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Seaweed and Sagebrush Robbery: State Revenue Losses From Offshore and Onshore Federal Lands

Senate Office of Research

SEAWEED AND SAGEBRUSH ROBBERY:

STATE REVENUE LOSSES FROM OFFSHORE AND ONSHORE FEDERAL LANDS

Prepared by:
Senate Office of Research
Elisabeth Kersten, Director
October 1984

JOINT

CALIFORNIA LEGISLATURE

Senate

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

October 1984

The Honorable David Roberti, President pro Tempore of the Senate
The Honorable Members of the California State Senate

Dear Mr. President and Members:

Attached for your information is a report on State Revenue Losses from Federal Lands, prepared by the Senate Office of Research. The report points out that California is losing millions of dollars of the state's legally authorized share of federal land revenues as a result of federal government mismanagement and intentional federal efforts to reduce the state's share of federal land revenues.

About 45% of all land in California is owned by the federal government (over 45 million acres), and over 59 million acres of submerged lands offshore California's 1100-mile coastline is controlled by the federal government. Revenues owed to the U.S. government from offshore energy leasing and onshore minerals and timber development are the second largest source of revenue received by the federal government, exceeded only by federal income taxes. A substantial share of these federal land revenues is required by federal law to be shared with states and local governments.

For example, in 1983, California's share of onshore federal land revenues exceeded $65 million, with the bulk of the funds going to school districts and counties where the federal lands are located. And in 1984, the federal government offered California over $200 million to settle disputed claims over more than $1 billion in offshore oil revenues.

The report points out that in addition to refusing to provide California with a fair share of offshore oil revenues, the state is losing or is threatened with the loss of millions of dollars in federal land revenues as a result of:

- **federal mineral royalty mismanagement;**
- **mineral leasing "lottery" scandals;**
- **federal agency "undervaluation" of gas production;**
- **illegal deductions of federal "windfall profits" taxes from state revenue shares;**
- **federal proposals to reduce the state share of revenues from federal land timber harvesting and grazing; and**
- **federal government use of "appropriation bills" to circumvent federal land laws requiring state revenue sharing.**

It is important that the Legislature help guard against the erosion of the state's legally authorized share of federal land revenues. In particular, counties and school districts dependent on federal land revenues will be significantly harmed if revenue sharing reductions continue. The report includes a number of detailed proposals to address particular revenue sharing problems associated with federal offshore energy, onshore minerals, and timber and rangeland activities. In addition, the report includes general recommendations to establish a comprehensive state mechanism to monitor and influence federal land decisions having major land use and fiscal impacts in California by creating a:

I. FEDERAL LANDS COORDINATION OFFICE, and

II. FEDERAL LANDS ADVISORY COUNCIL

If you have any questions about the report, please contact Michael Shapiro in the Senate Office of Research (916) 445-1727.

ROBERT B. PRESLEY
Chairman, Senate Natural Resources and Wildlife Committee

BARRY KEENE
Chairman, Joint Committee on Fisheries and Aquaculture

RAY JOHNSON
Chairman, Select Committee on Forest Land Issues

ELISABETH KERSTEN
Director, Senate Office of Research

C A L I F O R N I A   L E G I S L A T U R E

SENATE OFFICE OF RESEARCH

Elisabeth K. Kersten, Director

October 25, 1984

STATE REVENUE LOSSES FROM OFFSHORE AND ONSHORE FEDERAL LANDS

Report Corrections (Errata Sheet forthcoming)

State revenue receipts were understated

Corrections

Transmittal Letter--1st page: Change $65 million to $78 million

P. 4 Change $55 million to $68 million

P. 6 Change $55.6 million to $68.75 million

Equals the sum of:	Forest revenues--	$43	million	(p. 29)
	Minerals --	$25.6	million	(p. 19)
	Grazing --	$ .15	million	(p. 32)
	Total	$68.75	million	

P. 6 Change $65.6 million to $78.85 million

P. 7 County Distribution Table is incorrect--understates funds. New table being developed.

Addtional copies of this publication may be purchased for $5.50 per copy from: JOINT PUBLICATIONS OFFICE, Box 90, State Capitol, Sacramento, CA 95814. Please add 6% sales tax. Make checks payable to STATE OF CALIFORNIA.

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Prepared by:

Michael E. Shapiro
Senate Office of Research

October 1984

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COUNTY FEDERAL ACREAGE[5]

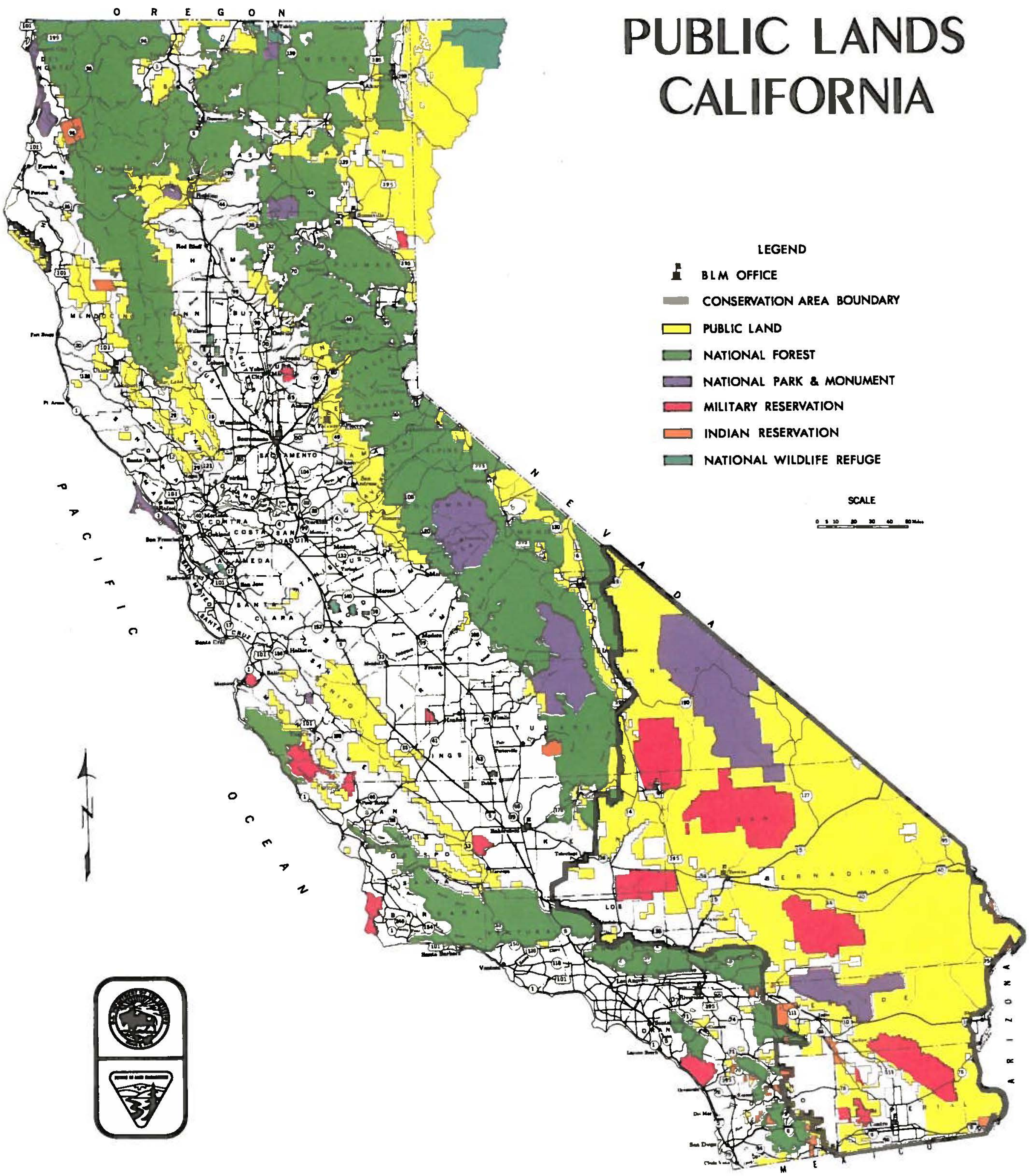
County	Total Land Area In Acres	Federal Ownership	% of County Owned by Government
Alameda	469,120	6,178	1.317%
Alpine	462,720	425,926	94.08
Amador	379,520	76,987	20.29
Butte	1,064,320	151,199	14.21
Calaveras	657,280	128,553	19.56
Colusa	737,920	111,396	15.10
Contra Costa	469,760	9,722	2.07
Del Norte	641,920	451,743	70.37
El Dorado	1,096,960	513,830	46.84
Fresno	3,816,960	1,476,894	38.69
Glenn	842,880	217,127	25.76
Humboldt	2,286,720	436,133	19.07
Imperial	2,741,760	1,499,402	54.69
Inyo	6,458,240	5,172,135	80.09
Kern	5,217,280	1,246,329	23.89
Kings	892,800	20,913	2.342
Lake	803,840	351,170	43.69
Lassen	2,910,080	1,771,503	60.87
Los Angeles	2,598,400	763,237	29.37
Madera	1,372,160	545,661	39.77
Marin	332,800	11,572	3.477
Mariposa	931,200	443,867	47.67
Mendocino	2,244,480	310,489	13.83
Merced	1,268,480	24,803	1.955
Modoc	2,618,880	1,729,305	66.03
Mono	1,937,920	1,452,195	74.94
Monterey	2,127,360	588,387	27.66
Napa	485,120	72,754	15.00
Nevada	625,920	159,486	25.48
Orange	500,480	64,808	12.95
Placer	911,360	298,532	32.76
Plumas	1,644,880	1,150,229	69.93
Riverside	4,593,280	2,489,120	54.19
Sacramento	629,120	15,279	2.429
San Benito	893,440	115,039	12.88
San Bernardino	12,883,840	9,619,763	74.67
San Diego	2,723,300	750,693	27.57
San Francisco	28,800	4,224	14.67
San Joaquin	901,760	9,854	1.093
San Luis Obispo	2,122,240	308,360	14.53
San Mateo	290,560	275	.0946
Santa Barbara	1,752,320	838,546	47.85
Santa Clara	833,280	10,717	1.286
Santa Cruz	280,960	152	.0541
Shasta	2,430,720	978,474	40.25
Sierra	613,120	374,539	61.09
Siskiyou	4,039,680	2,516,444	62.29
Solano	529,280	15,553	2.939
Sonoma	1,010,560	12,355	1.223
Stanislaus	960,000	16,367	1.705
Sutter	388,480	2,592	.6672
Tehama	1,904,640	460,159	24.16
Trinity	2,042,240	1,465,593	71.76
Tulare	3,096,320	1,558,008	50.32
Tuolumne	1,455,360	1,089,238	74.84
Ventura	1,184,640	621,395	52.45
Yolo	661,760	31,510	4.762
Yuba	407,680	86,352	21.18
Total	100,206,720	45,076,382	44.98%

I. INTRODUCTION AND EXECUTIVE SUMMARY

In recent years, Western states, including California, have been preoccupied with major federal land use battles such as the "Sagebrush Rebellion" (the struggle to secure state ownership of federal lands),[1] the "Seaweed Rebellion" (conflict between coastal states and the federal government over offshore energy development),[2] "privatization" (opposition to the current Administration's plan for the massive sale of federal lands to private interests to reduce the national debt),[3] and "firesale leasing" (contesting a major expansion and acceleration of federal mineral leasing, which floods the market and generates low bids).[4] These skirmishes over federal land ownership, disposal and development have sometimes obscured the equally critical problem of federal government fiscal raids on state revenue shares guaranteed under federal land laws. While the "Sagebrush and Seaweed Rebellions" are on hold, and "privatization" and "firesale leasing" temporarily in check, the immediate challenge facing California and other public land states is putting a stop to "Seaweed and Sagebrush Robbery", namely federal government actions which are resulting in the loss to states of millions of dollars of their legally authorized share of federal land revenues.

The federal government dominates land ownership in California. About 45% of all land in California is owned by the federal government (see map below), the bulk of which is managed by the Department of Agriculture's Forest Service (over 19 million acres of national forests) and the Department of the Interior's Bureau of Land Management (over 16 million acres of public lands). In addition, the Department of the Interior's Minerals Management Service controls over 59 million acres of offshore federal lands along California's entire 1100-mile coast. Much of this federally-owned land generates significant revenues for the federal government.

PUBLIC LANDS CALIFORNIA



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1979

Revenues owed to the U.S. government for offshore oil and gas, and onshore fuel and fertilizer minerals, timber, and other federal land resources are the second largest source of revenue the federal government receives, exceeded only by federal income taxes. A substantial share of this federal land revenue is required by federal law to be shared with states. Several pieces of federal legislation have been enacted to compensate states for the burdens imposed by tax-exempt federal property. They fall into two categories:

1. **Federal land revenue sharing programs, and**
2. **Payments in lieu of taxes.**

For example, in the federal land revenue sharing area, California is entitled to a share of federal offshore oil revenues and was recently offered over $200 million to settle disputed claims over more than $1 billion in revenues. Furthermore, in federal fiscal year (FY) 1983, California received over $55 million from the federal government as its share of revenues generated by onshore oil, gas, and geothermal leasing, timber sales, grazing fees, and other uses of federal lands in California, with the bulk of the funds going to school districts and counties where the federal lands are located.

In the category of payments in lieu of taxes (PILT), local governments in California received over $10 million in 1983. The California payments are part of a national PILT program to supplement federal land revenue sharing payments to local governments to compensate in part for property tax revenues lost because of the presence of federal tax-exempt property.[6]

FEDERAL AND CALIFORNIA LAWS CONCERNING FEDERAL REVENUE SHARING

Federal Law/Agency	Type of Receipts	State Share	California Law
Mineral Leasing Act (30 U.S.C. 191) Bureau of Land Management	Revenues received from mineral leasing (oil, gas, geothermal, potash, etc.)	50% to state	Public Resources Code (PRC) 2795--the first $1.1 million to be deposited in Surface Mining and Reclamation Account PRC 3821--requires 40% of the state's share of geothermal revenues to go to counties of origin for geothermal related activities PRC 3822--requires 30% of geothermal revenues to be granted or loaned by the Energy Commission to local governments for geothermal projects PRC 3825--requires 30% of geothermal revenues to go to the Renewable Resources Investment Fund (PRC 34000) for natural resource and wildlife projects PRC 12304-07--requires federal potash and potassium revenues to be distributed to affected school districts and community colleges Education Code 12320--all other Mineral Leasing Act monies go to the State School Fund
National Forest Management (16 U.S.C. 500) U.S. Forest Service	Monies received from National Forests (timber sales, recreation fees)	25% to counties	Government Code 29484--apportioned 50% to county school service funds and 50% for county roads
Taylor Grazing Act (43 U.S.C. 315i) Bureau of Land Management	Monies received from Section 3 grazing "districts"	12.5% to counties	PRC 8557.5--to be used for range improvements and predator control
	Monies received from Section 15 grazing	50% to counties	PRC 8557.5--to be used for range improvements and predator control
Federal Power Act (16 U.S.C. 810) Federal Energy Regulatory Commission	Monies received from occupancy and use of federal lands	37.5% to state	No state allocation law--monies go to the State General Fund
Payment in Lieu of Taxes (16 U.S.C. 6901) Bureau of Land Management	Annual appropriations allocated to local governments	75¢ per federal acre less revenue sharing funds or 10¢ per federal acre with no deductions; both have ceiling amount based on population	No state allocation law--monies paid directly to counties
Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) Minerals Management Service	Lease revenues from offshore tracts within 3 miles of the state's seaward boundary	"fair and equitable" share of common pools	No state allocation law--disputed monies being held in escrow account.

Federal Outer Continental Shelf Lands Act Escrowed Revenues	
Collected Nationwide	$5.3 billion
California Escrow Account	$1.3 billion
Federal Offer to California (16 2/3%)	$217 million

Federal Land Revenue Sharing (RS)	Fed. FY 83
California received (allocated to counties, schools and the state)	$55.6 Million
Payment in Lieu of Taxes (PILT)	Fed. FY 83
California counties received	$10.1 Million
Total Payments	$65.6 Million

COUNTY DISTRIBUTION[7]
(Federal FY 1983)

County	Revenue Sharing	PILT	Total PILT & RS	Federal Payments as a % of County Revenues
Alameda	$ 0	$ 1,319	$ 1,319	.0003
Alpine	334,784	38,342	373,126	15.69
Amador	303,819	8,268	312,087	2.742
Butte	235,820	14,178	249,998	.4405
Calaveras	82,925	14,350	97,275	.7890
Colusa	67,919	9,502	77,421	.7255
Contra Costa	0	1,060	1,060	.0004
Del Norte	662,386	43,465	705,851	6.339
El Dorado	1,889,738	49,437	1,939,175	4.517
Fresno	675,676	256,172	931,848	.3247
Glenn	194,285	19,277	213,562	1.762
Humboldt	478,733	1,488,546	1,967,279	3.554
Imperial	192,414	648,379	840,793	1.907
Inyo	672,918	485,741	1,158,659	8.552
Kern	214,984	589,442	804,426	.2695
Kings	2,142	5,414	7,556	.0188
Lake	1,149,160	35,724	1,184,844	4.492
Lassen	1,355,965	155,342	1,511,307	12.12
Los Angeles	207,764	476,300	684,064	.0186
Madera	259,110	87,533	346,643	1.092
Marin	0	108,687	108,687	.1248
Mariposa	145,923	153,020	298,943	3.610
Mendocino	218,678	29,235	247,913	.6467
Merced	688	28,788	29,476	.0363
Modoc	666,504	159,310	825,814	11.79
Mono	322,800	161,239	484,039	3.993
Monterey	23,298	268,112	291,410	.2679
Napa	1,136	42,778	43,914	.1200
Nevada	340,706	17,520	358,226	1.350
Orange	22,256	19,136	41,392	.0067
Placer	755,158	33,830	788,988	1.256
Plumas	1,554,329	108,867	1,663,196	13.89
Riverside	27,471	917,520	944,991	.2848
Sacramento	0	3,030	3,030	.0007
San Benito	9,530	78,705	88,235	.9372
San Bernardino	371,338	759,237	1,130,575	.2566
San Diego	65,734	310,022	375,756	.0544
San Francisco	0	12,470	12,470	.0007
San Joaquin	0	881	881	.0004
San Luis Obispo	49,878	228,276	278,154	.3841
San Mateo	0	0	0	0.0
Santa Barbara	43,245	450,778	494,023	.3720
Santa Clara	19,198	5,079	24,277	.0048
Santa Cruz	0	0	0	0.0
Shasta	998,463	90,650	1,089,113	1.777
Sierra	788,254	40,349	828,603	22.63
Siskiyou	2,576,939	236,162	2,813,101	12.11
Solano	0	3,271	3,271	.0037
Sonoma	703,937	2,339	706,276	.5359
Stanislaus	303	3,405	3,708	.0027
Sutter	0	113	113	.0004
Tehama	732,311	41,749	774,060	3.885
Trinity	1,299,369	141,885	1,441,254	15.61
Tulare	497,953	658,422	1,156,375	.8359
Tuolumne	590,301	111,992	702,293	3.704
Ventura	38,629	448,337	486,966	.2246
Yolo	1,135	19,501	20,636	.0371
Yuba	70,293	4,658	74,951	.2952

In the long term, federal land revenue sharing funds should grow substantially as expanded and accelerated resource development occurs both onshore and offshore and as 2.5 million acres of additional federal lands in California are opened up for minerals, forestry and other development as a result of the 1984 California Wilderness bill compromise signed by the President.[8] However, the following federal actions are significantly undercutting state revenue sharing from federal lands:

California is losing or is threatened with the loss of millions of dollars in federal land revenues as a result of:

- **the federal government's refusal to provide states with a "fair and equitable" share of offshore oil and gas revenues;**
- **federal mineral royalty mismanagement;**
- **mineral leasing "lottery" scandals;**
- **federal agency "undervaluation" of gas production;**
- **illegal deductions of federal "windfall profits" taxes from state revenue shares;**
- **federal proposals to reduce the state share of revenues from federal land timber harvesting and grazing; and**
- **federal government use of "appropriation bills" to circumvent federal land laws requiring state revenue sharing.**

California is being seriously harmed by federal government incompetence as well as intentional federal efforts to reduce state and local shares of federal land revenues. The threat of continued federal land law revenue sharing losses becomes all the more serious as the deficit-ridden, revenue-hungry federal government seeks to reduce state and local financial assistance wherever possible.

California must guard against the further erosion of its share of federal land funds. In particular, counties and school districts dependent on federal land revenues will be significantly harmed if revenue sharing losses continue. While working to maintain existing entitlements, the state must also ensure that monies due to the federal government from federal land development, and thus due in part to the state because of revenue sharing requirements, are in fact fully paid.

This report describes the burdens imposed by the presence of vast federal land holdings in and offshore California, summarizes federal land revenue sharing programs and related state laws, reviews recent state actions to assess the economic impact of federal lands in California, identifies specific problems causing or threatening to cause offshore oil and gas, onshore mineral leasing, forestry, grazing, and other federal land revenue losses for the state, and provides recommendations for state action. In addition to detailed proposals to address the particular problems cited above, the report includes general recommendations to establish a comprehensive state mechanism to monitor and influence federal land decisions having major land use and fiscal impacts:

GENERAL RECOMMENDATIONS

I. Create a FEDERAL LANDS COORDINATION OFFICE

II. Create a FEDERAL LANDS ADVISORY COUNCIL

II. BACKGROUND[9]

Impact of Federal Lands In California

Federal lands generally are intermixed with state and private lands and make up a major portion of the state's real estate. Consequently, their use significantly affects the use of adjoining lands. Federal land activities often cause substantial development pressures on nearby communities, with increased demand for transportation, education, police and fire protection, and other public services.

Minerals, energy and forest development on federal land are sometimes accompanied by increases in population, local economic readjustments, degradation in water and air quality, losses of recreational opportunities, and "boom-bust" towns. In addition, federal livestock grazing and range improvement decisions often influence the long-term stability of local ranching communities. Similarly, federal offshore energy development causes environmental and economic consequences along the coast, which affect tourism, recreation, commercial and sport fishing, and other segments of the state's economy.

The dominant and sometimes oppressive character of federal land decisions is exacerbated by the fact that many counties in which federal ownership is significant tend to have small populations and lack a significant tax base. With limited financial resources to spare, some counties are unable to contend with federal land issues. As a consequence, the vast amount of federal land holdings in California often frustrates local government self-determination.

Federal Assistance Programs Related to Federal Lands

States do not have the power to tax federal property despite the burdens on state and local jurisdictions to provide services to the federal government as well as to the general public using federally owned property. In response to this inequity, and to partially compensate states and local governments for adverse impacts and the loss of self-determination, several pieces of federal legislation have been enacted to provide financial aid. These laws fall into two categories:

1. **Federal revenue sharing programs, and**
2. **Payments in lieu of taxes (PILT)**

Furthermore, pursuant to the reserved powers of the states under the Constitution, states may impose **severance and other taxes** on private lessees operating on federal lands.[10]

This constitutional and statutory framework influences the annual distribution of billions of dollars of revenues generated from federal lands. The bulk of California benefits are derived from federal revenue sharing programs related to onshore oil, gas and geothermal development, fertilizer mineral production, timber harvests, offshore oil and gas leasing (currently held up in an escrow account), and the PILT program.

FEDERAL AND CALIFORNIA LAWS CONCERNING FEDERAL REVENUE SHARING[11]

Federal Law/Agency	Type of Receipts	State Share	California Law
Mineral Leasing Act (30 U.S.C. 191) Bureau of Land Management	Revenues received from mineral leasing (oil, gas, geothermal, potash, etc.)	50% to state	Public Resources Code (PRC) 2795--the first $1.1 million to be deposited in Surface Mining and Reclamation Account PRC 3821--requires 40% of the state's share of geothermal revenues to go to counties of origin for geothermal related activities PRC 3822--requires 30% of geothermal revenues to be granted or loaned by the Energy Commission to local governments for geothermal projects PRC 3825--requires 30% of geothermal revenues to go to the Renewable Resources Investment Fund (PRC 34000) for natural resource and wildlife projects PRC 12304-07--requires federal potash and potassium revenues to be distributed to affected school districts and community colleges Education Code 12320--all other Mineral Leasing Act monies go to the State School Fund
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California Review of Federal Lands

Some states have maintained that existing federal revenue sharing programs do not achieve the objective of equitably compensating states and local governments for the loss of self-determination, reduced tax revenues, and economic burdens caused by federal lands, and have sought to regain full control over such lands. In 1980, California passed AB 2302 (Hayes) and, in a modest way, formally joined the "Sagebrush Rebellion" -- the term given to efforts to wrest ownership of public lands from the federal government.[14] AB 2302 directed the State Lands Commission, Attorney General, Governor's Office of Planning and Research, and Department of Fish and Game to jointly conduct a study of California land managed by the Bureau of Land Management (BLM) with a view towards securing state ownership of such lands.

A report prepared by the Attorney General's Office pursuant to AB 2302 concluded that efforts to secure state ownership of federal lands were most likely doomed to failure.[15] This prediction was later reinforced by a federal 9th Circuit Court of Appeals decision in 1983 which ruled against Nevada's claim to ownership of federal lands.[16]

AB 2302 called for a final joint agency report to be submitted to the Governor and Legislature by January 1, 1982. In addition to the question of land ownership and control, the report was to address local income and costs associated with current and future BLM land management activities. In May of 1982 a "draft" report was issued entitled "California and the Federal Lands: Alternatives for State Action." The document focused primarily on options for state and federal land management; only minor attention was paid to fiscal issues. A final report has yet to be submitted.

In 1984, California enacted SB 1726 (Keene)[17] which requires the Director of Forestry to prepare a forest and rangeland resources report by January 1, 1987, which must include an assessment and critique of federal policies with respect to rangeland, grazingland and timberland. The legislation not only deals with management issues, but also calls for an evaluation of economic benefits and costs.

Also in 1984, the California legislature passed SB 1673 (Hart), which directed the Governor to coordinate a process to facilitate local government participation in reviewing and commenting on federal offshore leasing and development proposals. The bill also established a local government energy advisory committee charged with making recommendations to the Governor concerning the development of coastal energy resources and the protection of coastal tourism and recreation, commercial and sports fishing and other competing economic interests. The Governor vetoed the bill.[18]

An understanding of the serious problems associated with "Seaweed and Sagebrush Robbery" will provide the state with a basis for undertaking new initiatives which focus on preventing the loss to California of millions of dollars of offshore and onshore federal land revenues.

III. STATE LOSSES OF FEDERAL OFFSHORE ENERGY REVENUES

The Battle Over Outer Continental Shelf "8(g)" Funds

Section 8(g) of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978[19] gives coastal states a right to a "fair and equitable" share of federal bonuses, royalties and other revenues derived from oil and gas tracts leased within three miles of the state's seaward boundary (i.e., 3-6 miles offshore), when those tracts contain geological structures (pools of oil) common to both federal and state submerged lands. If the Department of the Interior and a coastal state governor cannot reach a negotiated settlement on a division of these revenues, the Interior Department may proceed with leasing but is required to place into escrow OCS revenues from the 3-6 mile tracts until such time as an agreement is reached or a federal district court determines the allocation of funds.

Since 1978, the Interior Department has been negotiating with California, Alaska, Alabama, Mississippi and Florida, and has been litigating with Texas and Louisiana over 8(g) funds. In the meantime OCS 8(g) escrow accounts nationwide have grown enormously to over $5.3 billion, with California's escrow account exceeding $1.3 billion (as of September 30, 1984), to be shared by the federal government and California.

Texas, which has taken the litigation lead on this issue, has argued that the states' revenue share must reflect all relevant factors, including the "enhancement" of federal leasing revenues due to information generated by adjacent state leasing which makes federal leases more valuable. The Interior Department maintains that under the OCS Lands Act states are only entitled to compensation for "drainage" of state oil and gas reserves by adjacent federal lessees.

The Texas position was recently approved by a federal district court which awarded the state a 50% share of "enhanced" bonus revenues amounting to $335 million.[20] Under the Texas precedent, California may have a legitimate claim to a portion of "enhanced" bonus revenues if the state can prove that previous California submerged lands oil and gas development activities have generated valuable geologic information about nearby federal lands, thereby increasing the value of those federal tracts.[21]

However, California does not appear to be fully capitalizing on this opportunity. Following the Texas decision, the Secretary of the Interior offered coastal states a settlement equalling 16 2/3% of bonuses and rental payments, plus interest, for leased acreage in the 3-6 mile zone. Under this proposal, California would receive $216.8 million.

Federal Outer Continental Shelf Lands Act Escrowed Revenues

Collected Nationwide	**$5.3 billion**
California Escrow Account	**$1.3 billion**
Federal Offer (16 2/3%)	**$217 million**

Royalties were not part of the offer, but instead were to be allocated under the Interior Department's court-rejected proposal to give states a share of royalties from oil and gas determined to have been "drained" from state submerged lands. In addition, the offer contained conditions which could inhibit state challenges to the size of offshore lease sales, thus opening the door to overzealous "firesale" leasing, flooding the market with tracts and generating low bids.

After representatives from seven coastal states met to discuss the offer, including four Governors (California was represented by the Secretary of Environmental Affairs), it was condemned as inadequate and rejected by all states with the sole exception being California.[22]

OCS 8(g) Recommendations

(a) The Legislature should ask the Governor for a report on the status of OCS 8(g) negotiations, and should specifically request an explanation of why California's position differs from all other coastal states.

(b) The Governor should file a lawsuit against the Department of the Interior if the 8(g) offer is determined to be inadequate and negotiations break down.

(c) The Legislature should develop legislation to allocate future OCS 8(g) funds received by the state.

The "Seaweed Rebellion" Over OCS Revenue Sharing

On September 13, 1984, the House of Representatives adopted 312-94 a conference report on S. 2463, a bill which gives all coastal states and territories 4% of OCS revenues, up to $300 million a year, for block grants to fund state and local programs for coastal research, education, planning, management and development activities.[23] California would receive about $23.5 million a year from this program if it is established. The Reagan Administration opposes the bill and threatened a veto. On October 9, 1984, Senators in support of the President's position threatened a filibuster, and the bill died in the Senate.

While OCS Lands Act 8(g) funds are intended to benefit only a few states with federal OCS leasing in the adjacent 3-6 mile belt, OCS revenue sharing legislation is based on the principle that a modest portion of federal revenues derived from the extraction of publicly owned, non-renewable offshore energy resources should be reinvested in all coastal states for the sound management of renewable coastal resources.[24]

The Seaweed Rebels who support the legislation point out that the Reagan Administration has reduced or eliminated funding for state coastal programs (e.g., Coastal Zone Management, Coastal Energy Impact Assistance, Sea Grant Research, Fisheries Management) at the same time that it has accelerated and expanded its OCS leasing program, which is expected to generate an estimated $6 billion in FY 1985. In California, the Department of the Interior has plans to open up for oil and gas leasing 59 million acres offshore from Mexico to the Oregon border.[25]

While the benefits of OCS leasing are spread across the nation, socioeconomic and environmental risks are concentrated locally. Without federal assistance, most state and local governments will be hard pressed to plan for and manage development associated with offshore energy activities. Federal funding is also needed to build on the progress made to date in state coastal research, education, management, protection and fisheries programs. Supporters also point out that as a matter of fairness and equity, OCS revenue sharing would bring coastal states and affected local governments into partial conformity with their counterparts who receive a share of onshore federal oil and gas revenues under the Mineral Leasing Act. Furthermore, while states may impose severance taxes on federal lands onshore,[26] the OCS Lands Act prohibits state taxation of offshore minerals.[27]

OCS Revenue Sharing Recommendation

(a) The state should continue to support legislation to establish an OCS revenue sharing block grant program.[28]

IV. STATE LOSSES OF FEDERAL ONSHORE MINERAL REVENUES

Mineral Leasing Programs

Under the Mineral Leasing Act and Geothermal Steam Act, the federal government is authorized to lease fuel deposits such as oil and gas, geothermal steam, and other minerals including sodium, phosphate and potash. Under section 35 of the MLA, 50% of the sales, bonuses, royalties and rentals related to the production of these minerals are payable to the state in which the leased lands are situated, to be used by the state and its subdivisions as the legislature directs, giving priority to areas adversely affected by mineral development.[29] In 1983, California received over $25 million, derived principally from oil and gas development. However, these funds may be significantly less than the full amount owed to the state because of federal government royalty mismanagement and industry fraud.

State Mineral Leasing Revenue Shares	Federal FY 83
Oil and Gas	$16.5 million
Geothermal	$ 5.8 million
Other Minerals	$ 3.3 million
	$25.6 million

Mineral Royalty Fraud and Mismanagement

Serious deficiencies in the federal government's mineral royalties management program have resulted in hundreds of millions of dollars in losses, representing as much as a 10% royalty shortfall. This has been enormously costly to public land states because for every dollar of underpayment, states lose fifty cents.

In response to widespread reports of theft of federal oil, industry failure to report oil production and federal agency mismanagement of onshore oil royalty collection, the Linowes Commission on the Fiscal Accountability of the Nation's Energy Resources was established in 1981 by the Department of the Interior. The following year the commission issued a report[30] confirming serious deficiencies including:

- failure to verify production data;
- failure to maintain adequate accounting records;
- failure to impose penalties for late payments;
- failure to require adequate site security;
- chronic understaffing.

The Linowes Commission recommended a strengthened royalty management system and increased coordination with states.

Passage of the Federal Oil and Gas Royalty Management Act of 1982 established a framework for efficient royalty management and provided a basis for federal-state coordination.[31]
The Act provides for:

- "cooperative" federal-state audit agreements;
- the "delegation" to states of federal royalty management authority;
- "compensation" for state cooperative agreements and delegations;

- state authority to sue industry for underpayments if the federal government fails to act expeditiously.

Despite the promise of the legislation, it has not been fully implemented by the Reagan Administration.

To date, eight states including California have participated in cooperative audit efforts with the U.S. Department of the Interior, but thus far only California has received federal reimbursement for its auditing costs, and this was only after the state filed a lawsuit against former Secretary of the Interior James Watt.[32] According to the Department of the Interior, as of September 1984, these eight cooperative audit programs have netted over $29 million from oil companies who underpaid royalties. From this amount, $11.8 million has been distributed to the states.

To date California has received almost $1.5 million as a result of royalty audit billings and in October 1984 the state filed a claim for an additional $1.5 million. The State Controller's Office has projected that by the end of FY 1985-86, California audits will lead to the recovery of royalty underpayments from federal mineral lessees of over $26 million, not including interest.[33]

FEDERAL MINERAL ROYALTIES COLLECTED AND DUE CALIFORNIA

Audit Collection		Amount ($ million)
FY 1983-84		$ .217
FY 1984-85		1.248
Total		$ 1.465
Audit Billings (uncollected)		
FY 1984-85	(billed 10/84)	$ 1.553
	(estimated billing by 12/31/84)	8.650
FY 1985-86	(projected audit findings)	14.500
Total		$24.703
Total Actual and Estimated Recoveries		$26.168

Although federal law authorizes full state reimbursement for auditing costs, under recently issued federal royalty management regulations only 50% of state costs incurred pursuant to "cooperative audit agreements" will be paid by the federal government. This means that states will not receive their full 50% revenue share and will be augmenting the federal budget by providing free auditing assistance.[34]

While the good news is that the regulations call for 100% reimbursement for costs associated with federal "delegations" to states of royalty management authority, the bad news is that the federal government has been slow in implementing a delegation program. No funds have been requested for delegations, and the meager sum of only $1.5 million is being sought in FY 1985 to pay for up to 8 cooperative agreements, leading to the suspicion that effective state participation is not welcomed by the federal government.[35]

Rather than establishing a constructive working relationship, the cooperative agreements have left states frustrated and upset. State auditors have been discovering unrecorded oil and gas producing wells, late payments without interest paid, supposedly shutdown wells in production, proposals to "write-off" royalty balances under $100,000, and other costly deficiencies. Federal ineptness, refusal to share information, and general resistance to state participation have undermined cooperative efforts to remedy these deficiencies.[36]

One observer of this situation has raised the question, "If oil and gas royalties are in a mess, what other resource based revenue programs are affected?"[37] Between 1980-84, California received over $16 million in federal geothermal leasing revenues and over $15 million from federal potash development, and the annual state revenue shares from these minerals are rising. No audits have ever been performed on geothermal or potash royalties to verify that the proper amount of royalties has been paid to the state. In August 1984, the State Controller requested audit access for these resources.

Royalty Management Recommendations

(a) California should petition the Department of the Interior for royalty management "delegation" authority. Federal mineral lands often are intermingled with producing state lands; thus, it would make sense for California to manage royalties for both federal and state lands. Additionally, California has considerable experience in administering its own oil and gas leasing program, and the state's tax and auditing agencies employ efficient accounting systems.

(b) The state should seek from Congress federal appropriations to reimburse the state for "delegated" functions. California should also urge the Department of the Interior to issue federal regulations which guarantee 100% reimbursement for state costs associated with "cooperative agreements."[38]

(c) State royalty management activities should be extended beyond onshore oil and gas activities to other federal resource revenue programs (e.g., geothermal, fertilizer minerals, timber sales, etc.) if it is determined that federal mismanagement in other resource sectors is causing significant losses in state or local revenue shares.

Mineral Leasing "Lottery" Losses

Under the Mineral Leasing Act, the oil and gas leasing process differs depending on whether the minerals for lease are considered to be part of a "known geologic structure" (KGS) or an unknown deposit. KGS areas are accessible only through competitive bidding. Lands that lie outside a KGS are generally leased through a noncompetitive lottery system. In the lottery system, anyone submitting a $75 entry fee and willing to pay a $1 per acre annual rental fee may enter and possibly win a lease. Nationally, about 97% of all mineral leasing is done through the lottery system. In FY 83, of the 396 oil and gas leases issued by the Bureau of Land Management (BLM) in California, 395 were noncompetitive.

A major problem with the lottery is that it deprives the federal treasury and state governments of substantial amounts of money because highly valuable mineral deposits have been leased for a song. Errors in KGS determinations have cost states millions of dollars. For example, in 1983, BLM leased tracts in Wyoming adjacent to producing oil wells through the lottery for the $1 per acre rental fee. Two-thirds of the leases were then reassigned to energy companies for huge sums. It has been estimated that these leases were worth $50-$100 million, and the state lost half that value due to the lottery.

A similar error cost the State of Arkansas $30 million after BLM leased 33,000 acres of valuable oil and gas lands for $1 per acre. Adjacent tracts were being sold for $4000 per acre. Arkansas successfully sued BLM to cancel the leases arguing that BLM had breached its obligation to protect the state's 50% share of revenues.[39] While no one can be certain about the scope of the problem, a public and congressional outcry over extensive fraud and abuse led to a temporary suspension of the lottery in October 1983.[40]

The Congressional Budget Office has concluded that the federal government could substantially increase its mineral revenues by eliminating the lottery and switching entirely to a competitive bidding system. Under an all competitive leasing system, net receipts would increase by $700 million per year, with half going to public land states. Federal legislation was introduced in 1983 to eliminate the lottery, but died in the face of Administration opposition.[41]

Another problem with the lottery is that the $75 fee received by BLM, which generates about $90 million a year, is not shared with states under the 50% Mineral Leasing Act formula. States only share in the $1 per acre annual rental. BLM argues that its filing fee covers administrative costs and is not subject to the statutory revenue sharing requirement. However the fees greatly exceed administrative costs and appear to be used as a device to enhance federal revenues at the expense of the states.

Lottery Recommendations

(a) As long as the lottery continues, the state should seek authority to review selectively noncompetitive proposals prior to leasing to ensure that valuable mineral reserves are not leased for less than fair market value. The state should negotiate an agreement with the BLM to obtain geologic information, well activity in the vicinity, and other pertinent information, and should examine adjacent state and private leasing activity when appropriate.

(b) The state should support federal legislation to secure a 50% share of the lottery filing fees, and also consider joining other states in a test case challenging the withholding of these funds.

(c) California should support federal legislation to eliminate the lottery and replace it with an all competitive leasing system.

Undervaluation of Federal Gas Production

Natural gas production on federal leases in California represents a significant portion of the state's Mineral Leasing Act revenue sharing base. Almost one-half of the state's oil and gas revenue share is related to gas production. That revenue base is now under attack. The Reagan administration has proposed new guidelines for valuing natural gas production which could cost California and other states hundreds of millions of dollars in future royalty revenues.[42] The new guidelines base value on "contract price," rejecting the current practice of using the highest price of gas at nearby wells in the same general production area.

The problem with the new guidelines is that the majority of gas contracts are not "arms length" agreements. About 80% of the contracts are between affiliated parties that share an interest in keeping the price of gas low. The proposed guidelines would shift the burden to government to prove that the "contract price" does not reflect fair market value.

The Linowes Commission observed that gas undervaluation has been the major cause of royalty underpayment, and that the problem will worsen as gas royalties rise by 1990 to represent about 75% of all royalties paid.[43] The Department of the Interior proposal ignores this warning and exacerbates the problem. Rule-making to implement the proposed guidelines is scheduled to take place by the end of 1984.

Natural Gas Valuation Recommendation

(a) California should oppose the proposed guidelines for natural gas valuation, and if necessary should support federal legislation or join in a judicial action against the Department of the Interior to overturn the guidelines.

Double Windfall Profits for the Federal Government

The federal crude oil windfall profits tax attempts to recoup from oil companies excess profits resulting from inflation and past energy crises.[44] In 1982, this tax captured 13% of all federal onshore oil and gas revenues, providing the U.S. Treasury with $163.6 million.

The federal government deducts the federal windfall profits tax from gross royalty receipts before calculating the states' revenue share. This accounting practice deprives states of the full 50% share promised by the Mineral Leasing Act. The State of New Mexico has filed a lawsuit testing the application of this practice to the state's share of royalties paid by federal oil and gas lessees, arguing that the deduction of the tax from gross revenues impermissibly diminishes the state's 50% entitlement guaranteed under the Mineral Leasing Act. A federal district court has ruled in favor of the state; the case is on appeal.[45]

To compound the problem, it was recently discovered by state auditors in a number of Western states that the federal government has been "overwithholding" windfall profits taxes in excess of $50 million. As a result, states were deprived of over $26 million, with California's shortfall equalling about $1.25 million.

Windfall Profits Recommendation

(a) California should support New Mexico's litigation efforts and should consider actions to secure remedial federal legislation if the litigation is not successful.

Backdoor Federal Appropriation Maneuvers

In FY 84 and FY 85 the Department of the Interior attempted through the budget process to deduct its administrative costs of royalty management from onshore revenues prior to the distribution of the states' 50% share. In other words, states would receive 50% of net rather than gross revenues. In effect, through appropriation language, the Interior Department sought to indirectly amend the Mineral Leasing Act's revenue sharing formula. This budget maneuver would reduce state revenues by about $15 million, with California losing about $1 million. Thus far Congress has rejected these proposals.

Similarly, the federal government has unsuccessfully attempted to fund the Payment in Lieu of Taxes (PILT) program from mineral royalties, again seeking to reduce the states' share. The PILT program is currently funded with general revenues through annual appropriations. The Reagan Administration has consistently opposed the PILT program, and budget appropriations are always uncertain.

Appropriation Recommendation

(a) California should oppose federal government appropriation bills which seek to diminish the states' 50% Mineral Leasing Act share by deducting royalty management and PILT program costs from mineral royalties prior to distribution to the states.

V. PROTECTING CALIFORNIA'S SHARE OF NATIONAL FOREST AND RANGELAND REVENUES

National Forest Service Proposal to Reduce State Revenues

National Forest Revenues	FY 1983
State Share	$43 million
Distribution To Counties	
Alpine	$ 604,261.43
Amador	319,554.62
Butte	591,879.89
Calaveras	265,723.21
Colusa	120,210.98
Del Norte	1,309,636.20
El Dorado	2,001,665.04
Fresno	1,759,377.45
Glenn	346,907.52
Humboldt	964,296.61
Inyo	480,974.43
Kern	293,530.95
Lake	470,987.30
Lassen	3,349,528.08
Los Angeles	148,596.10
Madera	715,586.97
Mariposa	435,122.33
Mendocino	325,394.43
Modoc	2,248,026.31
Mono	500,965.95
Monterey	19,949.74
Nevada	572,025.26
Orange	15,755.99
Placer	1,150,659.19
Plumas	3,973,495.28
Riverside	70,486.48
San Bernardino	188,887.41
San Diego	21,133.23
San Luis Obispo	12,373.40
Santa Barbara	41,191.79
Shasta	3,733,690.62
Sierra	1,352,471.32
Siskiyou	4,912,384.45
Tehama	1,820,388.26
Trinity	4,521,851.73
Tulare	804,333.65
Tuolumne	1,908,307.73
Ventura	36,798.67
Yuba	142,710.38

Over 6 million acres of National Forest lands in California are managed for timber production, and this acreage will significantly increase with the implementation of the 1984 California Wilderness bill which opens an additional 2.5 million acres for development. Twenty-five percent (25%) of federal timber sale revenues are distributed to the state for expenditure on roads and schools in the counties producing the revenues, and the state received more than $42 million in 1983. State payments are based on gross rather than net receipts--the base amount used to calculate state revenues includes road construction and reforestation credits provided to purchasers of timber.

These local government revenues are now seriously threatened by a Reagan Administration proposal to modify the existing revenue sharing scheme. The President's FY 85 budget calls for a legislative initiative to eliminate the 25% revenue sharing formula and replace it with a system permitting individual counties to assess and tax the federal government on its timber holdings as if they were private lands. Local assessors would be required to appraise the value of national forest lands and apply state and local property tax laws.

Timber harvesting counties fear that under the proposed system they will receive only a fraction of the total money they receive under the current formula. Many counties in central and northern California contain substantial federal forestlands, and the 25% revenue share makes up a significant portion of total county revenues. Reductions in National Forest funds could seriously impede their ability to maintain county roads, bridges and schools.

The Reagan Administration argues that the new approach will eliminate year-to-year revenue fluctuations, create equity among counties with active timber harvesting and those with forest lands used primarily for recreation, and eliminate school and road earmarking requirements. The Administration also maintains that under their proposed program no county would receive less than the average amount paid between 1977-1983.

The proposal appears to be simply another effort by the Reagan Administration to reduce state revenue sharing under the guise of providing counties with predictable, no-strings-attached funds. The Administration fails to mention that during the 1977-1983 revenue sharing base period, the forest products industry reduced production to the lowest level in the post-World War II period while sufferring from the most sustained timber industry depression since the "Crash of '29". Furthermore, the base amount that each county is guaranteed is fixed, and its value deteriorates over time with inflation.

As for the other alleged advantages, counties are able to manage revenue fluctuations by earmarking forestry monies for multi-year capital improvements rather than operating expenses, and inequities among counties in federal land revenue sharing payments are already factored into the Payments In Lieu of Taxes program. As for earmarking limitations, the schools and roads limitations can be eliminated without modifying the 25% formula. Furthermore, the proposed system would create an administrative nightmare, with county assessors charged with the responsibility and costs of appraising millions of acres of National Forest lands.[46]

The Administration's proposal is further complicated by the fact that California does not impose a property tax on forest lands. Instead the state applies a Timber Yield Tax--a severance tax on the volume of timber harvested on both private and public lands, including National Forest lands.[47] Thus, conceivably the state would gain nothing from the proposal if it only authorizes the application of existing state and local "property tax" laws to forest lands. If the proposal provides the state with the equivalent of the revenues generated by the Timber Yield Tax, the benefits would be minimal as the state's timber severance tax receipts are far less that the funds received under the current revenue sharing formula.[48] The temptation would then arise to increase timber valuation to generate a greater tax yield. Resistance by the timber industry and tax assessment limitations imposed by Proposition 13, the tax-cutting measure passed by California voters in 1978, would then come into play.

In the face of intense criticism, the National Forest Service has retreated from an immediate plan to introduce legislation, and instead has instituted a study to assess the impact of the proposal in 40 counties nationwide, including 5 California counties (Butte, Plumas, Los Angeles, Tulare and Humboldt).

Interestingly, the Administration's proposal comes at a time when legislation has been introduced to increase state revenue sharing to 50% in recognition of the fact that in some counties the costs of building and maintaining the infrastructure to service national forest lands has been higher than the existing 25% revenue share, and that the 50% share conforms to the Mineral Leasing Act formula.[49] Facing Administration opposition, the legislation failed to pass Congress this year.

National Forest Lands Recommendations

(a) **The state should actively monitor the Forest Service tax study and should continue to oppose legislation to impose a new local property tax scheme on national forest lands, unless it can be demonstrated that the state will be as well or better off.**[50]

(b) **The state should support federal legislation to increase the national forest land revenue sharing formula to 50%.**

(c) **When implementing SB 1726 (Keene), which requires an assessment and critique of federal policies regarding timberland management, the Director of Forestry should include detailed consideration of revenue sharing issues.**[51]

Potential Loss of Federal Grazing Land Revenues

In California, grazing by cattle, sheep and horses takes place on 9 million acres of federal lands. Most of this acreage is in poor condition and in need of improvement to increase forage. The Taylor Grazing Act requires that 12½% of revenues obtained from Section 3 "grazing district" fees and 50% of revenues generated from Section 15 grazing on isolated tracts go to the counties in which the lands are situated. In 1983, California received about $150,000 as its share of grazing fees. Revenues were modest due in part to the poor condition of the range and low fees.

State Share of Federal Grazing Fees	FY 1983
Section 3	$ 22,713
Section 15	$127,010
	$149,723

The current fee structure runs through 1985, at which time the Administration must report to Congress with a recommended fee schedule for subsequent years.[52] A report to Congress, to be submitted jointly by the BLM and Forest Service, is scheduled for completion in March 1985. Public meetings will be held in November and December 1984 to solicit comments.

In a recent meeting of the Western Legislative Conference, the BLM distributed a report entitled "Grazing Fee Review and Evaluation", which described the grazing fee formula and appraisal process. In discussing the report, the BLM stated that all rangelands need not be upgraded. Rather than adjust fees or seek additional appropriations to improve rangeland productivity, the Reagan Administration may be laying the groundwork for allowing rangeland deterioration to continue.

It is also possible that the federal government will consider arrangements whereby grazing permittees would receive a fee deduction for making range improvements. The problem with this strategy is that implementation could reduce revenue distributions to counties if they receive a share of funds based on net revenues computed after the permittee credit is deducted. Whatever the final outcome, a new fee system should promote the stability of family ranching operations and rural communities dependent upon federal range forage without reducing county revenues.

Grazing Land Recommendations

(a) The state should support congressional appropriations for federal rangeland improvements to enhance the value of the federal range and thereby increase local revenue sharing.

(b) The state should actively monitor the Administration's activities related to recommending changes in the grazing fee structure after 1985.

(c) The state should support a federal grazing permittee range improvement credit program only if the state revenue share is based on gross revenues computed prior to the credit (which is how Forest Service credits are handled).

VI. CONCLUSION AND RECOMMENDATIONS

Growing federal, state and local government budget constraints and escalating energy and natural resource values have brought a renewed focus on federal land revenue issues. As a result, federal land revenues have become an increasingly important source of income to public land states such as California, and in particular to California counties dominated by federal lands. The problem facing California and other public land states is that this source of federal funding is now seriously threatened. "Seaweed and Sagebrush Robbery" on the part of the federal government has resulted in the loss to California of millions of dollars of the state's rightful share of federal land revenues. The problem will likely get worse in the future as the federal government moves to reduce the national debt at the expense of state and local governments.

California should take action to counter federal efforts to reduce the state's share of federal land revenues. In the material set forth above, specific recommendations are laid out in response to particular problems. While these individual, case-by-case actions are important, they are not sufficient by themselves to enable the state and affected local governments to prevent future federal actions detrimental to state receipt of federal land revenue sharing funds.

Despite the fact that almost one-half of the state is owned by the federal government and that our entire shoreline is adjacent to federal submerged lands, California lacks a comprehensive state mechanism to monitor and influence federal land decisions having major land use and fiscal impacts. The state needs to provide adequate staffing and funding to track and participate effectively in federal land management activities. A centralized state operation responsible for interagency coordination is needed and could minimize duplicative agency costs. In addition to improving state agency performance and coordination, there needs to be better support for and collaboration with affected local governments. Absent state financial and technical support, many counties, particularly in rural areas, will be unable to participate effectively in fiscally significant federal land decisions.[53] If new funds are needed to support these state and local activities, the legislature should consider charging federal land users for state government administrative costs.[54]

GENERAL RECOMMENDATIONS

I. California should create a Federal Lands Coordination Office, to identify and monitor major federal land use and fiscal decisions, and to coordinate the state's position. The office should be responsible for negotiating information and coordination agreements with federal land agencies. The office should also be required to provide information and assistance to affected local governments.

II. California should establish a Federal Lands Advisory Council, with membership representing the:

- **Governor**
- **Resources Agency**
- **State Lands Commission**
- **Attorney General**
- **State Controller**
- **Senate**
- **Assembly**
- **Local Governments**
- **Industry**
- **Environmentalists**

The Council should be charged with the task of periodically meeting with federal land agencies and reporting recommendations annually to the Governor and Legislature concerning ways of protecting and enhancing California's influence over federal land management and fiscal decisions.

RECAP OF SPECIFIC RECOMMENDATIONS

STATE LOSSES OF FEDERAL OFFSHORE ENERGY REVENUES

OCS 8(g) Recommendations

(1) The Legislature should ask the Governor for a report on the status of OCS 8(g) negotiations, and should specifically request an explanation of why California's position differs from all other coastal states.

(2) The Governor should file a lawsuit against the Department of the Interior if the 8(g) offer is determined to be inadequate and negotiations break down.

(3) The Legislature should develop legislation to allocate future OCS 8(g) funds received by the state.

OCS Revenue Sharing Recommendation

(4) The state should continue to support legislation to establish an OCS revenue sharing block grant program.

STATE LOSSES OF FEDERAL ONSHORE MINERAL REVENUES

Royalty Management Recommendations

(1) California should petition the Department of the Interior for royalty management "delegation" authority. Federal mineral lands often are intermingled with producing state lands; thus, it would make sense for California to manage royalties for both federal and state lands. Additionally, California has considerable experience in administering its own oil and gas leasing program, and the state's tax and auditing agencies employ efficient accounting systems.

(2) The state should seek from Congress federal appropriations to reimburse the state for "delegated" functions. California should also urge the Department of the Interior to issue federal regulations which guarantee 100% reimbursement for state costs associated with "cooperative agreements."

(3) State royalty management activities should be extended beyond onshore oil and gas activities to other federal resource revenue programs (e.g., geothermal, fertilizer minerals, timber sales, etc.) if it is determined that federal mismanagement in other resource sectors is causing significant losses in state or local revenue shares.

Lottery Recommendations

(4) As long as the lottery continues, the state should seek authority to review selectively noncompetitive proposals prior to leasing to ensure that valuable mineral reserves are not leased for less than fair market value. The state should negotiate an agreement with the BLM to obtain geologic information, well activity in the vicinity, and other pertinent information, and should examine adjacent state and private leasing activity when appropriate.

(5) The state should support federal legislation to secure a 50% share of the lottery filing fees, and also consider joining other states in a test case challenging the withholding of these funds.

(6) California should support federal legislation to eliminate the lottery and replace it with an all competitive leasing system.

Natural Gas Valuation Recommendation

(7) California should oppose the proposed guidelines for natural gas valuation, and if necessary should support federal legislation or join in a judicial action against the Department of the Interior to overturn the guidelines.

Windfall Profits Recommendation

(8) California should support New Mexico's litigation efforts and should consider actions to secure remedial federal legislation if the litigation is not successful.

Appropriation Recommendation

(9) California should oppose federal government appropriation bills which seek to diminish the states' 50% Mineral Leasing Act share by deducting royalty management and PILT program costs from mineral royalties prior to distribution to the states.

PROTECTING CALIFORNIA'S SHARE OF NATIONAL FOREST AND RANGELAND REVENUES

National Forest Lands Recommendations

(1) The state should actively monitor the Forest Service tax study and should continue to oppose legislation to impose a new local property tax scheme on national forest lands, unless it can be demonstrated that the state will be as well or better off.

(2) The state should support federal legislation to increase the national forest land revenue sharing formula to 50%.

(3) When implementing SB 1726 (Keene), which requires an assessment and critique of federal policies regarding timberland management, the Director of Forestry should include detailed consideration of revenue sharing issues.

Grazing Land Recommendations

(4) The state should support congressional appropriations for federal rangeland improvements to enhance the value of the federal range and thereby increase local revenue sharing.

(5) The state should actively monitor the Administration's activities related to recommending changes in the grazing fee structure after 1985.

(6) The state should support a federal grazing permittee range improvement credit program only if the state revenue share is based on gross revenues computed prior to the credit (which is how Forest Service credits are handled).

VII. FOOTNOTES

1. See generally, "Comment, The Sagebrush Rebellion: Who Should Control Public Lands," 1980 Utah Law Review 505 (1980); Leshy, "Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands," 14 U.C. Davis Law Review 317 (1980).

2. See "Note, The Seaweed Rebellion: Federal-State Conflict Over Offshore Oil and Gas Leasing," 18 Willamette Law Review 535 (1982); "Note, The Seaweed Rebellion Revisited: Continuing Federal-State Conflict in OCS Oil and Gas Leasing," 20 Willamette Law Review 83 (1984).

3. The Reagan Administration has initiated the most extensive transfer of public property to private control in recent American history. See Executive Order No. 12,348, 47 Federal Register 8547 (1982). Millions of acres of federal lands, including Bureau of Land Management and Forest Service lands, worth billions of dollars may be put on the auction block. Also known as "Asset Management" in the Department of the Interior, the "privatization" program contemplates sales of up to 5% of federal lands each year to the highest bidder, with hopes of raising $4 billion a year to reduce the federal deficit. "Privatization" could severely reduce state revenue sharing benefits if federal mineral and timber properties are sold to private parties. The program also threatens to deprive states and local governments of opportunities to obtain federal land for schools, parks and other needed purposes. Existing law allows state and local governments to secure surplus federal land at less then fair market value for recreation and other public purposes.

4. "Firesale leasing" of offshore oil and gas and onshore coal resources led Congress to impose moratoria on these programs after outcries over leases issued for less than fair market value, threats of environmental damage, and allegations of illegal bidding activities. For example, in a June 1982 nationwide federal offshore "Reoffering" sale covering lands offered but not sold the previous year, including tracts offshore California, some of the California tracts were leased for millions of dollars under bids that were rejected as too low a year earlier; and in holding the largest coal sale in the nation's history in Wyoming's Powder River Basin, the Interior Department sold the federal coal for an average of 3.5¢ per ton, while privately owned tracts in the same area sold their coal for 18-20¢ per ton just months earlier. See the Wilderness Society's Report on the Park, Wilderness and Public Lands Policies of the Reagan Administration (1981-1984), Washington, D.C., June 27, 1984.

5. These figures are derived from the California Almanac, 1984-85 Edition, Table 8.1, published by Pacific Data Resources, Novato, Cal. (1984).

6. Under the PILT program, counties receive the greater of 75¢ per acre for certain federal lands in the county less deductions for federal land revenue sharing payments, or 10¢ per acre with no deductions; both formulas are subject to ceiling amounts based on county population. 31 U.S.C. 6901 et. seq.

7. These figures are derived from the California Auditor General's Report, Statement of Federal Land Payments, October 1, 1982 Through September 30, 1983, F-467, August 1984; California State Controller, Annual Report 1982-83 Financial Transactions Concerning Counties of California, 1984.

8. H.R. 1437, 98th Congress, 1st Session (1983); signed into law in September 1984 by President Reagan after California Senators Cranston and Wilson reached a compromise on wilderness acreage.

9. For a comprehensive background discussion on the impact of federal lands in Western States and federal land revenue sharing programs, see Sally Fairfax, The Financial Interest of Western States in Non-Tax Revenues from the Federal Public Lands, (Discussion Draft), A Joint Educational Project of the Western Legislative Conference and the Lincoln Institute of Land Policy, (1984). See also, Advisory Commission on Intergovernmental Relations, The Adequacy of Federal Compensation to Local Governments for Tax Exempt Federal Lands, Commission Report A-68, GPO, Wash., D.C. 1978; U.S. Comptroller General, Alternatives For Achieving Greater Equities in Federal Lands Payment Programs, General Accounting Office Report to Congress, PAD 7964, Wash., D.C. 1979.

10. See footnotes 38 and 47 infra, and accompanying text.

11. This exhibit covers only those programs which generate significant revenues for the state. Examples of excluded programs include the sale of public land and materials (5% state share) which generated $35,329 in 1982, and federal government acquisitions of park and wilderness lands (1% county share for 5 years) which generated $14,978 in 1982.

12. In federal FY 1983, $567,302 was deposited in the State General Fund.

13. PILT funds are paid directly to counties by the federal government, and may be used by counties for any governmental purpose. In 1983, the PILT Act was amended to change the definition of eligible "local government", adding smaller units of general purpose government in addition to counties,

and authorizing state governments to enact legislation to reallocate PILT payments in whole or in part to these smaller local government bodies. The amendment to the Act further provides that where states enact such legislation, the PILT funds would be paid to the state for redistribution to local governments.

14. See California Public Resources Code Section 6201.5, added by Chapter 831, Statutes of 1980.

15. See "State Sovereignty and the Public Lands: A Report Prepared Pursuant to Chapter 831, Statutes of 1980," by Jan Stevens, Deputy Attorney General (December 8, 1982).

16. Nevada v. U.S., 699 F.2d 486 (9th Cir. 1983). In the absence of power to take control over federal lands, public land states like California must rely on the consultation, coordination and consistency provisions of federal planning and management statutes to influence federal land decisions. State and local governments are granted various degrees of influence over federal lands under the:
--Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.)
--National Forest Management Act of 1976; Forest and Rangeland Renewable Resources Planning Act of 1978 (16 U.S.C. 1600 et seq.)
--Public Rangelands Improvement Act (43 U.S.C. 1901 et seq.)
--Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)
--Outer Continental Shelf Lands Act (43 U.S.C. 1330 et seq.)
--Coastal Zone Management Act (16 U.S.C. 1451 et seq.)
--National Environmental Policy Act (42 U.S.C. 4321 et seq.)

17. See Public Resources Code 4789.3, as amended, added by Chapter 835, Statutes of 1984.

18. Pursuant to the federal Outer Continental Shelf Lands Act, local governments may submit their lease sale and development plan recommendations to the Secretary of the Interior, but must forward them through the Governor (43 U.S.C. 1345). Local governments lobbied for SB 1673 after complaining about inadequate federal public notice, hearing and consultation procedures which undermined their ability to participate effectively in offshore leasing decisions. In the Governor's letter returning the bill without signature, he maintained that existing procedures for local government participation were satisfactory. Governor's letter to members of the California Senate, on SB 1673, September 28, 1984.

19. 43 U.S.C. Section 1337(g).

20. Texas v. Secretary of the Interior, 580 F. Supp 1197 (E.D. Tex. 1984)--on appeal to the 5th Circuit Court of Appeals. A Louisiana federal district court followed suit by adopting the Texas decision--see Louisiana v. Department of the Interior, Civ. No. 79-2965 (E.D. La., May 16, 1984). See generally, Andrew Kever, "A Fair and Equitable Division of Federal OCS Revenues: The 8(g) Chapter," Summer 1984 Western Natural Resources Litigation (hereafter WNRL) Digest 17.

21. Texas also managed to secure an injunction preventing the federal government from unilaterally withdrawing funds previously escrowed. The California State Lands Commission believes that despite the Texas court injunction, close to $500 million plus interest may have been withheld from the California escrow account by the Department of the Interior. See "An Assessment of the Provisions of Section 8(g) Outer Continental Shelf Lands Act Amendments of 1978 on California's Share of Bonuses, Royalties and Other Revenues," California State Lands Commission, July 1984.

22. It is noteworthy that California is the only affected coastal state with a Republican Governor--partisan considerations may have influenced the state's position.

23. S. 2463 (Stevens R-Alaska), 98th Cong., 1st. Sess. (1983).

24. Under S. 2463, funds would be allocated to coastal states and local governments based on a formula tied to coastal population, shoreline mileage, proximity to OCS leasing, volume of OCS oil and gas landed, and status of the state's coastal management program (states with federally approved programs, such as California, receive additional funds).

25. See Michael Shapiro, "Status of Energy Leasing Activities Offshore California," Winter 1984 WNRL Digest 12.

26. See footnotes 38 and 47 infra, and accompanying text.

27. See 43 U.S.C. 1333(a)(2)(A); see also Maryland v. Louisiana, 451 U.S. 725 (1981) (overturning Louisiana's severance tax on OCS natural gas landed in the state).

28. On June 10, 1983 and September 2, 1983, members of the California Senate sent letters in support of OCS revenue sharing legislation to California's U.S. House delegation and U.S. Senate delegation, respectively.

29. Under Section 191 of the Mineral Leasing Act (MLA), as amended, states receive 50% of the revenues from both the MLA and the Geothermal Steam Act. Of the remaining funds, 40% goes to the federal Reclamation Fund (43 U.S.C. 371 et seq.), an account established in 1902 to provide start-up money for irrigation projects in Western states, and 10% goes to the general fund of the U.S. Treasury.

30. See Linowes Commission Report, Fiscal Accountability of the Nation's Energy Resources, (January, 1982); see also Oversight Hearings on Royalty Accounting System Within the U.S. Geological Survey: Joint Hearings before the House Subcommittees on Mines and Mining and Oversight and Investigations, 97th Cong. 2nd Sess. (1981); Comptroller General's Report to Congress, Oil and Gas Royalty Collection--Serious Financial Management Problems Need Congressional Attention, 96th Cong., 2nd Sess. (1979).

31. See 30 U.S.C. Section 1701 et seq.

32. California v. Watt, Civ. No. 81-1217 (D.D.C. voluntarily dismissed 1983). California argued that the federal government has a fiduciary duty to state recipients of federal land revenue sharing to ensure that all past royalties were accurately accounted for and collected. The Secretary of the Interior denied any obligation to federal lands states other than to distribute 50% of whatever happened to be collected from producers. The lawsuit was settled by an agreement in which the Interior Department reimbursed California for $500,000 toward the expenses of a cooperative audit.

33. Under the Federal Oil and Gas Royalty Management Act of 1982, states are entitled to 50% of all interest collected beginning in FY 1983-84. The State Controller's Office estimates that interest due California as of December 31, 1984 will be approximately $12 million.

34. See final regulations implementing the Federal Oil and Gas Royalty Management Act, 49 Federal Register 37336, September 21, 1984.

35. Some or all of the appropriated "cooperative agreement" funds could possibly be "reprogrammed" to pay for state "delegation" costs.

36. See generally, Jan Stevens, "The Management of Mineral Royalties: An Opportunity for Cooperative Federalism," Winter 1983 WNRL Digest 29.

37. See Sally Fairfax, Background For A Conference on Fiscal Federalism and the Patchwork Quilt of Natural Resource Revenues, prepared for the Western Office, Council of State Governments and the Lincoln Institute, p. 1 (1984).

38. If sufficient federal funding is not provided to pay for state auditing and other royalty management costs, the Legislature should consider raising needed funds by amending Public Resources Code sections 3400-3403. These provisions currently authorize oil and gas production charges, including charges on federal production, to cover state administrative costs related to regulating oil and gas production. California regulates the activities of federal oil and gas lessees pursuant to a "Memorandum of Understanding" with the BLM. Section 32 of the Mineral Leasing Act declares that the federal mineral leasing program does not affect the right of states to tax federal land lessees; see also Commonwealth v. Montana, 453 U.S. 609 (1981) (upholding a Montana 30% severance tax on coal extracted in the state, including coal taken from federal lands).

39. Arkla v. Watt, 734 F.2d 347 (8th Cir. 1984). The court's decision was a major victory for states because it established state standing to challenge federal government leasing decisions which adversely affect state revenue shares. See Alan Novins, "Court of Appeals Decision in the Arkla v. Watt Case: Growing Role of States in Federal Resource Administration," Summer 1984 WNRL Digest 32.

40. See 48 Federal Register 49703 (1983) for notice of the lottery suspension.

41. H.R. 4191 (Miller D-Calif.) 98th Cong. 1st Sess. (1983). Another problem with the lottery program is that it suffers from fraud and abuse, as it is a fertile ground for unscrupulous con-artists. It has been estimated that there have been consumer losses in excess of $100 million since 1982 due to fraudulent filing services. This abuse of the lottery system results in tremendous costs not only to citizens but also for state law enforcement and consumer protection agencies. See Comment, "Toward an All Competitive System for Federal Onshore Oil and Gas Leasing," 21 Harv. J. on Legis. 531 (1984).

42. Draft guidelines letter issued by the U.S. Minerals Management Service on May 10, 1983. See Howard Schrinar, "States Alert: Gas Production Valuation on Federal Lands," Winter 1984 WNRL Digest 19.

43. See Linowes Commission report, supra note 30, at 64.

44. See 26 U.S.C. Section 4986.

45. New Mexico v. Regan, Civ. No. 81-0452-M (D.C. N.M., June 8, 1983). The court directed the federal government to provide New Mexico with 50% of all future royalties from production undiminished by the tax; the United States is to assume the entire burden of the tax from its share. New Mexico was also granted past deficiencies plus interest.

46. The immense problems associated with local assessment of federal lands was reviewed and confirmed in the report of the blue ribbon Public Land Law Review Commission, One Third of the Nation's Land, Ch. 14, Tax Immunity, p. 235 et seq., Washington, D.C. (1970).

47. See California Revenue and Taxation Code Section 38101 et seq. States may apply severance taxes to private interests

harvesting national forest timber. Georgia Pacific Corp. v. Mendocino County, 357 F. Supp. 380 (D.C. N.D. Cal. 1973); see also U.S. v. Fresno, 429 U.S. 452 (1977) (upholding a California tax on federal employees' possessory interests in Forest Service housing owned and supplied to them by the federal government as compensation).

48. In 1983, the California Timber Yield Tax generated $11.6 million. Of that amount, $4.4 million came from state and federal lands (the accounts do not distinguish between government jurisdictions), with the remainder from private timber production. In comparison, the state received almost $43 million in federal FY 83 under the current federal revenue sharing scheme.

49. H.R. 5649 (Weaver, D-Oregon), 98th Cong., 1st Sess (1983).

50. See SJR 50 (Doolittle), Res. Ch. 90, Statutes of 1984, which memorializes the President and the Secretary of Agriculture not to proceed with legislation to provide for the local taxation of federally-owned forest lands.

51. See footnote 17 supra, and accompanying text.

52. See Public Rangelands Improvement Act, 43 U.S.C. 1901, 1908(b).

53. See generally, Cowart, Fairfax and Wilson, Beyond the Sagebrush Rebellion: Enhancing State and Local Authority in Public Lands Management, A Report for the Western Conference, Council of State Governments, San Francisco, California (1983).

54. See footnotes 38 and 47 supra, and accompanying text for a discussion of the imposition of state taxes on federal land lessees.