

Testimony of Randal O'Toole
Cato Institute
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My name is Randal O'Toole and I'm a senior fellow with the Cato Institute specializing in land-use issues, including public lands. I've written a book titled *Reforming the Forest Service* and more than 100 papers on national forest, BLM, and other federal and state land-management agencies.

The recent standoff in my home state of Oregon is merely the latest controversy over how federal lands should be managed. For more than 100 years, debates have raged over such issues as grazing vs. wildlife and timber vs. wilderness, with the parties usually asking Congress to settle the conflicts. All sides have learned that whatever they ask for will be at least partially compromised away, so the demands and rhetoric tend to become highly polarized.

The past few years have also seen a fundamental shift in the political landscape. Ninety percent of the residents of the West live in urban areas occupying just 1 percent of the land, and unlike a four or five decades ago, few those urban residents have jobs that depend on agriculture, logging, or other rural land activities. As a result, most urban residents have what might be called a preservation land ethic, believing the federal lands should be protected for recreation, wildlife, and other natural values.

Just 10 percent of the West's residents live on the other 99 percent of the land, and many of them have what is sometimes called a wise-use land ethic, believing that resources should be used while protecting the long-term productivity of the land. While I disagree with the tactics and much of the rhetoric used by the people who occupied the Malheur Wildlife Refuge, it is easy to see how this group, which has shrunk to a tiny minority of the West's population, might feel besieged by forces beyond their control.

The one thing on which all sides agree is that the federal lands are very valuable; the term "priceless" is often used. But this leads to the second conundrum regarding federal lands: they cost taxpayers more than \$5 billion per year. Moreover, the vast majority of revenues collected from public land users that go to the U.S. Treasury come from coal leases and oil & gas royalties collected on less than 1 percent of the land. That means the other 99 percent costs taxpayers roughly \$10 per acre per year.

Aside from the taxpayers who have to pay this cost, subsidies to the federal land management agencies hurt many people. Private landowners in the West cannot realize the full value of their land because they compete against free or below-cost resources on federal lands. Public land users may think they benefit from getting recreation and other goods and services at little or no cost, but actually they are harmed because low or no fees means there are fewer opportunities for such recreation and other uses.

These two dilemmas—the polarization among interest groups and the staggering cost of managing the lands—are really two sides of the same issue. If the lands were funded out of their own revenues, instead of appropriated funds, and if all users paid fair market value for their uses, then debates over public land uses would be settled in the market place rather than in the political sphere, and taxpayers would no longer have to subsidize the agencies managing the land.

The question is, how do we get there? Some people, including many of my colleagues at the Cato Institute, believe we should privatize most federal lands. But when I look at private land management, I don't see a great deal of improvement.

For example, Congress spends \$20 billion per year subsidizing 350 million acres of croplands, for an average subsidy per acre that is more than five times the subsidy to federal lands. At the same time, most land in urban areas is private, yet many cities—particularly those in coastal states—have such stringent land-use regulations for how those lands can be used that market forces play very little role in housing, transportation, and other important sectors of urban economies.

Other people have suggested that federal lands should be turned over to the states. So I took a close look at more than 150 state land agencies, including agencies managing parks, forests, wildlife refuges, and other state lands. I learned that many of these agencies are no better off than their federal counterparts: depending heavily on taxpayer subsidies, they lurch from crisis to crisis and are subject to numerous debates between resource users.

A few state agencies, however, are well managed and actually earn a profit. The difference is not that they are managed by the states but that they are legally considered *fiduciary trusts*, which means they have trustees managing assets for trust beneficiaries. Fiduciary trusts have centuries of common law history behind them.

Calling something a trust does not make it a fiduciary trust; neither the Social Security Trust Fund nor the Highway Trust Fund are fiduciary trusts. Something becomes a fiduciary trust when someone puts an asset in the care of a trustee to manage on behalf of a beneficiary. In most cases, the state land trusts came about when Congress granted lands to the states for schools.

Common law obligates trust managers to make money for the beneficiaries, to preserve trust assets, and to have a transparent decision-making process. In many if not most cases, state land trusts are funded out of their receipts, not tax dollars.

This means that state land debates are resolved differently from those on federal lands. For example, when an environmental group in Washington state asked the state Department of Natural Resources to stop logging particular state lands because of a conflict with a rare species of wildlife, the department responded that it was obligated to earn revenue for schools, but if the environmentalists were willing to outbid the timber purchasers, the logging would cease. The environmental group raised \$20 million to have the land managed primarily for wildlife. Such a transaction would not be possible on federal lands.

The key to resolving public land debates, then, is not who owns the lands but what systems of governance and incentives guide land managers. Two key reforms would resolve nearly all federal land debates. First, federal land managers should be allowed to charge fair market value for all resources people use and should be funded exclusively out of a share of the receipts they collect. Second, federal lands should be turned into fiduciary trusts, which would fundamentally change the incentives faced by land managers.

There are many options for implementing these reforms, including:

- How big should the trusts be? I recommend 1 million to 5 million acres.
- How would trustees be selected? I suggest they be elected by a “friends” group.
- Who or what would be the trust beneficiaries? I suggest groups protecting non-market resources such as endangered species or historic sites.
- How should receipts be divided among the trusts and the beneficiaries? I suggest 50-50.
- What happens if a trust becomes insolvent? I suggest Congress could either shut down that particular trust or merge it into another one.

I discuss these issues in detail in my Cato paper, *A Matter of Trust: The Case for Turning Federal Lands into Fiduciary Trusts*. I'll be glad to answer any questions you may have.