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## BRINGING LOCAL KNOWLEDGE TO FEDERAL LANDS

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### INTRODUCTION

*“We’ve been blessed with the opportunity to stand for something, for liberty and freedom and fairness. And these things are worth fighting for, worth devoting our lives to.”*

-- President Ronald Reagan, speech to the Conservative Political Action Committee, March 8, 1985

**T**HE UNITED STATES might indeed be one nation, indivisible, but there are huge differences between its eastern and western halves when it comes to federal lands. In the West, nearly half the land is owned and controlled by the federal government, compared with only 4 percent in the East. That difference affects the ability of western states to determine their own destiny.

In March 2012, Utah Gov. Gary Herbert signed H.B. 148, legislation that insists the federal government divest its lands in the state, transferring most of them to state jurisdiction. Utah is not alone in the desire to bring federal acreage under local control. At least four other western states (Idaho, Montana, Nevada and Wyoming) have passed similar legislation and still more are considering similar bills.

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Proponents of the measure argue that this sort of decentralization would place control in the hands of those with the most to gain or lose from effective land stewardship. They also point to enabling legislation passed by Congress when each of these states joined the union, noting that they typically have included clauses providing that the federal government would extinguish its title to any unappropriated lands. Indeed, what were once public lands in eastern states largely have been transferred to the private sector, where they generate revenues for those states. Conversely, in the West, hundreds of millions of acres of federal land remain. The consequences include limited revenue for state coffers, declining recreation access, increased restrictions on commodity production and, in some cases, poor environmental stewardship.

These pieces of state legislation undoubtedly will face constitutional challenges,<sup>1</sup> but regardless of their legal standing, if federal land management was to be reassigned, who would mind the estate? What rules would reign? What sort of arrangements would best steward America’s lands to ensure they are managed to bring recreational and environmental value, while also providing the revenues and resources needed for a productive society?

This paper provides a glimpse of some of the institutional and management problems that face America’s public lands and suggests reforms that policy-makers should consider to improve management of the federal estate.

### THE POLITICS OF SCIENCE

**THE FEDERAL GOVERNMENT** owns and manages 28 percent of the nation’s land. About 57 percent of that federal land is in the contiguous western states, with another 35 percent in Alaska. The states east of Colorado now contain a mere 7 percent of all federal land, and only about 4 percent of the land in the East remains under federal control.

1. American Lands Council, “HB 148 Utah Transfer of Public Lands Act,” Accessed Dec. 18, 2013. <http://www.americanlandscouncil.org/we-can-t-wait-talking-points.html>.

Rather than follow the precedent set in the East and transfer public lands in the West to each of the newly formed states at the time of statehood, Congress – heavily informed by Progressive-era thinking – created federal agencies to manage western lands. The widely held belief of the day was that an elite group of experts could dispassionately use science to determine best resource use and that those experts would align management to provide for those uses. The ability of science to determine best use, and of agency heads to manage accordingly, has certainly come into question over the past 100 years.

A look at wildfire policy over the last century helps illustrate why science cannot determine “best use.” Forest fires are natural disturbances that open the forest floor, providing habitat and forage for wildlife. By burning some areas and not others, fire creates a diversity of forest types and tree ages, providing habitat for a variety of creatures. More than a century of forest science has demonstrated the importance of fires to forest health.<sup>2</sup>

On the other hand, forest fires have devastating impacts. They destroy homes, lives, habitat and wildlife. Fires increase erosion and flooding and reduce water and air quality.

Herein lays the problem: there is no scientifically discoverable “best” policy for dealing with wildfires. Whether forest fires are on net good or bad depends on the preferred outcome, and science alone can’t tell you what that value should be. Federal responses to wildfires, like many other land management policy questions, are about tradeoffs and the varying costs and benefits of different strategies. There is not one universal and scientifically determinable ideal.

A 2002 U.S. Forest Service report known as the Bosworth Report confirms:

[A]t its core, the debate over natural resource use on public lands is driven by differences over values. Sound science and competent land management cannot resolve such differences.<sup>3</sup>

To a large degree, decisions about fighting wildfires, like other federal land management decisions, are political in nature and are informed by agency rules and congressional funding. Wildfire suppression has become the biggest line item of the USFS, receiving about \$1 billion annually, with no requirements for environmental assessment and planning. Conversely, road and trail maintenance, forest restoration,

fuel reduction and other forms of active forest management receive considerably less funding. Moreover, agency officials charged with executing each of these management strategies must abide by the expensive burden of extensive planning, environmental analysis and public input – which frequently leads to litigation— before any action can be taken.<sup>4</sup>

While science can demonstrate potential outcomes of various decisions, it can’t determine which decision is preferred or which resource use is most highly valued. Instead, federal land managing agencies perform under legislative guidelines that are ultimately directed by political appropriations and legislative mandate. The Forest Service and the Bureau of Land Management have an overarching goal to provide for multiple uses, with little direction in how to prioritize scarce resources. Even the National Park Service, with a narrower mission, faces conundrums on how to determine best use, while frequently being stymied by regulations and the political process of budget appropriations.

## REALISTIC REFORM

THE DEBATE OVER how best to manage the federal estate is longstanding, and the problems multiply as new legislation overlays old. Because the issues are political, any meaningful reform must be politically feasible. To be sure, there is no one-size-fits-all reform that would be appropriate for all or even most federally owned lands. Rather, different reforms – ranging from outright privatization to devolution of decision-making authority – may be appropriate in different circumstances.

The remainder of this brief lays out a menu of options to consider. Each could enhance the management of what are now federal lands by providing better stewardship and increased revenues and resource value.

## PRIVATIZATION

Though fully privatizing the federal estate is not a politically viable option, it is useful to consider the incentives and potential outcomes that would result from such an undertaking. Driven by profits and competition, private entrepreneurs are motivated to innovate and provide goods and services at a low cost. Importantly, the direct link between buyer and seller relays continually changing information about resource value.

By contrast, Congress controls the finances of the federal land agencies through budget appropriations. It is politicians, not

2. Nancy Langston, *Forest Dreams, Forest Nightmares* (Seattle, WA: University of Washington Press, 1995), 247.

3. Dale Bosworth, “The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management,” U.S. Forest Service, June 2002. <http://www.fs.fed.us/projects/documents/Process-Predicament.pdf>

4. Budget data is accessible at USDAFS, FY 2012 Budget Overview. <http://www.fs.fed.us/aboutus/budget/2012/justification/FY2012-USDA-Forest-Service-overview.pdf>. Cited Nov. 21, 2013. Because line items compile activities and change over time, it is difficult to track timber management allocations with a precise understanding of actual expenditures on the ground.

resource managers or scientists, who have final say about how agency dollars will be spent. Rather than focus on the best available science or enhancing resource value, politicians are influenced by constituents and special interests. Consider that appropriations to manage Montana's nearly 27 million acres of federal land are determined by 535 politicians, only three of which directly represent the citizens of the state and live in proximity to those lands. As a result, funds move toward political priorities, rather than to address management concerns. Those who are most directly impacted by management decisions – visitors and the owners of adjacent resources – make up just a very small part of the decision-making process.

## DOWN TO SCALE

TO GET BETTER outcomes from the federal estate takes more than devolution; the rules must change. The National Environmental Policy Act requires federal land agencies to publicize and accept input on any decision that may alter or impact the environment. The intent of the law was to provide stakeholder input and oversight. But the result, according to former USFS Chief Jack Ward Thomas, has instead been gridlock.<sup>5</sup>

Our myriad laws and regulations and related court decisions have produced a Gordian knot that is strangling public law management. Nobody can cut the knot but Congress.<sup>6</sup>

The Bosworth Report confirms these constraints, noting that agency decision-making must now “include a stream of pre-decisional consultations and analyses, often followed by post-decisional appeals and litigation.”<sup>7</sup> The report concluded that the multitude of overlapping laws makes decisions expensive to conclude and fragile once made.

The result is a process choked by multiple veto points and no group that can effectively weigh the tradeoffs between different policy alternatives. Moreover, it encourages opposing parties to litigate decisions with which they disagree, with no incentive to bargain.

Abolishing the NEPA process and devolving management responsibility for some federal lands to the state or local level would be one way to source decision-making to where outcomes are most greatly felt. Interest groups, entrepreneurs and citizens that directly bear the costs and benefits

of resource decisions better understand the value of each, which reduces polarization, motivates negotiation and encourages mutual resource use. Reducing the number of veto points and more narrowly defining the evasive term “stakeholders” would serve to make decision making easier and more certain.

## LANDS IN TRUST

STATE SCHOOL TRUSTS are one form of devolution that has been effective at prioritizing resource use under a fiduciary goal. The federal government granted land to nearly every state in the West upon its admission to the Union to provide sustained revenues for state institutions, K-12 education in particular. Similar to federal lands, many of these trusts are managed for multiple uses. But unlike federal lands, state land trusts must generate revenues in excess of costs for every management activity. The beneficiaries— parents, teachers and other school officials – have clear incentives to monitor the management of trust lands. Indeed, multiple court cases have demonstrated the ability and motivation of overseers to ensure both fiscal and stewardship accountability.<sup>8</sup>

The fiduciary goal has not precluded conservation. To the contrary, trust lands are required to generate net revenues into perpetuity, providing a long-term management outlook. In fact, state land trusts have conservation leases that are found across the West, under which conservation groups buy leases to meet their own goals, including the protection of wildlife habitat, recreation access, exclusion of timber harvest or grazing and stream restoration.<sup>9</sup> Similar to how ranchers lease grazing forage, conservation groups can lease lands to manage for habitat or stream exclusion areas. Evidence shows that the state-managed lands generate greater net revenues than comparable federal lands, and they do so in a more sustainable and environmentally friendly manner.<sup>10</sup>

The reason trust lands are able to sustain multiple uses is that resource users competitively bid on use rights, which reveals relative values of different uses. Furthermore, because lessees must pay for use rights, they incorporate the additional costs and benefits of resource use in their bottom line; they explicitly understand the tradeoffs. This discourages the zero-sum battle seen in the public input process of federal land agency decision making.

5. Tim Findley, “On Environmental Morality,” *Range Magazine*, Winter 2005. <http://www.rangemagazine.com/features/winter-05/environmentalmorality.shtml>

6. Ibid.

7. U.S. Forest Service, “The Process Predicament : How Statutory, Regulatory, and Administrative Factors Affect National Forest Management,” June 2002. <http://www.fs.fed.us/projects/documents/Process-Predicament.pdf>. Cited February 7, 2012.

8. Terry L. Anderson and Holly L. Fretwell, “A Trust for the Grand Staircase-Escalante,” PERC, September 1999. <http://perc.org/sites/default/files/ps16.pdf>

9. Holly Fretwell, *Who is Minding the Federal Estate?: Political Management of America's Public Lands*, p 130-132, 1999, Lexington Books, Lanham, Md.

10. Anderson and Fretwell, “A Trust for the Grand Staircase-Escalante,” 1999.

The trust concept could be extended on federal lands, allowing private parties and nonprofit groups the right to bid for use in competitive auction. The parameters of the lease would be defined by the controlling federal agency, but the management and use of the resource would fall to the winning bidder.<sup>11</sup> A specified area of forest, for example, could be put out to bid for timber harvest or for recreation.

Resource uses need not be mutually exclusive. Allowing for a sublet option can help move resources to the highest-valued use. For instance, a logging company that wins a bid could sublet a portion to another interest, such as a birding group. Alternative use leases, easements and rights of way are common on private lands, such as when ranchers lease stream access for fishing or hunting rights. In this manner, the value of alternative uses is brought into the open through a cooperative arrangement, rather than the winner-takes-all game currently played on federal lands. Such “nature leases”<sup>12</sup> provide a mechanism for managers to mitigate the polarized multiple-use conflicts they are up against, and to generate revenues in the process.

## FEDERAL-TO-STATE TRANSFERS

DESPITE THE BENEFITS of state trust management, one should not conclude that their success counts as endorsing a massive direct transfer of federal lands to the states. Not all state lands are managed the same way. While state school trust lands have the specified goal to generate revenues for state institutions into perpetuity, other state land programs face the same conflicting priorities as federal lands. Simply transferring federal lands to a state does not necessarily improve the underlying regulatory framework. In fact, one could reasonably argue that direct transfers of federal lands to state ownership is unlikely to resolve many of the current problems of federal resource use. It is the governing legislation and incentives that determine how effective local management is likely to be.

There are multiple land-managing agencies within and across the states. While state park agencies tend to be more efficient than the NPS, devolving all federal lands to their control would be no panacea.<sup>13</sup> Some state park agencies, such as those in New Hampshire and Vermont, rely on almost no government funding and have done a good job responding

to their fiduciary responsibilities, as well as providing a quality recreation experience. Other states, such as California<sup>14</sup> and Arizona,<sup>15</sup> continually lose money and have threatened to close parks as a result. If creating recreational opportunities and high-quality visitor services are policy goals, there is another way to enhance the quality of the visit and lower agency expenditure.

## PRIVATE-PUBLIC PARTNERSHIPS (PPPS)

FOR MORE THAN a half-century, private contracts to manage public land have helped protect resources and enhance recreation visits. Rather than just providing concessions leases for a single shop or facility, agency leases often cover entire campgrounds or park units. Private entrepreneurs operate more than 1,000 federal campgrounds and recreation areas.<sup>16</sup> Federal agencies maintain ownership of the land and resources, set the overriding goals and define the lease parameters, such as collecting fees, maintenance, cleaning and some infrastructure enhancement. Private firms bid for the right to manage public lands, with winning lessees abiding by the agency contract while paying fees or a percent of revenues to the agency. Under these recreation leases, the private operator makes a profit, the federal agency saves money and visitors get quality experiences at a lower cost.<sup>17</sup>

According to Warren Meyer, president of Recreation Resource Management, one of the largest private contractors of federal lands, “private companies in this system are generally able to operate much more efficiently than the public agency, primarily by better matching people and salaries to the jobs at hand.”<sup>18</sup> Meyer estimates that, on comparable sites, labor costs make up about 80 percent of federal land agency expenditures but only about 30 percent of the costs of a typical private firm. He notes that private contractors’ incentives motivate them to hire part-time and temporary employees to suit particular needs, whereas federal agencies must hire according to legislated guidelines. He also points out that contractors benefit directly by capturing cost savings, while public agencies, who generally must return savings to the federal Treasury, lack the motivation to find those savings.

11. Alison Berry, “Branching Out: Case Studies in Canadian Forest Management,” PERC Case Study, 2006. <http://perc.org/articles/branching-out-case-studies-canadian-forest-management>.

12. Fretwell, Who is Minding the Federal Estate?: Political Management of America’s Public Lands, 1999.

13. Holly L. Fretwell and Kimberly Frost, “State Parks’ Progress Towards Self-Sufficiency,” PERC White Paper, October 2006. <http://perc.org/articles/state-parks-progress-toward-self-sufficiency>

14. Little Hoover Commission, “Beyond Crisis: Recapturing Excellence in California’s State Park System,” Report #215, March 2013. <http://www.lhc.ca.gov/studies/215/report215.html>

15. Nicole Santa Cruz, “Arizona decides to close most state parks,” *Los Angeles Times*, Jan. 16, 2010. <http://articles.latimes.com/2010/jan/16/nation/la-na-arizona-parks16-2010jan16>

16. Warren Meyer, “A Tale of Two Parks,” PERC Case Study, Sept. 25, 2013. <http://perc.org/articles/tale-two-parks>

17. Holly L. Fretwell, “Funding Parks,” PERC Case Study, Aug 22, 2011. <http://perc.org/articles/funding-parks-political-versus-private-choices>

18. Meyer, “A Tale of Two Parks,” 2013.

Concession leases need not be restricted to recreational applications. Indeed, these public-private partnerships could be expanded to provide opportunities for private firms to administer non-recreational federal lands. The goals and guidelines would still be agency-determined, and private firms would be held accountable for achieving contractually described outcomes.

## INCENTIVES MATTER

THERE ARE OTHER examples within federal land agencies where the link between land managers and resource users is more direct. Whereas most revenues earned by federal lands are deposited with the Treasury, under 2004's Federal Lands Recreation Enhancement Act,<sup>19</sup> at least 80 percent of fee revenues collected at participating sites remain on that site for visitor enhancement. According to Leslie Weldon, deputy chief of the National Forest System, "[f]ee retention provides an immediate, stable and flexible source of funding that has been and continues to be a fundamental component of a sustainable funding model."<sup>20</sup>

FLREA, which is due to sunset in December 2015, gives managers the authority and resources to respond to on-the-ground priorities over political ones. Funds collected this way have been invested in user and manager priorities, such as water quality studies, enhanced interpretive centers, improved campgrounds and better maintained trails. By allowing sites to retain their fees, managers face incentives that are better aligned with visitor experiences, enhancing accountability.

Such user fees are not a cure-all remedy. Similar to the recreation program, a portion of timber sales receipts are held onsite on USFS and BLM lands. Though managers appreciate the retained funds and use them for forest restoration, this funding process creates incentives that can skew management focus toward timber harvest over other resource uses without comparable funding.<sup>21</sup>

## CONCLUSION

INESCAPABLY, INCENTIVES MATTER. The problem with today's federal lands management is not incompetent federal land managers or a lack of taxpayer funds. Rather, it is that immediate political pressures, not long-term stewardship or resource value maximization, drive the management process. That is, today's planning process lacks any means of

discovering and utilizing knowledge about the relative values of federal land resources. The value of the federal estate remains largely unmeasured, and the tradeoffs between different uses of natural resources remain unknown.

While improving management of the federal estate requires reform of the agencies and laws, there is no single solution that is appropriate to manage the millions of very different acres of the federal estate.<sup>22</sup> Rather, many different experiments – such as nature leases, public private partnerships and devolution – need to be run to discover their efficacy and their limits. Though that will be a difficult process, it is certainly preferable to the huge sums of money currently expended and the resources currently squandered fighting polarized battles that produce little constituent or environmental benefit.

Federal land management must be restructured so the true value of our public resources can be realized. It is time to explore other mechanisms and policies for managing America's western lands so they can better secure this country's environmental heritage. How these resources are used and managed defines our destiny.

22. Congressional Research Service, "Federal Land Ownership: Current Acquisition and Disposal Authorities," December 2011. <http://www.fas.org/sgp/crs/misc/RL34273.pdf>

## ABOUT THE AUTHOR

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19. 16 USC Chapter 87

20. Leslie Weldon, "Testimony to House Subcommittee on Public Lands and Environmental Regulations, Committee on Natural Resources," June 18, 2013. <http://naturalresources.house.gov/uploadedfiles/weldontestimony06-18-13.pdf>

21. Fretwell, Who is Minding the Federal Estate?