

Western Lands Update

Western Lands Project
Seattle, Washington

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Research, Outreach, and Advocacy to Keep Public Lands Public

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Two Public Land Victories in the Ninth Circuit

Activists fighting land exchanges in Arizona and California received great news this fall when the Ninth Circuit Court of Appeals ruled that two land trades violated federal laws. First, on September 14 the court overturned an Arizona District Court judge's decision regarding the proposed Ray Mine land exchange between the Bureau of Land Management and the mining corporation Asarco. Western Lands Project was a plaintiff in this case, along with the Grand Canyon Chapter of the Sierra Club and the Center for Biological Diversity. Then, on November 10 the appellate court largely upheld a district court opinion that barred the BLM from exchanging land with the Kaiser Corporation near Joshua Tree National Park to make room for what would have been the country's largest landfill.

The proposed **Ray Mine land swap** would have traded almost 11,000 acres of public lands for about 7,300 acres of land owned by Asarco. Some of the public lands are adjacent to areas of critical environmental concern and/or Wilderness, and almost 7,000 acres are desert tortoise habitat. Asarco has several thousand mining claims on the selected public lands, and the trade would make it easier for the company to develop those claims and expand its open-pit Ray Mine complex, one of the largest copper mines in the United States.

Our opposition to this exchange dates back to 2000, when we filed an administrative appeal of the BLM's decision to move ahead with the proposed swap. We challenged BLM's assertion that, because Asarco owned mining claims on much of the public land it wanted, the impacts from mining would be the same whether or not Asarco obtained outright ownership of the land containing its claims. We and our co-plaintiffs argued that the Mining Law of 1872 imposes sufficient restrictions on mining operations on federal land to at least somewhat limit their extent if the land remained in public hands. (This is not to say that the Mining Law is not archaic and in desperate need of reform). On the other hand, if the trade were to take place, neither the Mining Law nor other federal environmental laws would apply to Asarco's mining.

The Ninth Circuit sided with us, holding that the BLM had not taken the requisite hard look at the no-action alternative. Under the Mining Law, Asarco would be required to submit one or more Mining Plans of Operations for BLM's review and approval if it wished to proceed with mining in the absence of the land trade.

Continued next page ➔



Joshua Tree
Photo: Western Lands Project

—Continued from page 1

The Ninth Circuit found it highly likely this process would substantially affect the manner in which mining operations took place on the public lands. The court also held that the BLM's determination that the proposed swap was in the public interest was rendered arbitrary by the agency's faulty assumption that the impacts of mining would be the same if the trade were not consummated.

The second great Ninth Circuit decision involved a proposed swap between the BLM and **Kaiser Eagle Mountain**, a subsidiary of the Kaiser Corporation that wishes to establish the nation's largest landfill within sight of Joshua Tree National Park. Donna and Larry Charpied, longtime friends of Western Lands Project, were the plaintiffs in one of two suits against the BLM that were consolidated as *National Parks Conservation Ass'n v. Kaiser Eagle Mountain*. Donna and Larry, who run an organic jojoba farm in the Chuckwalla Valley, have been fighting the landfill proposal for twenty years.

Kaiser has sought to use its former mining lands near Joshua Tree to build a landfill that would serve Los Angeles and other parts of southern California. For the landfill to be feasible, the company would need to acquire adjacent public lands

via trade with the BLM. The facts of this case parallel those of *Desert Citizens Against Pollution v. Bisson*, a Ninth Circuit case from 2000. In both cases, the appraisals of the selected public lands failed to consider a landfill as the highest and best use of the lands, despite its being the primary purpose and need for the proposals.

The court also ruled in favor of the plaintiffs' claims that BLM had 1) too narrowly drawn the project's purpose and need, 2) failed to analyze a reasonable range of alternatives to the proposed action, and 3) not taken the necessary hard look at the impacts of eutrophication, the introduction of excessive nutrients to an environment. Here, stray waste material and nitrogen-bearing airborne emissions had the potential to disrupt the fragile Mojave Desert ecosystem surrounding the landfill.

Despite the encouraging rulings, in neither case is a permanent victory assured. Both opinions had lengthy, impassioned dissents—the Ray Mine dissent opened with the canary-in-a-coal mine analogy while the Kaiser Eagle Mountain dissent compared Kaiser's travails to those of Homer's Ulysses—that practically begged for en banc review by a larger panel of Ninth Circuit judges.

*We have fallen heirs to the most
glorious heritage a people ever
received, and each one must do his
part if we wish to show that the
nation is worthy of its good fortune.*

—Theodore Roosevelt

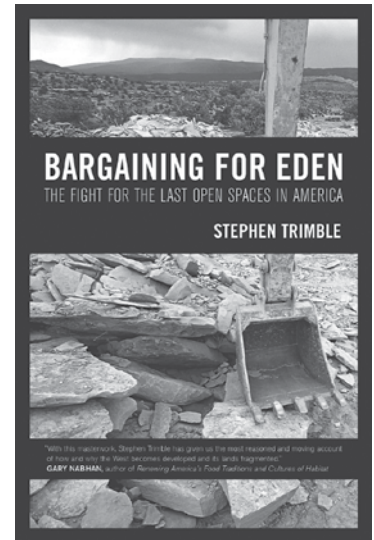
A book about the real west

At the center of the book *“Bargaining for Eden: The Fight for the Last Open Spaces in America,”* the Utah-based writer and photographer Stephen Trimble places the story of the Snowbasin land exchange, a public land scandal of epic proportions. With this trade, Earl Holding, billionaire owner of Sinclair Oil, Sun Valley Resort, and Little America, obtained 1,300 acres of national forest land to expand his Snowbasin ski area near Ogden, Utah.

From the time he purchased the ski area in 1984, Holding wanted a land exchange that would enable him to develop lodges, condos, and homesites around the ski area. After many years of struggling with a skeptical Forest Service, he finally got what he wanted through the rich man’s shortcut—the U.S. Congress. Branding his resort expansion as critical to Salt Lake City’s 2002 Olympic Winter Games (which it patently was not), the Utah delegation happily did Holding’s bidding with passage of a bill that waived environmental laws and bent the land appraisal rules in his favor. The exchange represented a loathsome trampling of both the public interest and the fragile environment of Mount Ogden.

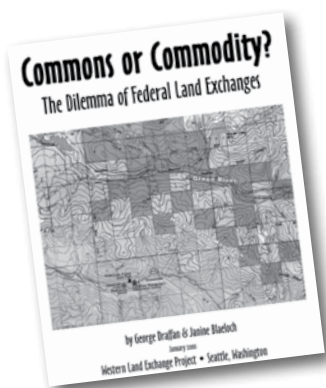
Bargaining for Eden covers the intricacies of the land trade in impressive detail, and much of the story is told through portraits of the operators, activists, and bureaucrats involved. Trimble then takes off into both narrower and wider territory. His own purchase of a parcel of land in southern Utah’s red rock country and construction of a second home prompts him to examine his new status as a developer. It also puts him at the virtual Center of the Universe of rural and public land politics—extraction vs. preservation, locals vs. transplants, conflict vs. consensus. He uses both his knowledge of the Snowbasin deal and experiences in his new community to illustrate the forces roiling around land use in the West.

Even as he weighs the competing philosophies around him, Trimble consistently asserts his own strong belief in the value of the commons. “In the United States, where we have retained much of our wild country as public land, every citizen of the democracy shares in the wealth of this land. On this scale we are all wealthy.”

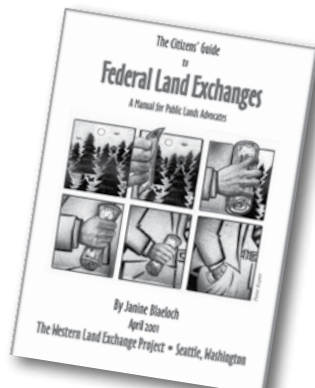


Published by the University of California Press, “Bargaining for Eden” has just won the Utah Book Award and is now available in paperback.

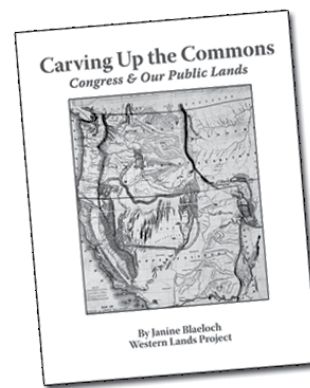
Books by the Western Lands Project



“Commons or Commodity? The Dilemma of Federal Land Exchanges” by George Draffan & Janine Blaeloch



“The Citizens’ Guide to Federal Land Exchanges: A Manual for Public Lands Advocates” by Janine Blaeloch



“Carving Up the Commons: Congress and Our Public Lands,” by Janine Blaeloch

We now offer our three publications as free PDF files. Contact us at info@westernlands.org to request any or all.

Donor Profile: Sandra Perkins

Sandra Perkins has practiced law for 30 years and has had her own law firm focused on estate planning and probate for ten. Since 2003, she has been a committed supporter of Western Lands Project — and we are grateful!

Sandra is a firm believer in public land as a public good that belongs to all of us, and not just the select few. She is horrified to read of proposed ‘deals’ that would sell or lease our public lands for a tiny fraction of their worth— and often to people or corporations that will lay waste to them. She says present and future generations depend on us to preserve our public lands for the common good, and Sandra is living up to her end of the bargain.

In 2004, Sandra became a member of Washington Women’s Foundation (WWF), a well-known group of philanthropists who pool their resources to give larger gifts to carefully selected grantees. Sandra credits

her experience with WWF, especially as a member of the Grants Committee, for teaching her how to be more strategic in her personal philanthropy and how to maximize the impact of her giving. She says that giving to Western Lands Project every year is an example of both.

“First,” she says, “Western Lands Project is a relatively small organization that achieves big results. Second, because Western Lands Project is not huge, donors can have a greater impact by giving to WLP than by giving to larger, more well-known organizations. Third, Western Lands Project does not ask for money every other week like many large charities do. Therefore, when I receive a request for donations from Western Lands Project, I usually donate right away. They don’t waste my time and their money with frequent solicitations, so I know they are serious when they do ask. I really respect and appreciate that.”

“I am so grateful that Western Lands Project is watching over our public lands and protecting them (and all of us) from those who would abuse them for private gain.”
— Sandra Perkins



Sandra with her husband, UW Prof. Jeffrey Ochsner, and their cats Summer, Autumn and Winter.

Donor Profile: Professor emeritus Gordon Schochet

Gordon Schochet is a recently retired professor who has been a dedicated supporter of Western Lands Project for many years. He and his wife live in Edison, New Jersey with their beloved cat and have two grown children and four grandchildren.

In addition to being a family man, Gordon is a decorated political science scholar with a BA and MA from Johns Hopkins and a Ph.D. from the University of Minnesota. He was a Fulbright Scholar, was awarded many prestigious research fellowships and appointments, has published numerous books and articles, was the founding co-editor of the journal *Hebraic Political Studies*, and a founding co-director of the Center for the History of British Political Thought at the Folger Shakespeare Library in Washington, DC. Wow!

Last June, Gordon retired after 44 years of teaching political science at Rutgers University in New Brunswick, New Jersey (50 years in total).

His most enduring personal hobbies are his love of architecture and geography – particularly the landscapes of the American West – and collecting memorabilia. His self-described “landscape envy” started young with cowboy movies – which he still enjoys today and admits to watching sometimes for the scenery alone. In 1946, Gordon received a postcard from a boyhood friend

from the Grand Canyon: “one of those deliciously colored misrepresentations published by Curt Teich of Chicago - and I was hooked on the American West.” Soon after, he began to collect railroad travel brochures, leaflets and other postcards portraying the West and his lifelong love affair had begun.

After years as an armchair traveler, Gordon made his first trip to the real West in 1966. There, he saw some of the things not shown on postcards: clear-cutting, building, mining, damming. A trip across the Colorado River at Glen Canyon Dam convinced him that he needed to become a public lands advocate.

As Gordon says, “The very existence of public land is among the most positive things about American public life. Unlike anything else, they belong to all of us collectively and are not the preserves or playgrounds of any groups or individuals. They impose upon us as a people a profound obligation of other-regardingness, and it is always distressing for me to see the rampant displays of self-interest by many users of our public lands.”

Today, Gordon’s vision for our public lands is this: “that they will be there for my grandchildren to see and enjoy and that rather than a symbol of the good that we could have done, they will be a marker of the good that we actually accomplished.”



*Gordon Schochet:
political scientist
and fan of the
American West*

“By exposing and resisting the potential transformations of public lands into profit-making ventures, [Western Lands] does us all a noble service.”

— Gordon Schochet

Seeking reform in a BLM Land Sale Program

In 2000, Congress passed the Federal Land Transaction Facilitation Act (FLTFA), authorizing the Bureau of Land Management (BLM) to sell public lands and keep the proceeds to acquire other land. Although FLTFA did not confer authority to sell land that was not already eligible for sale, we initially feared that its passage would precipitate a frenzy of sell-offs. Normally, the BLM's land sale money simply goes to the General Treasury, to pay for wars or other budget priorities, while FLTFA provides an incentive to sell by allowing BLM to use the money. We added FLTFA sales to our monitoring work, and found that in fact relatively few sales were proposed.

In 2008, the Government Accountability Office conducted an audit of the FLTFA program and found several problems. One reason sales were few, the GAO found, was a lack of qualified staff. During the Bush years, realty staff that would have conducted the land sales were ordered to prioritize oil and gas-related projects, such as leases and rights-of-way, and some offices did not have sufficient experienced staff in the first place. There were several additional problems, many attributable to the BLM's not having come up with a system to prioritize sales and acquisitions.

Another feature of the law was that BLM must share some of the proceeds with the Forest Service, Park Service, and Fish & Wildlife Service to use in land acquisition. Interagency agreements took years to complete, further slowing the sales and acquisitions.

The GAO finding that most piqued our interest was that 92 percent (\$88 million out of \$95.7 million) of the FLTFA sale proceeds in the first 7 years were generated in Nevada. Since 80 percent of funds must be spent within the same state, this left the other states at a great disadvantage in acquiring desirable land. Moreover, Nevada

does not have the same need for FLTFA money the other states do: several acts of Congress, including the Southern Nevada Public Land Management Act, have given the Nevada BLM special authority that has allowed that office to sell public land for development in the Las Vegas Valley and use some of the proceeds to acquire environmentally sensitive lands elsewhere in the state. To date, the Las Vegas land sales have generated almost \$3 billion, of which more than \$356 million have been spent or allocated for land acquisition.

FLTFA reaches its mandated 10-year "sunset" in July of next year, and members of the House from both parties, led by Rep. Martin Heinrich (D-NM) have introduced legislation (HR 3339) that would make FLTFA permanent, with virtually no changes in the law. Western Lands Project submitted detailed testimony on the bill, calling for amendments that would address the flaws identified by the GAO as well as some other issues. The most significant change we are proposing is for all of the sale proceeds to go into the Land & Water Conservation Fund, from which acquisition funds could be spread across geographic areas and agencies based on priority, rather than the number or locations of sales.

The House hearing for the bill occurred in mid-November, and despite GAO testimony that most of the problems in the program remain, Members proposed no changes. A witness representing a coalition of national environmental groups also urged straight-up reauthorization. As the bill proceeds in the House and comes up in the Senate, we hope to persuade both members of Congress and environmental organizations to support the substantial improvements in FLTFA we are calling for.

If you would like to help us push for FLTFA reform, contact blaeloch@westernlands.org.

Do you live in the Seattle area & shop at PCC Natural Markets?



If so, you can help Western Lands Project just by doing your regular shopping at your neighborhood PCC co-op. As part of their community giving, PCC has sold us preloaded scrip cards at a reduced rate. By purchasing a scrip card from us for \$50, you get \$50 in shopping credit at PCC and Western Lands gets a 5% donation from PCC – every time you reload your card! Contact Emily at 206. 325.3503 to learn more and purchase yours today.



Start them young!

Public lands will be protected only as long as every generation experiences their wonders.

Emily, age 7, and her cowboy guide, somewhere in Utah during a family road trip out West.

A stable investment in your public lands

At Western Lands Project, we believe in transparency and open communication. We've prepared a brief snapshot of our current financial situation to bring you up to date on how we're doing. I'm happy to have good news to share.

Western Lands Project has been fortunate to have loyal and committed partners, like you, to keep us financially stable in spite of the recession. With cash on-hand plus committed funding, we are confident that we have enough funds to make it through next summer. As a grassroots organization, we are happy with a funding horizon of six months, so we are in good shape — thank you!

Since Western Lands was founded in 1997, we've worked hard to keep our costs low and our impact on public lands high. Our 2009 budget is \$214,166 and we are on track to end the year under budget.

Looking ahead, our 2010 budget is \$213,720.

Although the economy seems to be turning around, many analysts predict that the full impact of the recession will not hit nonprofits until late 2010 due to the lag time between foundation investment losses and their grantmaking cycles. So while we are happy with our financial standing, we'll have to work to maintain it.

If you haven't already made a contribution, please consider sending in your tax-deductible donation today and keep us going strong. With your help, and that of your fellow members and some enlightened foundations, we'll keep fighting to protect public land for as long as we are needed.

**Thank you for your support
& best wishes for 2010!**

Emily

Jan 1 – Nov 30, 2009	
Income	
Foundations	\$195,400
Individuals	\$21,211
Books Sales	\$545
Legal Fees	\$7,823
TOTAL	\$224,979
Expenses	\$190,876

Western Lands Project

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** These lists include donations/grants received from June 12, 2009 to November 30, 2009. If your gift was received after this date, you'll be acknowledged in our next newsletter. Please note that book sales are not included. Thanks for your support!*

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today.

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Keeping public lands in public hands

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