

William Perry Pendley: Rebutting a popular myth about my position on public lands



The Bureau of Land Management is responsible for 245 million acres of public lands across the U.S., including millions of acres in Colorado, like the Ruby-Horsethief stretch of the Colorado River where permits are now required for overnight camping in an effort to manage heavy use.

By WILLIAM PERRY PENDLEY | Guest Commentary | August 30, 2019

Since President Donald Trump appointed me as the Bureau of Land Management’s deputy director for policy and programs where I “exercise the authority of the director,” my 43-year legal career and 30 years representing Westerners have been scrutinized.

Public accountability is important in public service, as I am entrusted with upholding the values of this public institution in an ethical and legal manner. But, recent attacks on my character and misrepresentations of my past require that the record be set straight. Timothy Egan’s slapdash screed in the New York Times, on August 16, “[The Great Western Public Land Robbery](#),” is such a piece.

The Trump administration is crystal clear in its opposition to any wholesale disposal or transfer of federal lands. Secretary of the Interior David Bernhardt is steadfast in that

opposition, and, as a proud member of the Trump administration, I am as well. I am a Marine, and the oath I swore on July 15, 2019, to uphold the laws and the Constitution is as important to me as the one I took upon joining the Corps five decades ago. My fidelity will prove just as strong now as it was then.

The assertion made by Egan that I do not believe in federal or public lands is wholly inaccurate. The federal government owns more than a quarter of the land in this country, primarily in the American West, where I was born and raised and have fished, hunted, hiked, and lived for most of my life. For me, it is a fact of life.

In many Western rural counties, the federal government owns upwards of 90% of the land. We, Westerners, know best that amidst the wide-open spaces we call home are gorgeous national parks, breathtaking wilderness areas, and magnificent wildlife refuges. We know, too, that there are vast, “general purpose” federal lands managed by the U.S. Forest Service and the BLM, which collectively administer more than 400 million acres.

Federal law permits logging, mining, energy development, livestock grazing, and recreation on public lands. Balancing these different uses, pursuant to the Constitution, commands of Congress, and wishes of the American people, is challenging for the federal government and especially the BLM.

Recreation on public lands is fundamental to our mission at BLM, and the argument that I somehow seek to deny others such opportunities is completely baseless. Like myself, those who sought my professional legal assistance have a special relationship with these lands: Millions of families — like many of my former clients — will remain on and about land that others visit as tourists or passersby.

Contrary to characterizations by the press regarding my career, in leading a nonprofit, public-interest law firm based in Colorado, I represented those left behind when the tourists depart: the men, women, families, and communities that ranch, log, mine, explore for energy, or otherwise must depend on the federal lands that surround them.

Over the years, I represented people who could not afford to hire an attorney in their dealings with the federal government. I never argued that federal lands should belong to the states or my clients; that would have been silly, illogical, and, for those in their state of desperation, futile. Rather, I read and sought to apply the Constitution, federal statutes, rules, and regulations to the facts of my client’s case.

What’s more, my courtroom arguments were hardly “fringe.” One client denied a government contract because of his race, thrice reached the Supreme Court. We won 5-4 once, 9-0 the second time, and tied the third time. We also set a still-binding legal precedent best described by Justice Scalia, “In the eyes of government, we are just one race here. It is American.” This particular case, like others in which the [Mountain States Legal Foundation](#) was involved, concerned national issues, in this case, the [Constitution’s Equal Protection Clause](#), in which I argued that race-based decision making by governments (so-called “[affirmative action](#)” or “[reverse discrimination](#)”) is unconstitutional.

Representing the world's oldest family-owned and operated independent oil company and the Pennsylvania Independent Oil and Gas Association, I argued for the right of landowners in rural northwestern Pennsylvania to develop natural gas in a national forest, as they had since 1859. We prevailed twice in a federal district court and before two separate three-judge appellate panels, upholding the district court's landmark view that denial of a property right constitutes an irreparable injury.

Also, I represented a Wyoming man over an 11-year period before five federal courts, fighting the illegal seizure of his land for a federal bike trail. It was not my first landmark victory in such a case, but it reached the Supreme Court of the United States, which, in record time, ruled 8-1 in our favor.

As head of a tax-exempt non-profit organization, I was largely barred from "chipping away — in court, in public forum, in statehouses," in Egan's words, at the "very idea of shared space in the great outdoors...one of the most cherished of American birthrights." I testified only once before the Colorado General Assembly and just twice before U.S. Congress; never did I advocate the "disposal" or "transfer" of federal lands. I had no interest in doing so.

Egan and others latched onto my National Review article exploring, somewhat academically, the Western debate over federal lands. That op-ed began with a 2015 request from a professor at the University of Denver Sturm College of Law that, for an annual symposium, [I debate a professor on the topic](#).

I had never before given the matter much thought but soon became intrigued by it. Later, I expounded on the issue in the National Review. I quoted Western governors, Democrats, and all who were angry at the way federal lands were managed by President Jimmy Carter. I wrote that many Westerners believed the problems they faced then with Carter — and, when that article was penned, President Obama — would not be solved until much multiple-use land, but not parks, wilderness areas, and wildlife refuges, were transferred. That was their view, and I believe I did it justice. Personally, my view was somewhat different because I had watched President Ronald Reagan diffuse the original "[Sagebrush Rebellion](#)" to federal land management efforts with his good neighbor policy. I knew a future president could do as Reagan did.

Finally, my assertion that the founders intended the sale of all federally-owned lands was not prescriptive but a historically-accurate observation relevant to the debate.

President Trump's embrace of a true conservation ethic is some of the best news for the West since Reagan, whom I likewise served, and who quelled the Sagebrush Rebellion in 1981. I am honored to serve Trump and Secretary Bernhardt and look forward to implementing our dynamic stewardship of America's public lands.

William "Perry" Pendley is the deputy director for policy and programs at the Bureau of Land Management and is exercising the authority of the director of the agency that oversees 245 million acres of public lands.