

WRITTEN STATEMENT OF ROBERT H. NELSON TO THE FEDERAL LAND ACTION GROUP
U.S. CONGRESS, CONCERNING “OPTIONS FOR FEDERAL LAND REFORM,”
WASHINGTON, DC, FEBRUARY 9, 2016

My name is Robert H. Nelson. I am a professor in the School of Public Policy at the University of Maryland. From 1975 to 1993 I worked as a senior economist in the Office of Policy Analysis within the Office of the Secretary of the Department of the Interior. Based partly on this experience, since the 1980s I have written three books and many scholarly -- and also more widely accessible -- articles about the system of public land management by the Forest Service and the BLM.

I am pleased to be able to address today the options for public land reform in the future. There is a growing recognition that the system of federal ownership of nearly half the land in the American West is serving the region poorly. It is inhibiting the economic use of the lands and is also environmentally damaging -- mismanaging the national forests, for example, to create unprecedented acreages of wildfires now burning at new intensities. The rural West is deprived of the normal experience of democratic governance as it is experienced in other states and localities across the United States.

It is also costing the federal government a large amount of money at a time of fiscal stringency. In Utah, for example, in 2012 the costs of Forest Service and BLM management totaled \$231 million. Federal revenues were about \$20 million from surface lands. In 2013 the federal share of total mineral lease revenues from federal lands in Utah was \$170 million. Adding in PILT payments of \$35 million in 2013, the federal government has recently been running a net fiscal deficit of around \$75 million per year for Forest Service and BLM lands in Utah. If we project the Utah experience across the whole West, the federal fiscal deficit for public land management in the West can be estimated to be in the range of \$1 to \$2 billion per year.

In this time of intense partisanship, there is in fact wide agreement across the political spectrum that federal land management in the West has become dysfunctional. This should not be surprising because large parts of the American public today regard much of the federal system as a whole as dysfunctional. Given the unusually large presence of the federal government in the West, it bears a disproportionately large burden of the costs attributable to the failings of the current federal system.

There is much less agreement, however, as to the way out of this unhappy state of affairs in the American West. When proposals for reform are made, the discussion often breaks out into deep partisan disagreement. That may be partly because the menu of possible reforms being discussed in the public arena is limited relative to the full range of possibilities. In my testimony, I will briefly survey this range. I will not draw any final conclusions but hope to expand the scope for further analysis and discussion.

Broadly speaking, public land reform could move in three basic directions: privatization, transfer of federal lands to state and local governments, and management reforms within the existing system of federal land ownership.

Privatization

During the Sagebrush Rebellion of the late 1970s and early 1980s, there were many proposals from economists and others outside the West for the comprehensive privatization of Forest Service and BLM lands in the West (National Parks were typically excluded). The reaction in the West was almost universally negative. The specter of Saudi sheiks then rolling in oil money, was raised as the new landlords of the West. The reaction today would be similar. Bluntly stated, there is no prospect for a comprehensive privatization of federal lands in the West, even with National Parks and wilderness areas excluded.

Discussion of any broad based privatization should therefore be taken off the table. At present, it merely serves as a fig leaf for those who seek to block even much more plausible and incremental public land reforms.

That does not mean there is no possibility of privatization, whatsoever. There are many small parcels of federal land surrounding urban areas in the West. These parcels could be systematically surveyed and gradually offered for sale over a period of time. Making such lands available to the private land development market would have beneficial effects in terms of a lower price of urban land and a more coordinated quality of urban land development. Some such parcels might simply be sold at a minimal price to state and local governments for parks and other recreational purposes.

Other good candidates for privatization are the large areas -- 57 million acres in total -- for which the surface is privately owned but the mineral rights are federally owned. Supplying much of the total coal production of the United States, for example, the federal coal rights in the Powder River Basin in Wyoming predominantly lie below private surface. There is no good economic or environmental reason why these subsurface mineral rights should remain in federal hands. It is a legacy of the progressive era and its core belief that the federal government could provide a superior "scientific management" of natural resources. We now know otherwise. So why retain mineral rights that have only commercial uses at the federal level. Significant revenues could be gained by the sale of these rights.

There are also areas where the federal surface lands are being used for commercial purposes such as ski resorts that operate under federal leases. Again, there is no strong argument why these areas should be subject to federal review or approval of many details of their commercial operation. They could well be sold off.

Other federal lands such as the O&C lands in western Oregon are used for in essence the commercial harvesting of timber. The old growth forests are part of the protection plan for the northern spotted owl. But the second growth forest could be considered for sale. They might be offered to the O&C counties themselves at a large discount, reflecting the fact that the O&C counties receive the major share of the net revenues from O&C timber harvests. There may be other federal forest lands that have similar circumstances.

If any wider privatization were to be considered, it would only be conceivable under the condition that covenants be placed on the lands guaranteeing permanent future public access for hiking, cross country skiing, and other recreational purposes. This would resemble the land tenure system in countries such as Sweden and Finland. The land there is predominantly private but general public access is provided by law on all such private land to all residents of the nation. Recreational users are only constrained to remain a certain distance from physical structures and to not interfere with agricultural or other productive uses of the lands.

Any plan for privatization of some federal lands would have to provide for the protection of existing rights such as mining claims and grazing permits on the lands proposed for sale.

Transfer of Federal Lands to States and Localities

There is a long history of debate and discussion of the option of transferring federal lands to the states. Indeed, in the nineteenth century during the era of disposal, a common method of disposal was to transfer federal lands to the states. More land in total was transferred to the private sector (sometimes for free as with the Homestead Act of 1862) but full 328 million acres were granted to the states (compared with a total 288 million acres that were eventually homesteaded including in the twentieth century). State grants were often made in order to encourage the states to use the lands as incentives for infrastructure and other economic development.

State land grants on becoming a new state transferred a total of 78 million acres (excluding Alaska). Over time the amounts granted increased with three states -- Utah (in 1896), New Mexico (1912) and Arizona (1912) -- eventually reaching four sections per township (11 percent of the land in the township). In Alaska, more than 100 million acres of federal lands (more than 25 percent of the state land area) were transferred to the State after it achieved statehood in 1959. Large transfers of federal land to the states is thus not a new idea.

Disposal of federal land slowed greatly in the progressive era from 1890 to 1920 with the creation of agencies such as the Forest Service in 1905. Homesteading largely came to an end with the passage of the Taylor Grazing Act in 1934. But the option of transferring federal lands to the states has remained a live part of the western land policy discussion as, for example, during the Sagebrush Rebellion. In recent years, it has again been raised by western states -- most prominent Utah -- as part of the discussion of the future federal land role.

A key question is which federal lands might now be transferred. Most western proposals exclude the great majority of the units of the National Park System, consisting of 84 million acres in the full system (54 million of which are in Alaska, and some of which are in the East).

Wilderness areas are often also excluded from consideration for transfer. The National Wilderness System includes about 110 million acres, including 44 million acres in the National Park System. Taking account of this overlap, total National Park System acreage plus wilderness areas outside the National Parks equals a total of about 150 million acres. As compared with total federal land ownership of 640 million acres, such lands equal about 23 percent of the federal total. The lands under most active consideration for transfer to the states would thus be equal to about three quarters of the current federal land total.

Some federal lands in the West are currently being managed in a status similar to a wilderness area (such as "wilderness study areas"), even though they are not in a unit of the National Park System or in a Congressionally designated wilderness area. By some estimates there are about 50 million western acres in such a status. As an upper bound, if these lands with proximate wilderness characteristics were also excluded from transfer to the states, the total excluded areas would rise to around 200 million acres. This would be about 31 percent of the federal grand total of land ownership.

Military lands would also be excluded from transfer consideration, amounting to about 15 million acres. Thus, the total of federal "multiple use" lands outside a military status would be around 435 million acres, or about 66 percent of the total federal lands at present that would be available for transfer.

The National Wildlife Refuge System includes 95 million acres, 20 million of which -- mostly in Alaska -- are already in the wilderness system. Most other Refuge lands qualify as multiple use lands and thus might be considered eligible for transfer to state ownership -- at least to states that wished to assume this management responsibility. The treatment of the National Refuge System should be an important issue for discussion. If Refuge areas (those now outside the wilderness system) were also excluded from eligibility, total federal multiple use lands under consideration for transfer to states would drop by 75 million. It would then equal 360 million acres, 56 percent of total federal land in the United States.

The majority of federal lands thus would still fall in the category of what might be called "ordinary" federal lands with various multiple use purposes such as state and local recreation, livestock grazing and timber harvesting. In the rest of the United States, such uses are subject to state and local governance, including land use controls such as zoning. There is nothing in the history of federalism principles in the United States that would justify the imposition of a federal governance regime across the rural West with respect to such "ordinary" uses of land.

The other side of the coin would be the recipients at the state and local levels of lands transferred from the federal government. Some lands might go to the state and others to local governments. At the state level, there would be various options. Some transferred lands might be added to the existing state trust lands and others added to the existing state park system. New categories of state ownership such as state public corporations, drawing on the example of many existing public corporations around the United States, might be developed to assume responsibility for transferred land. To the extent that western states can spell out some of the details in such matters, it will help to alleviate current uncertainties and facilitate any future transfer process. At present, no western state has yet done so.

Newly created trust lands need not be established at the state level. They could be created at the level of local government. They might also be created under new governance structures that do not correspond to traditional local governance boundaries. The identities of the designated recipients of state and local trust net revenues would also need to be established.

An important question for the western states is the fiscal impact on the State of a large scale federal land transfer. In the past, westerners have sometimes wondered whether they could afford to assume the costs of management responsibility for these lands. The only western state which has so far studied this issue in close detail is the State of Utah which in November 2014 released a 732 page Report on *An Analysis of a Transfer of Federal Lands to the State of Utah*. As part of their planning for a transfer of federal lands to the states, other western states should undertake similar comprehensive analyses. The results will be highly state specific according to their significantly varying circumstances.

The fiscal answer for Utah depends in part on the issue of wildfire responsibilities. If Utah assumed current federal responsibilities for wildfire in Utah (the federal government on average spent \$77 million per year for this purpose from 2008 to 2012), and otherwise replicated federal land management practices, Utah would incur a fiscal deficit of about \$100 million per year for taking on the management responsibilities for the public lands.. If wildfire remained a federal responsibility -- as I think it should in light of past federal mismanagement that created the current levels of "excess fuels" and severely fire prone conditions -- the fiscal deficit for Utah would fall to about \$20 million per year.

Thus, it would seem to be a small price for Utah to take ownership of 31 million acres (the 57 percent of the total land the State that now has multiple uses and remains under federal ownership). I am including as Appendix C to my written testimony an analysis of fiscal impacts on Utah of a major transfer that I undertook in 2015, based on data available in the November 2014 Report as released by the State of Utah.

Land Management Reforms under Continued Federal Land Ownership

A third basic category of federal land reform would involve significant changes in federal land management within a context of continued federal ownership. One such federal land management reform that I proposed in a June 2015 policy paper issued by PERC in Bozeman, Montana would be to create "charter forests" on the national forests of the West. I am submitting this paper for inclusion in the record.

A charter forest would continue under federal ownership of the land. Drawing on the example of charter schools with large city traditional public school systems, however, the charter forest would be relieved of many of the federal controls and other requirements that have been heavily responsible for current national forest management dysfunction. There would be a national charter forest board -- located outside the Forest Service -- that would oversee the charter forest system, including the creation of new charter forests and the termination of charter forests that have failed to perform adequately in economic and/or environmental respects. At the local level, a charter forest board of directors would oversee the operations of each individual charter forest, including the hiring of appropriate administrative staff. I am including as Appendix A in my written testimony a description of the key steps and issues to be addressed in creating and planning for a new charter forest on an existing area of national forest land.

I have been working for the past year with county officials and other local leaders in Shoshone County in northern Idaho to develop a plan for a charter forest on parts of the national forest lands within the County. There has been a strong County interest in pursuing this option. It would be the first charter forest plan in the United States. As a pilot, this plan might be submitted to Congress for individual consideration and approval, perhaps in the fall of 2016. Just last week, on February 1, 2016, the three County Commissioners of Shoshone County unanimously approved a resolution stating the reasons why a charter forest is being sought by the County, and the determination of the County to continue with the planning process for a charter forest. I am including this Resolution below as Appendix B.

There are a host of other significant management changes that could be made on the national forests within the context of continued federal ownership. The concept of a charter forest could be extended to include the possibility of creating a “charter rangeland.” An additional related possibility would be to convert the current federal grazing system of 10 year grazing permits and allotments into a system of long term leases of the forage rights to the land -- perhaps the issuance of forage leases for around 20 to 30 years. Under such a system, and again partially following after the example of charter forests, ranchers would be freed from many of the federal controls that have frustrated more effective management of the public rangeland forage resource. Instead of BLM or Forest Service micromanagement, the rancher would sign a contract to meet certain environmental stipulations with respect to the future condition of the forage and the rangeland. The federal government would periodically review rancher performance to ensure that the contractually specified environmental conditions were being met. There would be wide discretion for the rancher, however, to decide exactly what management course to pursue to achieve the forage targets and other rangeland goals within this framework.

Such long term forage leases should be saleable and purchasable under normal willing seller/willing buyer arrangements. The rancher thus could sell the lease to an environmental or other group that would not necessarily have to make use of the forage for livestock grazing purposes. According to the preferences of the holder of the forage lease, the lands might remain open for public access and to uses that did not involve direct consumption of the forage. Rather than the current fierce political struggles over the administrative determination of federal rangeland uses, voluntary market transactions in this manner would play a much larger role in such determinations. Both free market and a number of environmental organizations have advocated such an approach.

Some further alternative ways to change the existing management regime within the context of continued federal ownership include the following:

1. Privately contracted public land management – This would in some ways be similar to a charter forest but the management would be overseen by a private contractor, rather than a charter forest board of directors. The contractor could be a private profit making organization or a non-profit NGO (such as the Nature Conservancy) that would sign an agreement for say 10 years for management of the forest or other public land area (with an expectation of renewal if the performance is satisfactory). The agreement would set out the management goals including tight environmental standards. Like a charter forest, the private contractor might work outside the existing federal hiring system and the rigidities of the existing public land management system, potentially including EISs, land use planning requirements, FACA, etc. There would thus be broad private freedom to decide the management course that would most successfully meet the contractual economic and environmental goals. Selection of contractors would be by individual negotiation, outside the bidding and other normal procedures of current federal contracting.

2. State or local government contracted management – This would be similar to #1 but the contractor for a specific area of public land might be a state government or a local county (or municipality).

3. Dedicated Forest Harvest Area -- Restoring the local timber industry in the West will require the dedication of supplies of timber sufficient to justify the operation of new (or revived) sawmills over a considerable period of time, long enough to pay off the investment. It may not be possible to establish sufficient certainty of timber supplies under the current public land management system. This alternative would designate forest areas for multiple use management, including sustainable timber harvesting, outside the existing public land hiring systems and other traditional rules and regulations. It might be done in conjunction with contractual agreements with private mill owners that would ensure them of sufficient timber supplies to justify future mill operation.

4. Public Land Cooperatives – This would allow different management units for public lands to join together in cooperatives to pursue collective projects, without having to integrate the separate units into one single consolidated management unit. New governance structures for the cooperatives could be developed as appropriate.

Conclusion

Before they could be implemented, such options for public land reform would have to be developed and analyzed in greater detail. Some of them have received greater previous study such as the transfer of federal land to a state trust land status or the creation of new public land management corporations. Others have received comparatively little detailed analysis. As part of its examination of future directions for federal land reform, besides its own staff resources, FLAG might make use of the analytical and investigative resources available to the Congress in the Government Accountability Office (GAO), the Congressional Research Service, and the Congressional Budget Office.

APPENDIX A -- STEPS IN PLANNING A CHARTER FOREST

1. Affirm up front the basic concept, that the land will remain federal in the national forest system, but the manager regime will be significantly altered, maybe also saying that it is based in part on the successful model of charter school. The goal will be to create a management environment that relieves the charter forest from many of the current sources of federal land management dysfunction on the existing national forests. Two areas of greatest concern will be to deal more successfully with wildfire risks and to encourage greater use of the charter forest lands to support the local economy and employment.
2. Identify the proposed boundaries for the charter forest and the rationale for these boundaries.
3. List the federal laws, regulations and other existing requirements from which the charter forest will be relieved, including possibly:
 - A. NEPA
 - B. RPA and NFMA land use planning requirements
 - C. Federal civil service hiring procedures, including the GS salary scales.
 - D. FACA
 - E. Federal minimum wage requirements such as recently announced for federal agencies by Obama
 - F. Others?.
4. State clearly that the federal government will continue to finance and provide wildfire suppression for the charter forest lands. The federal government may also contract with the charter forest for wildfire prevention activities on the forests. The rationales will include:
 - A. Wildfires in the charter forest area will affect federal lands outside of this area.
 - B. Federal government mismanagement of fire regimes did much to create the current large fire risks. The federal government should therefore be responsible for containing and cleaning up the wildfire mess that it created itself.
5. Explain how the board of directors of the charter forest will be chosen. There are various options as discussed in my PERC paper. One possibility, for example, might be a board something like the following:
 - A. Two appointees by the local County government.
 - B. Two appointees from School districts in the County.
 - C. Two local appointees by the Governor of the State.
 - D. Two local appointees by the U.S. Secretary of Agriculture (who are not current employees of the Forest Service)
 - E. One appointment by the Chief of the Forest Service who is a local Forest Service employee
 - F. One appointee from the local environmental community.
 - G. One appointee from the local timber industry.
6. Explain how the charter forest will be administered and the relationship of the charter forest to the administrative staff. This will probably include the selection of the chief administrator of the charter forest by the board of directors. This chief administrator would be responsible for organizing the administrative team and obtaining suitable management expertise. In some cases, the chief administrator might bring an outside group (such as a state land agency or a private forest management contractor) as the main staffing source. Ex-Forest Service employees might be important sources of charter forest staff expertise.
7. Explain how the revenues will be obtained including:
 - A. From timber sales.
 - B. From recreational, grazing and other use fees (conceivably certain kinds of high end hunting, if authorized by the State).
 - C. Assuming there is such provision in the pilot legislation from Congress, any continuing block grant payments from the federal government to the charter forest (perhaps for a transitional period of say ten years) – maybe say 33 percent of recent Forest Service expenditures for management of the lands in the charter forest area.
 - D. Acceptance of voluntary contributions from private individuals, groups, and philanthropic organizations that seek to promote ecological, recreational or other appropriate goals for the charter forest lands.

E. Other revenues?

8. Commit that the charter forest will cover its costs (a balanced budget requirement). In the event that there are net revenues, the plan should explain how the net revenues will be distributed. A preliminary cash flow analysis might be presented to show that a balanced budget is plausibly attainable, and what the net revenues might look like. While a balanced budget would be required, there might be provision for short run borrowing by the charter forest. The net revenue recipients might include some or all of the following.

- A. Schools
- B. Local governments
- C. The county government
- D. Others?

9. Explain how there will be systems of accountability. These might include:

- A. An annual budget report available to the public and certified by an outside party, confirming that the budget has been balanced.
- B. Certification of the environmental sustainability of charter forest management as provided by an outside reputable forest certification body.
- C. Provision for public meetings and other public participation opportunities.
- D. Others?

RESOLUTION 2016-04

A RESOLUTION FOR THE CREATION OF A "PILOT CHARTER FOREST" PROJECT, SHOSHONE COUNTY, STATE OF IDAHO

WHEREAS the U.S. Forest Service (USFS) has failed to adequately manage the national forests of Shoshone County;

WHEREAS three-quarters of Shoshone County's land area is federally managed;

WHEREAS the USFS has failed to adequately address the threat posed by excess fuels in the national forests in Shoshone County;

WHEREAS the overgrowth of the Shoshone County national forests has resulted in an unhealthy forest subject to diseased, dead and dying timber;

WHEREAS the citizens of Shoshone County are therefore subject to large and unreasonable risks of intense and rapid spreading wildfires;

WHEREAS wildfires create risk to human health and degrade air quality;

WHEREAS the Shoshone County Commissioners have an obligation to protect the citizens and communities of Shoshone County;

WHEREAS Shoshone County wishes to take an active part in developing a plan to protect Shoshone County communities from catastrophic fire,

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WHEREAS the USFS has limited the productive uses of the national forests of Shoshone County in a manner that has severely damaged the local economy;

WHEREAS Shoshone County relies on active use of the national forests in the county to sustain employment and local incomes;

WHEREAS timber harvests, which can raise revenue, generate employment, and reduce levels of excess fuels, have declined to historically low levels in the national forests of Shoshone County;

WHEREAS the USFS has, by policy and actions, restricted access to the national forests for emergency access, resource extraction and recreational use;

WHEREAS in the Forest Service's formative years, Idaho was assured a stable economic future by a Forest Service guarantee of enduring and unfettered local access and use of its national forests;

WHEREAS the federal government has failed to provide a stable replacement for lost property taxes -- such that said property tax burden has been borne by our county's property tax payers;

WHEREAS the federal government's "Secure Rural Schools and Community Self-Determination Act"(SRS), while it, when authorized, delivers funding to local governments and schools, does little to protect forest health, foster local forest-related economic activity, and minimize the risk of catastrophic wildfire;

WHEREAS, SRS offers only an uncertain resource for local governments and schools, as it is subject to congressional renewal and the prevailing political circumstances;

WHEREAS, SRS payments have shown a consistently declining trend since 2008;

WHEREAS Shoshone County Commissioners believe decisions affecting the basic safety of Shoshone County are better made at a local level;

WHEREAS the Shoshone County Commissioners believe the creation of a Charter Forest plan has the potential to resolve such major issues;

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WHEREAS the Charter Forest plan can generate income thereby relieving the federal government of the large spending outlays it must contemplate for the management of the national forests in Shoshone County;

WHEREAS a Charter Forest will provide local input and greater local control over the functioning of the local national forest;

WHEREAS a Charter Forest for Shoshone County will represent approximately one tenth of one percent of the National Forest;

WHEREAS the accumulation of decades of regulatory provisions has occasioned a well- known "analysis paralysis" and "gridlock" in the USFS, thus hobbling that agency 's ability to deal effectively with pressing forest-related obligations and management;

WHEREAS we see no viable prospect for a turnaround in the USFS's nonperformance of critical forest management obligations in our national forests in the foreseeable future;

WHEREAS the time has come to act, and any further delay in taking action is detrimental to Shoshone County's future.

THEREFORE BE IT RESOLVED THAT, Shoshone County seeks to become the nation 's first county site for the creation of a "Pilot Charter Forest" project, based on the Charter Forest plan utilizing the model developed over the past few years by, among others, Prof. Robert H. Nelson of the University of Maryland 's School of Public Policy.

In pursuit of this objective, it is further resolved that Shoshone County shall:

- Develop a plan for a Charter Forest;
- Work with the State of Idaho and the Idaho congressional delegation in developing this plan;
- Submit this plan to the U.S. Congress for authorization of a "Pilot Charter Forest" in Shoshone County;
- Build the plan on the general model of urban charter schools in inner cities;
- Base the plan on the principle of continued federal land ownership;
- Base the plan to decentralize the management of the land areas included within the Charter Forest;
- Specify the plan for the organization and operation of the Charter Forest to include matters such as definition of boundaries, relief from existing federal restrictive laws, regulations and other existing rigid requirements -- including, where Congress makes it possible, such provisions as the National Environmental Policy Act (NEPA), the Forest

and Rangeland Renewable Resources Planning Act (RPA), the National Forest Management Act (NFMA), federal civil service hiring procedures (including GS salary scales), and the Federal Advisory Committee Act (FACA);

- Maintain the principle that the federal government will continue to finance and provide wildfire suppression for the Charter Forest lands;
- Consider permitting the federal government to contract with the Charter Forest for wildfire prevention activities on the forests;
- Establish a means for selecting a Charter Forest board of directors including, but not limited to appointees: from the Shoshone County government, from the County school districts, by the Governor of Idaho, by the U.S. Secretary of Agriculture, by the Chief of the USPS (a local USPS employee), from the local environmental community, and from the local timber industry;
- Provide the means by which the Charter Forest shall be administered and the relationship of the Charter Forest board to the administrative staff;
- Provide the means by which revenues may be obtained, such as sales of timber, and fees for recreational, grazing and other uses;
- Support provision as may be made by Congress for continuing block grant payments from the federal government to the Charter Forest, perhaps for a transitional period of some number of years;
- Develop provision for accepting voluntary contributions from private individuals, groups, and philanthropic organizations that seek to promote ecological, recreational or other Charter Forest compatible functions;
- Commit that the Charter Forest will cover its costs (a balanced budget requirement);
- Explain the means by which net revenues will be distributed, to entities such as schools, and county governments; and
- Make provisions that shall provide systems of accountability such as: an annual budget report available to the public and certified by an outside party (declaring net revenues and confirming that the budget has been balanced), a certification of the environmental sustainability of Charter Forest management as provided by an outside reputable forest certification body, and a provision for public meetings and other public participation opportunities .

DATED this 1ST day of February 2016.

BOARD OF COUNTY COMMISSIONERS

Mike Fitzgerald , Chairman
Jay Huber
Leslee Stanley

APPENDIX C -- FISCAL IMPACTS OF A TRANSFER OF FEDERAL LANDS TO THE STATE OF UTAH

Robert H. Nelson, July 2015

The recently release Report, *An Analysis of a Transfer of Federal Lands to the State of Utah* (henceforth “the Report”), performs a valuable public service by making a wealth of information available concerning the revenues, costs, and other features of federal and state land management in Utah. Much of this information has previously been either difficult or impossible to obtain.

Using the data in the Report, it is now possible to estimate with greater accuracy the fiscal impacts on the State of Utah and on the federal government of a transfer to Utah of BLM lands, Forest Service lands, Fish and Wildlife lands and the Utah portion of the Grand Canyon Recreation Area.

Although not done in the Report, one good method of estimating the fiscal impacts is to assume that the above lands had been transferred to the state of Utah in 2012 for ownership and management commencing in 2013. This method has the advantage that it can be based on actual management outcomes, since the Report provides detailed actual 2013 revenue and cost data that make this feasible. It will be assumed for the purposes of analysis below that such a transfer would involve Utah receiving 100 percent of oil and gas and coal royalties as well as other revenues from mineral rights now federally owned (the State of Utah at present receives a revenue transfer of about 50 percent of federally owned mineral leasing revenues).

2013 Fiscal Impacts

In 2013 the total oil and gas and coal royalties and other mineral revenues on federal lands in Utah was \$308.0 million (see p. 125 of the Report). With the addition of 2013 surface revenues from federal land in Utah of \$23.7 million, the total 2013 revenues from federal lands in Utah under consideration for transfer was \$331.7 million (p. 125).

According to the Report (p. 145), the total federal management costs for 2012 in Utah were as follows: BLM lands (\$123.3 million); Forest Service lands (\$107.3 million); Fish and Wildlife Service lands (\$4.6 million); and Glen Canyon lands (\$16.2 million). If we assume that under a transfer to the State of Utah the management costs in 2013 would be similar to 2012, and that Utah would incur the same costs as the federal government, the estimated total management costs that would be incurred by the State of Utah in 2013 thus would be a total of \$251.4 million for the (hypothetically) transferred lands.

The Report states (p. xxvii) that PILT payments in Utah were \$35.4 million in 2013 and that they would be continued by the State under Utah ownership of previously federal lands. Adding in PILT, we can estimate the grand total of State of Utah land and minerals management costs plus PILT costs in 2013 to be \$286.8 million. This would be the additional cost for the State of Utah of the transfer. This 2013 figure is similar to the estimated grand total given in the Report (p. xxvi, p. 150) for State of Utah land and minerals management and PILT costs in 2017 of \$280 million

Federal 2013 Fiscal Impact -- If the federal lands under consideration had been transferred to Utah in 2012, with Utah administration to begin in 2013, the cost burden on the federal government in 2013 would be reduced by this amount, \$286.8 million, now to be borne by the State of Utah. According to the assumption specified above of a new 100 percent mineral share to Utah, the federal government, however, would lose its existing share of federal mineral revenues in Utah. According to the Report (p. 151), the State of Utah received \$138.3 million as its share of total 2013 mineral revenues on federal lands in Utah of \$308.0. Under federal ownership, the federal government thus would have received the remaining \$169.7 million as its share of federal mineral revenues in 2013 in Utah. Since these revenues would now go to the State of Utah under a hypothetical 2012 transfer, the loss of mineral revenues to the federal government would be equal to this amount, \$169.7.

Summing up the net fiscal impact on the federal government of a land transfer to Utah, the federal government would shed management and PILT costs of \$286.8 million, while it would lose mineral revenues of \$169.7 million. It would also lose the federal share of the 2013 surface revenues of \$23.7 million (some small part of these revenues at present goes to Utah), so the federal share can be estimated to be \$20 million. The cost savings for the federal government in Utah would thus be substantially greater than the lost mineral and surface revenues in Utah. Overall, the net fiscal impact in 2013 of a land transfer to Utah would thus be positive for the federal government, equal to a net fiscal gain of \$ 97.1 million.

State of Utah 2013 Fiscal Impact -- For Utah, the transfer would have the opposite effect, creating a negative fiscal impact in 2013, equal to the same amount, \$97.1 million. The State of Utah would incur new management costs in 2013 of \$286.8 million, while receiving an additional \$169.7 million in mineral revenues in 2013 (the previous federal share). It would also gain \$20 million in surface revenues (again, the previous federal share). In other words, the additional management costs facing Utah in 2013 would exceed the additional minerals and surface revenues coming to the State of Utah by \$97.1 million. This would be the immediate net fiscal burden on the State of Utah in 2013 of a hypothetical federal lands transfer in 2012. As the Report notes, it is still the case that the total in 2013 of all revenues from lands under consideration for transfer to Utah, \$331.7 million, would exceed the total 2013 costs to Utah of land and minerals management plus PILT, equal to \$286.8. Thus, the State of Utah would receive positive net revenues in 2013 from transferred lands of \$44.9 million.

However, at present the State of Utah incurs no direct management costs for BLM and Forest Service lands and minerals while already receiving \$138.3 million as its 2013 share of mineral revenues (plus a small share of the surface revenues). This amount (plus the small surface revenue share) is thus the actual net revenue to the State of Utah in 2013. A transfer of federal lands would therefore have reduced net revenue to the State of Utah in 2013 from slightly more than \$138.3 million to \$44.9 million. Fiscally, in terms of net revenue, Utah would be worse off as a result of the transfer by about \$90.0 million in 2013.

State of Utah 2017 Fiscal Impact – Rather than a hypothetical illustrative calculation for 2013, the Report sought to estimate the actual fiscal impact of a land transfer that is assumed to take effect in 2017. This is a more complicated calculation because, while the federal and state

revenue and cost numbers for 2013 are already known, it then becomes necessary to project them forward to 2017. Most of the revenues and costs in 2017 would probably be similar to 2013. If that were uniformly the case, the fiscal impacts on the State of Utah in 2017 would be similar to those indicated above for 2013.

The Report considers, however, that there is one area of significant uncertainty, the future levels of oil and gas revenues in 2017 from lands transferred to the State of Utah. As a result of this uncertainty, ten oil and gas scenarios were considered and royalty calculations developed for each of them. Assuming high oil and gas prices in 2017, the 2013 assumption above of a 100 percent revenue share to Utah corresponds most closely to scenario 5 of the Report (this “rosy” revenue scenario also includes oil and gas development increases and a royalty increase to 16.7 percent).

According to projections in the Report for scenario 5 (p. 607), a transfer of all federal mineral rights to Utah would result in an increase in the total oil and gas revenues received by Utah from \$146.6 million under federal ownership (Utah’s share under scenario 1, the “baseline” projected 2017 oil and gas situation) to \$340.1 million under the more optimistic assumptions of scenario 5 (in which Utah would now receive a 100 percent royalty share). In other words, 2017 oil and gas royalties to the State of Utah would increase by \$193.5 million from the baseline 2017 calculation (corresponding to the current federal distribution of mineral revenues that Utah would have received even under continuing federal ownership). Other additional Utah revenues would be a total of about \$20 million in grazing fees and other surface land revenues, and about another \$20 million from a shift from 50 percent to the retention by Utah of 100 percent of coal royalties. The grand total of additional revenues coming to Utah in 2017 under the most optimistic scenario 5 therefore would be around \$235 million.

Using the figures in the Report, additional 2017 costs to the State of Utah resulting from the land transfer would be \$280 million. Since the additional new revenues to Utah of \$235 million would not be enough to compensate for the additional new costs to the State of Utah in 2017 of \$280 million, the net fiscal impact on the State of Utah would still be negative, even under this optimistic scenario, a fiscal loss to Utah of about \$45 million. This would be, however, an improvement from the 2013 estimate above of a Utah loss of \$97.1 million, mostly reflecting significant projected increases by 2017 in oil and gas royalties received by the State of Utah. Moreover, the Report projects further rapid increases in oil and gas royalties in future years beyond 2017. If these projections proved to be accurate, it would not be many years before the overall fiscal impact on the State of Utah of a transfer of federal lands to Utah would become positive overall.

These estimates suggest the fiscal importance to the State of Utah of receiving 100 percent of the mineral revenues on transferred lands. That will be among the most important points of discussion in any future negotiations with the federal government. It should be noted that, even with a loss of its existing 50 percent of the mineral revenues, the federal government will still gain fiscally by a transfer of land and mineral management responsibilities and costs to the State of Utah.

Other Considerations

These estimates of fiscal impacts do not in themselves make a case that a transfer of federal lands to the State of Utah would not be beneficial for Utah. Many important impacts of a land transfer cannot be translated into monetary terms as fiscal impacts. These include:

1. The nonmonetary value to the citizens of Utah of a new freedom from federal control over a large part of the land and its uses within the State.
2. The nonmonetary value to the citizens of Utah of potential increases in recreational access and recreational values that are not captured in the collection of any fees or other recreation charges. Although oil and gas and coal yield the highest actual monetary revenues, the nonmonetized values of recreation activities on federal lands in Utah greatly exceed the mineral values of these lands. The Report (p. 271) estimates the annual value (“consumer surplus”) of hunting, fishing, hiking, mountain biking, boating and other recreational activities of Utah residents – very little of this paid for by these residents -- to be \$7 billion. Even a small percentage increase in annual recreational value to Utah residents as a result of a transfer of federal lands to the State of Utah, say 10 percent, would generate (mostly nonmonetized) recreational gains of \$700 million, far more than any State of Utah increased costs of land and minerals management in 2013 or 2017.

A further important consideration is that the fiscal estimates, as developed above and in the Report itself, assume that the State of Utah essentially replicates the federal costs of land management. It is likely, however, that the State of Utah would be able to significantly reduce these costs if the lands were transferred to its ownership. Both the numbers of employees per acre and the management costs per acre are much lower (p. 75) for Utah state trust lands administration by SITLA than for the BLM or Forest Service management of their lands.

Yet another consideration is that, other than oil and gas royalties, the estimates above, as in the Report, assume that the State of Utah would essentially replicate the past and projected federal revenue flows. It is likely that Utah, however, could increase many of these revenue flows above past federal levels. The Report, for example, develops scenarios showing large increases in oil and gas royalties from lands transferred to the State of Utah in 2017 and subsequent years. The 2012 surface revenues on SITLA lands equaled \$7.1 million, or \$2.09 per acre, as compared with 2013 surface revenues of \$0.76 per acre on combined BLM and Forest Service lands in Utah as proposed for transfer.

The Report also assumes that under a transfer scenario the State of Utah will bear all the land and minerals management costs for the transferred lands that are now borne by the federal government. It is likely, however, that at least some current federal management costs would continue to be borne by the federal government. This is plausible, in particular, for federal wildfire suppression and management costs (p. 507) that averaged \$76.7 million per year in Utah over the period 2008-2012 – a significant part of the total federal land management costs in Utah. There would continue to be many federal lands in Utah needing protection from wildfire and thus it would be reasonable for the federal government to continue to pay some share of wildfire suppression costs. Forest fires in the West sometimes cross state boundaries, making wildfire in this respect a federal responsibility. Finally, the increase of wildfires in the west is due in significant part to past federal mismanagement of many western forest lands. There

would be a strong case for the federal government to continue to pay a significant share of the future costs for excess fuels reductions and other land treatment measures in Utah forests that are now required to reduce the risk of future forest fires in Utah.