, and I doubt if anyone else knows; but it has been estimated at all the way from four to twelve thousand. It was stated in the Senate yesterday by the senior Senator from Wyoming in the debate on this bill that the former head of the Forest Service in an address before the Geographic Society stated that it would require the employment of about 118,000 to 120,000 men to properly conserve the forests in this country when this forest system reaches its real development. So that, if the present number of men employed—whatever it is—costs this Government $7,000,000 a year, we can roughly approximate what 120,000 men would cost.

But, Mr. Speaker, I would not at this late hour refer even thus briefly to this Forest Service question were it not for the gigantic and astounding forest-service policy that this country is now entering upon. I refer to the passage of the Weeks Appalachian bill, which was signed by the President to-day. I opposed and voted against that measure when it passed this House. Now that it is a law, there is probably no use of discussing it. But to me that bill is one of the most amazing outrages that has ever been perpetrated upon the American people. In the first place, I do not believe that this Government has any constitutional right to tax the people of this whole country for the purpose of buying possibly upward of 75,000,000 acres of land, which I think is conceded to be utterly worthless for any practical purpose, and paying a high price for it for the mere purpose of putting it into a forest reserve. It is stated that that bill only authorizes an immediate expenditure of something like $11,000,000. As a matter of fact, under its provisions, if they are carried out as its supporters undoubtedly hope and intend, it will, or may, cost this Government $300,000,000; and if this Appalachian and White Mountain forest reserve

is going to be administered over, after its purchase, in the manner in which the present forest reserves are, that one measure will cost this Government more money than the Panama Canal; and I can not see where anybody is going to be benefited, excepting the real-estate agents and the men who are going to sell these waste lands to Uncle Sam and the people who are going to get the jobs.

To show that I am not at all alone in my views, as well as to also convey to Congress and to the public the sentiment of the West upon this subject, I ask leave to extend my remarks in the Record by incorporating three articles appearing on the editorial page of last Sunday's Rocky Mountain News, of Denver, which I have just received.

[*Statement by Hon. Edward Keating*]

Uncle Sam has been in the land business for more than a century, and the only point on which the advocates of National control of our natural resources seem to be able to agree is that up to the year 1911 he has made a flat failure of the undertaking.

Mr. Pinchot's entire program is predicated on the proposition that successive Secretaries of the Interior and Commissioners of the General Land Office have permitted "the interests" to make ducks and drakes of the public domain; and Mr. Ballinger, smarting under Mr. Pinchot's castigations, admits that his predecessors have been culpable or careless, or both, and as proof of his own good intentions comes forward with a set of rules and regulations to govern the disposition of the Nation's lands which are so long and so complicated that a Philadelphia lawyer would have brain fag before he comprehended their meaning.

But however vigilant Mr. Pinchot may be and however long and wise Mr. Ballinger's regulations may be, the system the gentlemen advocate will always retain a fatal defect. It must in the very nature of things be a bureaucracy, clothed with powers which are repugnant to all our theories of republican government.

This bureaucracy—responsible to no one except the appointing power and protected against that by the machinery

of civil service—will cling tenaciously to the power it has and constantly reach out for more.

For that is the nature of bureaucracies, whether their headquarters are in St. Petersburg or in Washington.

This particular bureaucracy which the advocates of National control of our natural resources are endeavoring to strengthen and perpetuate would hold the public domain as a vast estate, occupied by such tenants as would conform to the rules and regulations and administered by an army of bureaucrats of high and low degree. They would transform Uncle Sam into a sort of glorified landlord and our public domain into "crown lands." At its best this system would produce a beneficent despotism, and at its worst it would make Ireland's most appalling examples of absentee landlordism seem commonplace.

Those of us who are opposed to this bureaucratic administration of the public domain hold that Uncle Sam should go out of the land business and that the public domain should be turned over to the various States in which it is located, under such regulations as may be agreed upon by the National and State Governments.

We all want to preserve our forests. Of course the first logical step in that direction would be the repeal of the tariff which places a premium on the destruction of our forests. I trust the next Congress may be induced to take that step, and I know that the genuine conservationists of the West will do all in their power to help along the good work. Will our friends Pinchot and Ballinger and other advocates of Federal control lend their aid? I fear not. In so far as the actual work of planting trees and patrolling and safeguarding the forests is concerned, the States are in a much better position to perform it than is the National Government. Under State control there would be less friction between the rangers and the settlers, but in case of conflict either side could secure speedy justice at the State capitol.

While the water-power trust, of which we heard so much a year or two ago, seems to have been consigned to the limbo of things imagined but never realized, the problem of what to do with our water power remains. I believe

the solution lies not in the National Government's attempt to collect rentals from some of the plants, but in the State's power to tax and regulate all the plants. These regulations would, of course, include the fixing of rates. With such power exercised by the State, I do not think we would have any occasion to worry about water-power trusts.

In asking the question, "What shall we do with the public domain?" I believe the News has stated the most important issue now before the people of the West, and one which will hold the attention of the Nation in the next presidential campaign.

We should meet it squarely. The public mind has been prepared for a frank discussion of the problem. The people of the West should agree upon a program, and that program should be pressed on the attention of our friends of the East and South with all the vigor which the West has displayed in other crises in its history.

[*Statement by Hon. E. M. Ammons*]

The public lands should be turned over to the States wherein they lie under terms just and equitable to both State and Nation, with restrictions to effectively prevent monopoly and at the same time secure the greatest possible settlement and development. The establishment of our present land board provides the agency for handling our lands and resources. All agricultural and grazing lands should be freely opened to entry under the limit of a homestead capacity. Under State control prospecting would be encouraged and mining stimulated in sharp contrast to the present discouraging conditions. Water for power purposes would be made available that the people might have cheaper light in their homes, cheaper power to operate the mines and mills and factories, and thus we would stimulate the manufacturing of our products at home. Under State control land suitable for summer homes could be opened to preemption to citizens of the United States, whether residents of the State or not, with proper restrictions as to residence upon the land and improvements. The coal, oil, stone, and clay lands could be sold and developed and our forest lands handled in harmony with our other resources

and under laws suitable to our local conditions. Pending settlement and sale, the unoccupied lands could be rented and the receipts from this source, which would be large, could be applied to the building of good roads, which would help to make these same lands accessible, and consequently more valuable.

Inasmuch as the Federal Government is not making expenses in the administration of these lands, it should be glad to cede them outright to the States. If the sentiment created by the press agency of the Forest Service is so strong that this can not be done, then they should be sold to the States at a minimum price, to be paid for as they are disposed of by the States. Agricultural and grazing land should not be charged for, the usual fees being paid to the State for administration. The surplus, after paying the Government price, should go to the construction of public highways and the completion of reclamation projects.

If such a plan was carried out it would result in one jurisdiction and uniform laws over all the territory in the State; would enormously increase taxable property, provide for the construction of good roads, open new lands to settlement and encourage greater production for market. We would thus have the same right that was enjoyed by the Eastern States of utilizing our natural resources to build our State. We would have the right to impose local taxes upon all property alike and expend the resulting revenues in a manner most advantageous to the welfare of our citizens. By increasing our population we would have more and better schools and thus improve social conditions. We would be able to establish public parks which, with our system of highways, would not only furnish places of recreation for our own people, but would attract the tourist trade of the world. The opening of our lands and resources to entry and use would stimulate settlement and development to a point unknown before, and the people of every section of the State would be guaranteed the right of local self-government.

The people of Colorado have a better knowledge of the resources of this State than any bureau at Washington could possibly have. We have a more direct interest in the preser-

vation and development of these resources and are best able to give the proper administration. The receipts from the use and sale of the public lands would be sufficient for their care, the establishment of a system of parks and the construction of all needed highways and the addition of this property to the tax rolls would help build and support our growing educational and other State institutions.

It will be argued that the States have never cared for these lands and resources as they should, but it must be remembered that the States did not own these lands, received no revenue from them, and had no control over them whatever. If there has been a tendency toward monopoly it has been the fault of Federal laws and administration, not the State.

The public-land question overshadows all others in importance to the West. Upon its solution depends whether our industrial life shall continue to be hampered by discouragements and prevention, or whether, by unlocking our lands and resources to the people, it shall be quickened into new vitality.

As the West prospers the East is enriched. At least, an "enlightened selfishness" should inspire the country to give us a "square deal."

Congressional Record. 48: Appendix 3-6. December 9, 1911.

Speech of Gov. John F. Shafroth, of Colorado, at the Trans-Mississippi Commercial Congress at Kansas City, Mo., November 15, 1911.

It has never been the policy of the United States to make money out of its lands. The sums charged are presumed to amount to very little more than sufficient to cover the expenses of properly regulating the disposition of the same.

It has been well recognized in all countries that they must have lands for colonization; for relieving the congested population of their cities, so as to make better and more prosperous citizens.

The people of the original States obtained title to their

lands at insignificant prices, the consideration named being a penny or a peppercorn.

Now it is proposed, by bills introduced in Congress and advocated by the followers of Mr. Pinchot, to change this policy, to impose royalties upon powers generated by falling water and to lease the oil and phosphate lands and the coal and metalliferous mines upon a rental basis payable to the Treasury of the United States. No other States have had their natural resources taxed by the National Government, and we deem it is unfair that the people of the States which had all the products of their natural resources for themselves should now require, through their Senators and Representatives, these less-favored States in the West to not only undertake the development of the natural resources of these States but to pay into the Federal Treasury a tax upon the very development thereof.

What does the leasing of the natural resources of the mountain States mean? It means perpetual ownership in the National Government, and that means exemption from taxation forever.

Perpetual exemption from taxation of vast territory in a State is almost destructive of the development of that State. It is an injustice which it seems to me every fair-minded person must recognize. The State must maintain government for State, county, and school purposes over all the lands within its borders, whether reserved or not.

In the West the taxes upon land for a period of 30 years, including reasonable interest upon each yearly payment, amount to the value of the land. Therefore, when the lands privately owned must pay all of the taxes for State, county, and school purposes it is equivalent to them paying every 30 years, in addition to their just taxes, an amount equal to the value of the public lands. Thus the people of these States must pay for these public lands every 30 years and yet never own a foot of the same. Is that right; is it just; is it the way a parent would treat a child? Is it a compliance with the enabling acts, which provide that each State is "admitted into the Union upon an equal footing with the original States in all respects whatsoever"?

This new policy would not only deprive the States of the

means of raising the necessary revenues to establish and maintain good government, but in addition to that injustice the advocates thereof propose to make revenue for the Federal Treasury by taxing the natural resources of the West. By so doing they propose to make the Mountain States pay an undue proportion of the burdens of the National Government.

It has been estimated by the Geological Survey at Washington that there are contained within the boundaries of the State of Colorado 371,000,000,000 tons of coal. More than three-fourths of this coal is upon the public domain. If a rental of 10 cents a ton is to be imposed upon that natural resource of the State of Colorado it would mean ultimately that the citizens of our State must contribute $27,000,000,000 to the Federal Treasury. This tax is advocated on the ground that it will prevent waste. According to this geological report, Colorado alone has sufficient coal to supply the world, at the present rate of consumption (of about one and a quarter billion tons per annum), for 300 years. Although my State is now mining 11,000,000 tons of coal a year, yet our production for 50 years has exhausted only one-half of 1 per cent of our coal deposits.

It has been estimated by the authorities at Washington that from 1,000,000 to 2,117,000 horsepower can be generated from falling water in the State of Colorado. If the Government is to charge $1 per horsepower as a rental for a temporary right of way for transmission lines, and conducting that water on Government land until it attains a height sufficient to generate power, it will mean, when this power is fully developed, a rental to the National Government from the inhabitants of Colorado of from $1,000,000 to $2,117,000 a year. It must be remembered that every horsepower generated by falling water saves the burning on the average of 21 tons of coal each year.

If royalties are to be paid for the extraction of the precious and base metals, other millions will be turned into the Federal Treasury, from the natural resources of our State. It may be that it will be proposed, as is done in the Forestry Department at Washington, that one-fourth of the receipts will be turned over to the State treasury, to be used

only for certain purposes to be prescribed by the Federal Government. But is it equal or fair treatment to our Commonwealth for the Government to impose any tax whatever upon our natural resources, which it has never imposed upon the older and richer States of the Union? It must be remembered that the act of Parliament of Great Britain, imposing duties upon goods shipped to the 13 colonies, against which our forefathers rebelled, provided that the revenues derived therefrom should be expended in America for its protection and defense.

All taxes upon production must ultimately be paid by the consumer. Yea more, such policy means that the people will have to pay additional prices for such products far in excess of the royalties which will be obtained by the National Government. It will put our people at a disadvantage in the struggle for industrial supremacy.

The State of Colorado pays into the National Treasury more than $5,000,000 a year, which is its fair proportion of the revenues of the Government collected from all the States of the Union. But the Western States object most strenuously to paying additional millions, the effect of which must be to retard the development of their natural resources. It is bad enough to be compelled to exempt from taxation, until disposed of, the 15,000,000 acres of forest reserves and 9,000,000 acres of coal lands of the public domain in Colorado, and thereby make us pay an equivalent for these lands every 30 years and yet never own a foot of the same. But we can not, in addition to that, consent to a tax upon our natural resources, to be paid into the Federal Treasury.

The excuse for imposing a tax and terms upon the water-power plants of our States is that Congress will prevent monopoly, whereas the State governments will not; that they at Washington are better able to administer local affairs than the people of the States in which the lands and the resources are situate.

It has been my good fortune to represent my State in Congress for nine years, and I and all other Members of Congress know that it is more difficult to pass through the United States Senate and House of Representatives an act which will prevent monopoly than it is to get through

the general assemblies of the various States the same character of legislation.

When we realize that the National Government has given away in 43 different railroad grants lands aggregating 155,504,994 acres, it comes with poor grace from the Federal officers to say that they can conserve and administer the lands better than the people of the States wherein the lands are situate. These railroad grants comprise an area equal to that of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, West Virginia, and Ohio combined. If the Western States had donated to railroads one-tenth of such grants, such action would have been looked upon as the most horrible example of waste and extravagance, if not corruption, that had ever occurred in the history of the world.

Why impose upon the Western States a rule which interferes with what they think are the rights belonging to the States:

First. Which will make the people of those States, by taxation upon their own land for government over all the lands, pay for these reserves every 30 years without owning any of the same?

Second. Which, in addition to the burdens imposed upon those States for the support of the National Government, will compel them to pay millions of dollars into the Federal Treasury as taxes upon their natural resources, which no other States have been required to do? And

Third. Which must foist upon those States landlordism and a bureaucratic control of these great reserves, which policy in the administration of government has always proven a failure?

Heed the advice of the great justice of the Supreme Court —let our Government be "a National Government for National affairs and State governments for State affairs," and then there will follow a development of the resources of the Rocky Mountain region which will be the marvel and wonder of the world.

Independent. 68: 697-9. March 31, 1910.

Why East and West Differ on the Conservation Problem. Leslie M. Scott.

The purpose of this article is to suggest that the Pinchot conservation idea of Eastern States antagonizes the Far Western idea of that subject.

In the East, Pinchot conservation means resistance to private greed and corporate fraud that have sought to despoil and waste the public domain, at the expense of the public.

In the Far West, Pinchot conservation is held to mean obstruction of settlement and public progress that comes from opening of new lands.

Far Western States, like Oregon and Washington, which contain the largest forest areas and the largest water powers in the United States, prefer State conservation to Pinchot or National conservation.

In the Western mind, purchase of land from the United States at $1.25 or $2.50 an acre for settlement is in accord with the good and lawful policy of the Nation and should continue.

More than one-fourth the land of Oregon—16,221,000 acres—is locked up within government forest reserves; also more than one-fourth the land of Washington—12,065,000 acres. The Government holds other large slices in withdrawals for water power sites, unopened Indian reserves and irrigation projects, which latter, especially in Oregon, will be carried forward, goodness knows when. The Southern Pacific Railroad holds in Oregon, as a big reserve of its own, 2,000,000 acres of the finest land in the State, granted by Congress in the early '70s, and refuses to sell. Private and corporate timber land tracts aggregate many million acres more. Five wagon road companies in Oregon own immense acres of Congressional-grant land.

In brief, out of 61,000,000 acres of land in Oregon, fully one-half, if not more, is locked up from settlement and much of the remaining half is arid, barren and bleak. Much of the forest reserve land could be opened to settlement without wasting timber wealth, for a large part of it has few or no

trees and other areas, extending down to the base of the mountains and into the valley, will produce more wealth with cows and potatoes than with forests. Vast mountain regions are unfit for farming; fit only for forest. These conserved will yield the people timber forever. Pinchot officials say the law authorizes homestead settlement on government reserve land which is suitable for agricultural use, but determination of this matter rests with Pinchot officials, and few admissions into forest reserve land are desired by settlers, under conditions that prevail, and very few are allowed.

These same restrictions exist in other Western States, but the effects are nowhere more glaring than in Oregon. Here Americans organized their first political community on the Pacific Coast in 1843. Yet in population and growth Oregon is last of the Pacific Ocean States. Its aggregate area barred from settlement amounts to 50,000 square miles. This exceeds the total area of the State of New York, or Virginia, or Pennsylvania. It exceeds the combined areas of Connecticut, Massachusetts, Vermont, New Hampshire, Rhode Island, Delaware and New Jersey. It almost equals that of Alabama, Arkansas, Illinois or Iowa. The Nation has bestowed vast parcels of Oregon on grabbers and selfish corporations; and now "Pinchotism" steps in to lock up the rest from the people's uses.

The taming of land requires patient, hard work and is accompanied by privation and stress bordering on poverty. This development Oregon and Washington need and demand. Land laws allow it, but officials have suspended the laws in answer to a clamor in the East from persons who know little and care less about Far Western efforts for progress and upbuilding, and imagine conservation means simply protection of the public domain from "spoliation." Meanwhile, tens of thousands of the most vigorous citizens of the nation—of the type that "saved" Oregon and Washington—are going to Canada to make homes under the British flag, on bleak and wind-swept wastes. This land they obtain by payment of a nominal sum of money—the Canadian Government virtually gives it to them, but they pay a higher price than any gold is worth, in frontier toil and suffering. The laws of the United States also virtually give wild land

to settlers and have done so for generations in all the States west of the Alleghanies. But settlers paid for it amply in hardships and so they must still do. Yet a howl goes up in Eastern States against this application of the old law, from persons who do not understand. Busy officials think themselves called upon to stop this settlement of the public domain—this "robbery of the people," they hear it called.

The real robbery was perpetrated by land-grabbing syndicates, working under stupid laws of Congress. That law-making body and officials in the national capital blazed the way to the Nation's land-fraud scandal. The lien land law was an incubator of fraud. Now the revolt against these abuses has rushed to the other extreme, to the detriment of Far Western States.

The people of Oregon and Washington think they should have something to say about control of their forests, lands and streams. Their efforts have given these resources most of their value, and, back two or three generations ago, their patriotism snatched this country from Britain to the United States.

Further, they want the resources of their States administered in accordance with local needs. In the office of the forest service in Portland is an army of "foreigners" ruling over their lands and forests and streams. In other words, the great resources are in the hands of men who have no abiding interest in the growth of this Northwest country. They wish to "hold their jobs," and to do this they seek to please their superiors in Washington by showing how busy they are preserving the public domain from "spoliation." But they are men who keep the stable door locked after the horse is stolen. Big frauds have taken vast areas of the public domain, but on this account are settlers to be barred out of the remaining land, the laws suspended and a land system reversed that has made other States great and wealthy for generations past?

The people of the State of New York own 1,641,523 acres of forest reserves in the Adirondack and the Catskill mountains, according to the last message of Governor Hughes. The Governor urges a project for increasing this total area to 4,000,000 acres, and for developing 246,000 horse power

from waters of Hudson River. This work in New York will be State conservation. It will be carried on for lasting benefit of the State of New York. Local desires and needs will be conserved along with the resources. The people of New York, of course, would not hand this business over to the Pinchot bureau in Washington; they have their own ideas of how they wish their resources conserved and what other things are to be safeguarded along with them. Resources of Oregon and Washington, and other Western States, however, are managed to suit non-resident ideas in the national capital. They are taxed to pay salaries of a host of officials whose purposes are elsewhere. The people of Oregon and Washington, unlike those of other States, must pay toll for the use of their own streams and forests to the people of the United States and a swarm of high-salaried officials.

Water power is a local utility; it cannot be transmitted long distances; its conservation is naturally a local matter, and the laws of the Nation and the States have always regarded it as a subject solely of State supervision and legislation. The laws of Oregon and Washington are fully adequate to protect the public, perhaps more so than those of New York State are adequate to protect the public of that commonwealth. Just think of taxing the people of New York to pay an army of inspectors and agents and conservers in the national capital to look after the public forests in the Adirondack and the Catskill mountains and the water powers of the Hudson River!

National control of State resources is assumption of authority unauthorized by the Federal Constitution and violation of the laws and the precedents of the Nation. This authority is not contained in the enumeration of powers conferred on the National Government. To make this doubly sure, two amendments to the national Constitution specifically declare: "The enumeration in the Constitution of certain rights shall not be construed to construe or disparage others retained by the people"; and "The powers not delegated to the United States nor prohibited by it to the States are reserved to the States respectively or to the people."

If Pinchot conservation is unconstitutional it is also contrary to the statutes of Congress. Altho the public domain is

supposed to be administered according to the acts of Congress, the Forest Bureau makes rules and regulations which have all the force of such acts and even take precedence over them. The laws guarantee every adult citizen the privilege of acquiring tracts of the public domain by complying with the laws, but the Pinchot bureau steps in and suspends the acts of Congress. This is wrong policy. The old method should be restored. Settlement should be encouraged. It has built up every State in the Union. Then why not these Western States? The "people" would not lose. Receipts from land sales have fully indemnified the Nation already. New land should be put to uses of wealth production. Cheap land, sale and use of lands containing the great resources of the country have given the Nation its immense development. The policy has increased our population by tens of millions and our wealth by hundreds of millions. Yet Pinchot conservation tells us now that this was wrong; in substance, that the country would be better in its savage state. We are led to believe that it was a mistake to destroy the original fine timber that stood on the site of the metropolis of Oregon.

Literary Digest. 41: 967-8. November 26, 1910.

Are We Conservation-Crazy?

Many Westerners think we are, says a writer who has figured out for the first time, as far as we have seen, the stupendous area of land now being held up by the Government's conservation policy. It appears that public lands aggregating more than the combined areas of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Pennsylvania, both Virginias, Ohio, Kentucky, Indiana, and Illinois have already been withdrawn from entry in the United States, according to the figures of Mr. Robert D. Heinl. The conservation movement, he declares, in *Leslie's Weekly* (New York), has closed to the settler nearly 300,000,000 acres of the public domain. The writer seems to sympathize with Governor Norris, of Montana, whose curt explanation

of conservation enthusiasm among Easterners is: "They have eaten their cake, now they want some of ours." In Mr. Heinl's article we read:

There is hardly passing comment in the East when the statement is made that virtually half of great Montana is closed, with 42,000,000 acres withdrawn. We reckon New York a State of magnificent area, but in the West over 30,000,000 acres—a larger area than all the Empire State—is withheld from the people of Idaho. That is 57 per cent of the State. Where before she had 50,000,000 acres to offer new-comers, Idaho now has 13,000,000—a tract barely the size of West Virginia.

From the following table the reader may see at a glance the vast areas of land actually withdrawn. Nor is this data guesswork. Every figure has been taken from official statistics furnished by the General Land Office, Department of the Interior, at Washington:

LANDS WITHDRAWN BY THE GOVERNMENT

(Figures corrected to September, 1910.)

	Per cent. of Total Acreage of State Withdrawn.	Total Acreage Withdrawn from Public Use in State.
Arizona	23	16,646,477
Arkansas	9.5	3,189,781
California	32	32,030,838
Colorado	33	21,557,915
Florida	2.3	712,291
Idaho	57	30,603,393
Kansas	.6	302,387
Louisiana	1.4	414,720
Michigan	.4	163,373
Minnesota	2.2	1,204,486
Montana	45	42,009,943
Nebraska	2.2	1,085,152
Nevada	9.2	6,342,215
New Mexico	19.9	15,576,384
North Dakota	41.1	18,488,964
Oklahoma	.2	108,880
Oregon	20	18,076,473
South Dakota	9.7	4,805,127
Utah	27	14,309,006
Washington	35	15,158,427
Wyoming	30.9	24,548,145

The thousands of settlers who would naturally occupy those enormous tracts of land, much of it as fine as any in the United States, are excluded. Largely because of these withdrawals, Canada, in nine years up to 1909, has gained nearly 400,000 immigrants from our Northwest. At the present time 100,000 good, sturdy American farmers are leaving this country annually. If the land had not been withdrawn, there might be an occasional farm which would go into the hands of undesirable settlers, but this would be counterbalanced over and again by *bona-fide* residents. The growth of population in the several Western States in question is being dangerously retarded.

The forest reserves, national parks, and like reservations have been permanently withdrawn. Other portions may be placed again within the reach of the people. The truth is that there remains in the public domain less than 700,000,000 acres that are unappropriated and unreserved, and, as has been pointed out, only a small per cent of this residue is attractive or ever will be

attractive to settlers. It includes the Bad Lands of the West, the irreclaimable deserts, barren summits, and worthless mountain country. The most desirable lands that have not passed to private ownership are now held up by the Government. Two-thirds of the land remaining in the public domain has never been surveyed.

Second National Conservation Congress, Proceedings.

Pages 52-8. Edwin Lee Norris.

Now, are we [Montana] capable of passing legislation to preserve our water resources? I think we are; and let me tell you some of our plans. In the first place, the water and the land, during the territorial days of each State, belonged to the Federal Government. When the State was admitted, the lands were reserved by the Federal Government, but the waters flowing in the streams of the State passed into the control of the State. You heard Senator Nelson, an able lawyer, refer this afternoon to the fact that that was the law. Now, they tell us that you cannot trust the States, you must trust the Federal Government; and yet I listened for nearly an hour to one of the ablest presentations I ever heard of how the Federal Government for a hundred years wasted its resources with all the prodigality of a drunken sailor. Trust the Federal Government! Why, the Federal Government has been the greatest sinner in that respect. I am glad the Federal Government has awakened and is going to preserve its resources, but Montana, at least, woke up a little before. In this matter of the water-power: The most valuable use that water can be put to, or, in other words, the most valuable function that water can perform, is not the development of electrical power; in the semi-arid States it is the applying of that water to irrigation and the reclamation of the arid lands of the West. So bear that in mind.

In the State of Montana—and what is true in that State is true largely in every other State in the West—not one-third of the arable lands that can be irrigated have as yet been reclaimed; less than 2,000,000 acres have been reclaimed in Montana, while there are 6,000,000, in fact there are 10,000,000 acres that can be reclaimed. In other words, there are from

six to ten million acres yet to be reclaimed by use of the water that flows in the streams of the State, and that is largely Government land. So that when you talk about conserving the water for water-power purposes, we say conserve it for reclamation purposes; for the reclamation of Government land, too, that may make homes for settlers who will come in and take it under the Homestead Act. There is the reason why we say that the Federal Government must not by its superior power step in and insist upon using the waters of the streams of the West for power purposes, unless when it so does it makes provision that the rights for irrigation purposes shall forever remain inviolate; otherwise, what does it amount to, the building of a dam across the stream? When the Government conveys the right to build a dam across a stream, it means that the amount of water flowing over that dam will determine the amount of power that may be developed; hence, when that dam is built the Government, if it conveys anything of value, must convey the right to the use of that water, and the right to the use of that water flowing over that dam must accrue as of that date, and forever thereafter the franchise-holder will have the right to demand as a concession from the Federal Government that the same amount of water, all the natural flow of that stream, must go over that dam forever. You thereby absolutely prevent the diversion of any water on that stream above that point for irrigation purposes. The use of water for irrigation purposes does decrease the amount flowing in the stream. That is the reason we object to the Federal Government coming in and taking charge of our water-power and giving it out—we do not care so much about the little income that may be received; that is the reason we are insisting upon the rights of the State.

Now, remember this: In the first instance, there is no contention but what the regulation of water for irrigating purposes is absolutely vested in the State, and that the Federal Government cannot acquire that right; hence a number of irrigators have already appropriated a part of the flow of the stream. The Federal Government grants the right of franchise for the building of a dam. Suppose we assume, for the sake of argument, that it can grant the right to the re-

maining flow of a stream; it not only thereby forever thereafter prohibits the use of that stream above that point for further reclamation purposes, but the rights of every irrigator, either before or after appropriation is made, comes in conflict, or may come in conflict, with the Federal franchise-holder? In other words, you transfer from the State courts and from the State forum the right of every irrigator to use the waters of a stream to the seat of power of the Federal Government at Washington. In other words, you practically stop irrigation in the arid West when you insist upon having that power. Is that conservation? True conservation demands that every acre of land shall be used for its highest purpose and be made to serve its highest productive function, whether in a forest reserve or out of it. Therefore, in order to serve its highest productive function in the West, water must be applied to the land.

Now, take the 6,000,000 acres of land that may be reclaimed in Montana. If you do not insist upon the Federal Government taking charge of the water-power and preventing its further reclamation, it means 6,000,000 acres of land reclaimed. It is fair to say that each year those reclaimed lands will produce a total of $25—yea, and if I did not want to be ultra-conservative, I would say $50—per acre; and at $25 per acre, you have an annual income from those 6,000,000 acres of land of $150,000,000. Isn't that worth thinking about? Isn't that a resource worth conserving? Why, the 6,000,000 horse-power that might be developed in Montana is not worth one tithe of that. You say, Give to the Federal Government the right to the water-powers of the State and forever prevent the further reclamation of our land? Why, you are asking of us the most priceless gift that we have to convey—far more priceless than our mines yielding $50,000,000 yearly, possibly the richest in the world—because you ask us to surrender not $50,000,000 a year but the opportunity to make $150,000,000 a year. Has the Federal Government this right? We insist, as a matter of law, that the Federal Government has no authority to grant any right to the use of water on any power site that it may have. If the power site is situated along a stream, the title to the power site rests in the Federal Government and it can grant the

right to erect a dam on that site, but the water that flows down the stream by that power site belongs to the State, and unless the State gives you the right to appropriate and take water you will develop no power by a damsite!

Second National Conservation Congress, Proceedings.

Pages 72-5. Bryant Butler Brooks.

A few years ago the western Governors held a meeting at Salt Lake City, and spent two days discussing this question of conservation. After full and complete discussion they adopted, unanimously, a brief set of resolutions, which I think express their views in this important matter. Colorado, Utah, California, Washington, Oregon, Idaho, Montana, and Wyoming were represented; and since the resolutions, which have been published in all the western papers, have met with unqualified public endorsement, and as it will only take me about a minute, I am going to read them, as embodying the views of the western Governors—and, I might add, of 95 percent of the citizens of the great western States:

Resolved, that the Governors of the Rocky Mountain and Pacific Coast States affirm as a platform of principles to be urged upon the National Conservation Congress to be held at Saint Paul, September 5-9, 1910—

First, that in legislatively solving the problem of conservation the National Congress adhere to the doctrine of Abraham Lincoln that the public lands are an impermanent national possession, held in trust for the maturing States.

Right on that point, I wish to refer to the splendid paper read here at the opening of this afternoon's session by that brilliant, honest, and patriotic statesman, Senator Nelson, outlining the public land laws. I call your attention to the fact that at the beginning of this great Nation of ours the Federal Government acquired, by cession from the States, by treaties with the Indians, and by purchase and conquest, all this vast public-land territory, the early idea being that this public domain was to be sold for the payment of the Revolutionary War debt and for the running expenses of the Government; though that early idea was quickly transformed and changed, owing to the insistent demand of the settlers, and the pre-emption laws (with which you are all familiar)

followed as the second step. They were a sort of settlement and revenue measure combined; but still the insistent demand of the settlers would not stop, and gradually we reached that stage, where the homestead law was passed, and signed by Abraham Lincoln in 1862, giving the settlers 160 acres of land as the result of settlement and cultivation, doing away entirely with the old revenue idea; and under that one law this great State of Minnesota, and every other State in this central country, has developed to a degree unparalleled in the history of human progress. Now, all the West asks is an even break; all the West asks is an equal opportunity. How can we educate our children, how can we maintain good government and good law, how can we do all those necessary and essential things to maintain a high state of civilization and progress, if over one-half of the State is to be held permanently as a Federal resource, giving no taxation or revenue whatever to the support of our State governments? It is utterly impossible. We of the West are just as bitterly opposed to monopoly, just as bitterly opposed to any misuse of the natural resources of this country as any of you gentlemen here assembled; but we do believe that the States themselves can in a great measure work out the safest and best conservation. I might get started here and go on talking, and I do not want to do it; I want to read the other resolutions:

Second, that State government, no less beneficently than National Government, is capable of devising and administering laws for the conservation of public property; and that the National and State governments should legislatively coordinate to the end that within a reasonable period of time the State governments be conceded full and complete administration of such conservation laws as may be found adaptable to the varying conditions of the several States.

The idea being that conditions vary so tremendously—just as you have heard from the Governor of Mississippi and the Governor of Illinois, the latter of whom told you about a monopoly stepping in and stopping the State development of the water-power along one of their streams. Such a condition is absolutely impossible in the West, because that old law of riparian rights does not apply; there is no law in the West whereby we are compelled to allow the water in the streams to flow by your property undiminished in quantity and undefiled in quality. In the West the law of appropria-

tion applies, the law of use. Under the Constitution of Wyoming, granted twenty years ago, we were given all the water of the State, everywhere and every place; we cannot part title with it, we hold it, and we will always hold it. Talk about monopoly! How absolutely impossible, under the laws of Wyoming! We have used this water wisely and well. It is absolutely impossible to get a monopoly of water-power in the State of Wyoming, and such an instance as referred to by the Governor of Illinois would be impossible. The State of Wyoming could simply refuse to allow that company to use one drop of water; they have the power to do it, it is so provided for in the Constitution, just as the State of Wyoming, if it chose, could absolutely refuse to permit the general Government itself to use one drop of water for power purposes. We have never had any power monopoly in the State of Wyoming, and we do not intend to have.

Third, that experience of the conservation States demonstrates that dispositions of public property made under existing national conservation laws and regulations have tended to intrench monopolies and interests menacing the common welfare; and that modifications of such laws and regulations should be promoted by the Conservation Congress.

Our great President this morning stated a great truth, and it came right to the hearts of the western people. You can't understand it here, perhaps, but we realize the importance of conservation; but we have been talked to death on it. *What we want is action!* We want the people to get busy; we do not want all these things bottled up in cold storage; we want them used for the generation of today. That is the important thing. As it is now in Wyoming, every big coal company in the State is adding an increased price to its coal to the consumer, who is already burdened beyond the point of endurance, simply because there is no further development in these coal lands as they stand today under the withdrawals; every ranchman in the State of Wyoming is paying ten dollars a thousand more for his lumber than he had to a few years ago—ten years ago, five years ago—owing to the fact that development has ceased. The only monopolies that we are troubled with out there are those that are unable to appraise their capital at present

simply because competition cannot come up and meet them on the markets under present conditions.

Fourth, that the elimination from the forest reserves of all homestead and untimbered grazing lands is immediately expedient.

Fifth, the use and control of all water-power inheres of right in the States, within restrictions insuring perpetual freedom from monopoly.

Sixth, that the privilege of American citizens to seek and develop mineral wealth wherever it may be found should be fully amplified and secured by laws.

Seventh, that the idea of deriving Federal revenue from the physical resources of the States is repugnant to that adjustment of constitutional powers which guarantee the perpetuity of the Union.

And with only one thought more I leave you: If the western States, never having had the opportunity so far to develop their great natural resources as you people of the East have, as Minnesota and the Atlantic States have, are now to be changed entirely from the time-honored policy that has made these States great and powerful; if now we are to be taxed, as we have been, $150,000 a year for the forest-reserve grazing privileges, when that same money is used in the great Empire State for forest protection free of cost, then we of the West have a hard row to hoe. We simply ask the same fair treatment as accorded every central and eastern State of the Union. It is not right to tax the West for anything which you would not apply in one of the great eastern States. We want our resources protected, we want them safeguarded for our children and our children's children, but we want the opportunity to make our young States grow and be prosperous, so that we of the West will have those things of which we can be as proud as you people of Minnesota are when you take a gentleman to your magnificent State Capitol, to your great Agricultural College, and to your other great schools—we want the same for our children and our children's children, without Federal interference.

Second National Conservation Congress, Proceedings.

Pages 177-88. James J. Hill.

To pack the fact into a single statement, the need of the hour and the end to which this Congress should devote

itself is to conserve conservation. It has come into that peril which no great truth escapes—the danger that lurks in the house of its friends. It has been used to forward that serious error of policy, the extension of the powers and activities of the National Government at the expense of those of the States. The time is ripe and this occasion is most fitting for distinguishing between real and fanciful Conservation, and for establishing a sound relation of means to ends.

We should first exclude certain activities that come only indirectly under the term, "conservation." The Reclamation Service is one. Its work is not preservation, but utilization. The arid lands of this country have been where they now are, the streams have flowed past them uselessly ever since Adam and Eve were in the Garden of Eden. Irrigation was practiced in prehistoric time. What we have to do is to bring modern methods to the aid of one of the oldest agricultural arts. It is mentioned here because its progress illustrates the dangers that beset conservation projects proper. They are dangers inseparable from National control and conduct of affairs. The machine is too big and too distant; its operation is slow, cumbrous, and costly. So slow is it that settlers are waiting in distress for water promised long ago. So faulty has been the adjustment of time and money that Congress has had to authorize the issue of $20,000,000 of National obligations to complete projects still hanging in the air. So expensive is it that estimates have been exceeded again and again. The settler has had either to pay more than the cost figured he relied on or seek cheaper land in Canada. It costs the Government from 50 percent more to twice as much as it would private enterprise to put water on the land. Under the Lower Yellowstone project the charge is $42.50 per acre, and one dollar per acre annually for maintenance. The Sunnyside project carries a charge of $52 per acre, and 95 cents maintenance. Under the North Platte project the charge is $45 per acre, plus a maintenance charge not announced. These projects, in widely separated localities, entail a land charge prohibitive to the frontier settlers to provide homes for those for whom this work was believed to have been undertaken. The pioneer settler who can pay, even in ten annual

installments, from $3,500 to $4,000 for eighty acres of land, in addition to the yearly fee per acre, must have some other resources to aid him. The work of irrigation would have been more cheaply done if turned over to private enterprise or committed to the several States within which lie the lands to be reclaimed. This is not a criticism upon any individual. It is merely one more proof of the excessive cost of Government work.

Toward the conservation of our mineral resources little can be done by Federal action. The output is determined not by the mine owner, but by the consumer. The withdrawal of vast areas of supposed coal lands tends to increase price by restricting the area of possible supply. Nor can such deposits be utilized eventually except under some such system as is now employed. It is foolish to talk of leasing coal lands in small quantities in order to prevent monopoly. Mining must be carried on upon a large enough scale to be commercially possible. The lessee of a small area could not afford to install the necessary machinery and provide means of transportation without charging for the product a prohibitory price. The land should not be leased by the acre, but by the quantity of coal contained in the land. A vein four feet thick contains about 4,000 tons to the acre; in many fields there are three, four, five, and six veins containing from fifteen to thirty feet of coal, or from fifteen to thirty thousand tons to the acre. What we want is intelligent understanding of the situation. Under too restrictive conditions the coal would remain in the ground indefinitely. The people of the West see little practical difference between a resource withheld entirely from use and a resource dissipated or exhausted. They understand by conservation the most economical development and best care of resources. It is the only definition consistent with the natural growth of communities in the history of the civilized world.

The prairie States are more interested than any other in the question of cheap fuel. We do not depend on Alaska for our future supply. There is abundant coal on the Pacific Coast nearer to our seaports and commercial centers. Vancouver Island is underlain with it; today while the railroad companies with which I am connected bought coal lands on

Puget Sound, which they still own, we are prepared to burn oil from California instead of coal. I speak of that as a practical reason why we should, before we leap, look to see what the actual conditions are. Then, to say nothing of Nova Scotia on the Eastern coast, there is coal in Spitzbergen, within the Arctic Circle, actually nearer our Eastern markets than the coal of Alaska. While we lament the exhaustion of our coal supply, we maintain a tariff that compels us to draw upon it continuously. It would be well to cast out this beam before we worry too much over the conservation mote.

The iron deposits of Minnesota, the most wonderful in the world, are today not only furnishing industry in the Nation with its raw material, but are piling up a school fund at home that is the envy of other States and adding more and more every year to the contents of the State treasury. Minnesota is considering the reduction of her general tax levy by one-half. Would it be better if these lands were today held idle and unproductive by the Federal Government, or worked only on leases whose proceeds went into the Federal treasury and enabled Congress to squander a few more millions in annual appropriations?

The attempted Federal control of water-powers is illegal, because the use of the waters within a State is the property of the State and cannot be taken from it, and that the State may and actually does, in the case of Idaho for example, perfectly safeguard its water-powers from monopoly and make them useful without extortion has been shown conclusively by Senator Borah in a speech in the United States Senate in which this whole subject is admirably covered. Back in our history beyond the memory of most men now living there was the same controversy over the public domain. Ought it to be administered by the Government and disposed of for its profit, or opened to the people and shared with the States? Let experience determine which was the better guardian. The worst scandals of State land misappropriation, and there were many, are insignificant when compared with the record of the Nation. The total cash receipts of the Federal Government from the disposal of public and Indian lands from 1785 to 1909 were $423,451,673. The

money is gone. It has been expended, wisely or unwisely, with other treasury receipts. It would be interesting to know how much the above sum exceeded the cost of administration. To go back 125 years and dig up the cost of the administration of public lands would be more of a task than I have time for, but I took the last report of the General Government, and in the disbursements of the Interior Department I found that the cost of administering the public lands was in 1907 $17,421,000, in 1908 $15,190,000, in 1909 $14,441,000. Now if we take the entire proceeds of all the public lands sold, including the Indian lands, it averages $3,400,000 a year for the 125 years during which it has been sold; and we find here that the cost of administering the greatly reduced estate is from three to five times as much as the total receipts would average. But certain limited areas of lands were conveyed to the States for educational purposes. The permanent common school funds, State and local, conserved by the States, amount to $246,943,349. The estimated value of productive school lands today is $138,851,634, and of unproductive $86,347,482. Add to these the land grant funds of colleges of agriculture and the mechanic arts, and the total is merely half a billion dollars. To what magnitude these great funds, now jealously guarded for educational purposes by the States, may grow in time we cannot even guess. Some may eventually provide amply for all educational needs of their States forever. This is one telling proof of the superior fidelity of the commonwealth as custodian of any trust for future generations.

Experience proves that resources are not only best administered but best protected from marauders by the home people who are most deeply interested and who are just as honest, just as patriotic and infinitely better informed on local conditions than the National Government can possibly be. It is clear that every one of the many problems all over the country can be better understood where they are questions of the lives and happiness of those directly interested.

Behind this, as behind every great economic issue, stand moral issues. Shall we, on the one side, deny to ourselves and our children access to the same store of natural wealth

by which we have won our own prosperity, or, on the other, leave it unprotected as in the past against the spoiler and the thief? Shall we abandon everything to centralized authority, going the way of every lost and ruined government in the history of the world, or meet our personal duty by personal labor through the organs of local self-government, not yet wholly atrophied by disuse?

Second National Conservation Congress, Proceedings.

Pages 226-37. Frank H. Short.

As briefly as I may, and seriously as I can, I will state the situation that confronts the people of the West, the poor man and the capitalist alike, in connection with the forest reserve. Forest reserves were authorized by Congress for the purpose of protecting forests and conserving the source of supply of streams. Probably one-third of the 200,000,000 acres that have been set apart in forest reserves in the western one-third of the United States are reasonably necessary and suited to these purposes. As to the other two-thirds, they were largely included—and in some instances this is frankly admitted—for the purpose of authority for Government control, to include pasture lands, power-sites, irrigation projects, and the like. If forest reserves had been created to meet the actual necessity which brought them into existence, and if they had been administered with due deference to the rights of the State within which they are situated, to improve and develop its resources without restraint, to construct or authorize to be constructed roads and highways, railroads, telephone and telegraph lines, canals and ditches for the beneficial use of water, and the functions of local self-government had not been assumed to the Federal authorities and denied to the local authorities, I could conceive of no reason why the forestry policy could not have been carried out with great credit and some profit to the Federal Government and greatly to the advantage of the district in which the forests are situated. The pity of it all is that this has not been done. We are told that the sentiment in opposition to transferring from the States to the Federal Government

important functions of regulation and control is not unanimous. This is true as to districts not directly affected by the forest reserves; but as to the people within and in the vicinity of the forest reserves, in other words, as to those who have come directly or indirectly in contact with bureaucratic government, the sentiment is about as unanimous as ever existed in America.

That the Forester and those under him honestly desire to benefit the people, especially "the poor, small man," we need not deny; that the actual results have been beneficial, however, we wholly deny. The imperial dominion withdrawn includes territory as large as 20 or 30 average-size eastern States, amounting frequently to one-fifth or one-fourth, and sometimes even exceeding the latter fraction of the territory within a State, and practically taking over and paralyzing local self-government in certain entire districts of a State. These lands are, and if the policy continues will remain forever, withdrawn from State taxation and revenue, and instead will become a source of expense and burden. First, considering the prime purpose to preserve and protect the forest, what has been the result? The Forester and those under him have my profound sympathy in connection with the recent awful destructive forest fires and the heroic way in which the disaster was met, even though it was not overcome.

For many years experienced and practical men in the West have protested against the policies pursued. Previous to the establishment of the forest reserves the land was pastured by sheep and cattle, admittedly in some instances overpastured. Frequent fires ran through the country, but in most instances as the country had been closely pastured off and fires had usually recently occurred, these fires did only incidental harm, and in a general way the great forests of the West in many districts—although the result of mere natural processes—as valuable and magnificent as there are in the world, were retained in their primitive and perfect condition. For a good many years now exactly the reverse of this primitive condition has prevailed. Sheep have been excluded and cattle have been limited; falling and decaying timber, the growth of vegetation from year to year, and the accumulation of underbrush and debris have continued; and

we have gone on conserving our forests in such a way that we have been accumulating fuel and the elements of destruction, piling up wrath against the day of wrath, until the fires, in spite of precautions, have started, and the destruction that has resulted is inevitable. What is needed now in this particular is a surgeon who has the nerve to amputate the conditions that create fire, and until this is done the danger will go on increasing from year to year and more destruction than benefits will inevitably result. To those who suggest that a sufficient patrol will prevent fires, I respond that they ought to try the experiment of filling a building with powder, putting an ample guard around it, and touching a match to it.

These great reserves have been practically closed to settlement and homesteading. The price of pasturage has been increased, the number of cattle and sheep pastured has been diminished, and the price of meat correspondingly advanced. The price of stumpage has been doubled and trebled, no small mills have been or can be successfully started, and the price of lumber to consumers has been increased. The policy has limited the construction of canals and other appliances for irrigation, and still more effectually limited the construction of like appliances for the diversion of water for the development of electric power. If this water could be diverted for irrigation and electric power under State laws without other restraint, the quantity available in the majority of the western States is so great that the supply would exceed the demand, the price would be lower, the consumption greater, and in every way the people would be benefited. The country would be settled, the people would be more prosperous, the supply of water and electricity would be more abundant and cheaper, and all of the people and all of the industries would be correspondingly more prosperous.

The situation might be illustrated by this simple statement: Uncle Sam may be assumed to be the father of four sons; we will name them East, North, South, and West. Uncle Samuel being liberal to a fault and mindful of a trust, has transferred to his three elder sons, East, North, and South, all of their share in his estate. But these elder sons, especially after their industrious younger brother has begun

to show the real value of his portion of their father's estate, begin to look with covetous eyes upon the younger brother's inheritance. Finally a deep sense of justice begins to pervade the minds of East, North, and South, and they appear before Uncle Samuel and say, "Father, you have been very profligate in the management of your great estate. You have turned over to us and to our children without needful restriction the whole of the proportion that we can rightfully claim. In the doing of this you have shown great incompetency and have practiced many faults, and behold, you have sinned against Heaven and in the sight of men. We can see no way of atoning for this awful offense except that you shall take and hold that portion of the estate that should descend to our younger brother for the benefit of all your children. And as a further atonement, having shown in the distribution of your estate to us that you are dishonest and incompetent in the last degree, in consideration thereof we will nominate and appoint you the landlord and guardian, without bonds and forever, of that portion of the estate that, except for this atonement, would have belonged to our younger brother; requiring you, however, to see to it with scrupulous care that we, your elder sons, shall receive from the rents, leases, and profits of this estate our equal shares with our beloved younger brother." Painful as it may seem, these elder brothers seem well nigh unanimous as to this scheme of atonement, and Uncle Samuel seems weak and subject to the influence of the majority. History, however, will record that the Constitution broke the will and the elder brothers were charged with the costs and counsel fees.

About the only argument that is made in favor of Federal control and against local self-government in the West is that the corporations appear to prefer the former. The question is not what the corporations prefer but what the Constitution requires; and, in the next place, the corporations do not deny the authority of the States because they are advised that they cannot and therefore should not attempt to do so, and because they are advised that they must in any event submit to local self-government and that Federal control would be an additional and not a lawful but a wholly unauthorized usurpation of authority. The American people,

of all people in the world, have earned the reputation of being the most obedient to law and the least submissive to usurpation of any people in the world. If some of our wealthy men and some of our corporations have offended against honesty and attempted to circumvent, misapply, and misuse the law, these are instances to be regretted, condemned, and punished. The practice should be abandoned, and if not abandoned rigorously prevented; having it, however, religiously in mind that ultimate justice can be done and the law vindicated only by adhering to due process of law.

We are told that Switzerland as a Nation regulates and manages its own power business. Since, however, Switzerland has no more authority or powers of government than California, Colorado, or New York, and since it is probably one-tenth the size of these States and its cantons are about the size of an ordinary western school district, this would not appear to indicate any reason why the western States of the Union could not successfully carry out the same function of government.

Our former President has said to us that he would be as swift to prevent injustice and unwarranted uprising against property as anyone. This I do not doubt, and I am prepared to agree that probably no one living could perform the task more cheerfully or effectively; but in this connection it might not be improper to reflect that the people have been taught, and rightly so, that this is "a government of law and not of men," and we rely upon the equal and continued protection of the law for the protection of our persons and our property, not upon the life or disposition of any man.

We have already referred to the assertion that the remaining resources of the Federal Government belong to all the people and are to be administered and revenues obtained for their full benefit. We are not, however, deluded with the thought that we are to begin to draw individual dividends. The revenues thus obtained are to go into the Federal treasury (and allow me parenthetically to suggest that the payroll will not be far behind the earnings), but if through some oversight a balance should be found in favor of all the people it will go into the Federal treasury to reduce taxation to the common benefit. Allow me to suggest, and ask all

thoughtful people to well consider, that if sufficient revenues were collected and paid into the Federal treasury to prove of great benefit to a hundred millions of people, the collection and payment of these same revenues will of necessity amount to some slight imposition and burden upon the ten millions of people when they are paid out of their resources and revenues.