

Presentation to the  
Federal Land Action Group  
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Holly Fretwell and Shawn Regan had it just right in the title of their March 2015 publication; “Divided Lands.” The total land area of the United States is approximately 2.27 billion acres of which 28% is under the policy and management directives of the federal government. A land ownership map of the USA clearly shows an east-west divide with approximately 4% of the land in the East federally controlled and nearly half of the land in the eleven Western states subject to the interpretation of congressional law by employees of federal agencies. With state revenues falling short of increasing needs and a growing concern over what many perceive to be poor stewardship of valuable natural resources, several Western states have adopted resolutions calling for the transfer of federally controlled land to state ownership. Aside from the anticipated visceral rejection of such a notion on the part of some, there are two very pragmatic questions that must be addressed from the perspective of the states calling for such action. First, what is the probability of generating a net positive income stream sufficiently high to justify the risk that the cost of adequate and scientifically sound landscape management may outstrip revenues generated? Second, is there reason to believe that bringing policy formulation and management decision-making closer to the user will result in greater efficiency as well as employ resource utilization practices that address both environmental as well as revenue generation concerns?

Can Land Transferred to State Control Generate a Net Positive Income Stream?

A number of studies seeking to address these questions have been completed and the results published. A paper entitled “Should Congress Transfer Federal Lands to the States?” was authored by Randal O’Toole and published in July, 1997 as a Policy Analysis by the Cato Institute. Mr. O’Toole stated that there was general agreement the federal lands are badly managed with agencies at that time spending \$5 billion more than the revenues received administering valuable natural resources that ought to produce huge profits for the benefit of the American tax payer. In his analysis he concluded that there is general agreement that the condition of the lands managed by federal agencies is poor. However, there is considerable disagreement as to what should be done about it. Those that favor the

transfer of federal land to the states argue that the best decisions are made by those that have a stake in the outcome and are closest in proximity to the problem. Opponents argue that community-based decisions will ignore environmental concerns and be solely driven by revenues generated and land transfers will ultimately result in mass privatization and closed access. In summary, Mr. O'Toole states that the history of land acquisition by the states does not show a propensity to convert holdings to private ownership. If anything, states have increased their holdings. In regard to fiscal responsibility and efficiency, Mr. O'Toole gathered revenue and expense data as well as explanations of budgetary processes from 150 state resource agencies across the country. After analyzing this data, he concluded that state agencies in general are not incentivized to return a profit and therefore also lose money. A notable exception is profit generated from lands managed as a public trust. Opponents to any land transfer proposal interpret such moves as nothing more than a "land grab" by development interests that place the acquisition of profits above legitimate environmental concerns. Mr. O'Toole cites that a different interpretation might be that such action represents a congressional admission that centralized micromanagement of federal lands and resource agency budgets has failed. At least some proponents of land transfers seek to reduce if not eliminate congressional interference by politicians who are invariably tempted to manipulate federal resources in response to pressure from special interests. A transfer of land from federal to state ownership does not automatically result in more prudent and fiscally responsible management but rather moves the political manipulations closer to home. As a counter to this reality, Mr. O'Toole points out the frequent success of the trust model in promoting fiscal and environmental responsibility and insulating resource management decision from political action. He cites four critical elements that are embedded in successful trusts:

1. There must be a sufficient revenue stream to beneficiaries such as public schools, universities, and hospitals that oversight of management decisions and business practices is a natural outcome.
2. Trust managers must be funded out of their net revenue generation making them a de facto beneficiary.
3. Trust managers must be allowed to seek a fair market value for the resources they manage.
4. A share of the trust proceeds must be dedicated to protect biodiversity and endangered species.

In conclusion, Mr. O'Toole states that adopting the trust framework, while not perfect, would do far more than simply transferring land from one political system to another to improve the fiscal and environmental management of federally controlled land.

In their study entitled “Divided Lands”, Holly Fretwell and Shawn Regan examined the revenues and expenditure associated with federal land management and compared them with state trust lands in Montana, Idaho, New Mexico and Arizona (PERC Public Lands Report, March 2015). They point out that local concerns over federal land management including restrictions on natural resource development, poor land stewardship, limitations on access and low financial returns have fueled recent requests from several Western states to transfer much of the land under federal control to the states. The results of their study support the conclusions reached previously by Randal O’Toole. After analysis of the data collected, they found that state trust agencies produce far greater financial returns from land management than federal land agencies. In fact the federal government most often loses money in the amount of nearly \$2 billion per year managing valuable natural resources. In contrast the four western states examined earn an average of \$14.51 for every dollar spent managing state trust lands. During the time period of the study the federal government lost money only returning 73 cents for every dollar spent. Additionally, federal agencies incurred expenditures more than six times higher per acre than state expenditures while state trust land employees produced revenues ten times higher per full-time employee than federal land agency employees. One of the key distinguishing characteristics of trust lands is the mandate to generate a financial return for the benefit of defined beneficiaries. The direct connection between earnings and beneficiaries is an important feature of state trust land management that distinguishes these lands from federal lands. In contrast federal land management is based on legislative rule, budget appropriations, and a public input process. Federal agencies are not required to generate revenues to cover or exceed their costs and are provided no incentive to do so. As an example, the combination of the US Forest Service and the Bureau of Land Management manages more than 100 million acres of timberland in the USA. Yet from 2009 to 2013 both agencies lost money on this vast timber resource together earning less than 40 cents for every dollar spent. This is in sharp contrast to the state trust lands that over the same time period returned an average of \$2.51 for every management dollar spent. What accounts for this striking difference? The high costs of federal management are largely the result of multiple layers of law requiring multiple layers of planning and the examination of multiple courses of action with an evaluation of multiple outcomes much of which requires completion of public input processes and multiple impact evaluations. A 2002 Forest Service Report entitled “The Process Predicament” puts things in perspective:

“The Forest Service is so busy meeting procedural requirements, such as preparing voluminous plans, studies, and associated documentation, that it has trouble fulfilling its historic mission to sustain the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of present and future generations.”

Like the federal government, the resource managers responsible for state trust lands are also required to complete environmental assessments, create long range plans, and provide for public input, however they are able to complete these responsibilities at far less cost and far less conflict. While it is true that the federal government returns to states and counties a share of the revenues generated, this must be put in perspective with the resource base generating these revenues. For example, Arizona received about \$50 million dollars a year from a federal land base that occupied about 42% of the state. During this time period, 2009 to 2013, state trust lands returned approximately \$106 million per year to designated beneficiaries from a land base that occupied about 13% of the state. While conversion of federal acres to state trust land management appears to offer an attractive alternative to retention in federal ownership, there are significant effects on current land management practices and existing public land users that must be understood and accepted. These may include higher lease rates based on fair market value, increased leasing competition, the possibility of conservation leasing, and modest fees for access and recreation use. The authors conclude by stating “State trust lands offer compelling evidence that our federal lands are in need of reform.” “Regardless of whether federal lands remain in federal ownership or are transferred to the states we can do better.”

Other studies have examined the possibility of federal land transfers for specific states. These range from a “back of the napkin” analysis in Montana that estimated federal land transfers would cost Montana citizens up to \$500 million per year, to an in depth study in Utah that brought together a task force from three state universities and a report that numbered 748 pages. The Utah study looks at the costs and potential revenue generation if 31.2 million acres of federally controlled land was transferred to the state. In summary the task force estimated that the cost to the citizens of Utah to manage these lands would be \$280 million in 2017 when the transfer would take place. Set against this cost would be substantial revenues from fees, leases, and royalties. In, 2013 the task force reported that total revenues from public lands was \$331.7 million. The researchers concluded that the land transfer could be profitable for Utah if oil and gas prices remained high and the state pursued an aggressive mineral lease program including the capture of 100% of oil and gas fees and royalties. The study results also revealed that there is an economic drag when 40 to 45% of the land in a county is controlled by the federal government. Twenty of Utah’s 29 counties exceed this threshold.

In 2013 the Nevada legislature commissioned the Land Management Task Force to study the costs and revenues associated with transferring federal lands to the state and to propose a plan for the administration and management of any lands transferred. Additionally the Task Force was tasked with recommending specific tracts of land that should be included in any transfer. Like all such studies, areas designated by the US Congress for special management such as wilderness areas, wildlife

refuges, and National Parks were off limits. Using financial data generated from trust lands in Arizona, Idaho, New Mexico, and Utah during the years 2008 through 2012 the Task Force concluded that Nevada could achieve net revenues from similarly managed trust lands in a range from \$7.78 to \$28.59 per acre. The task force recommended a phased transfer process with the initial phase consisting of 7.2 million acres. From this Phase I transfer, Nevada might be capable of realizing net revenues ranging from \$56 to \$206 million annually. The Task Force further recommended that the transferred lands be held by the State of Nevada in trust for specific beneficiaries and be managed for net revenue generation taking into consideration environmental health, function, productivity, and sustainability.

While it does appear that the transfer of federal land to state control might result in a positive net revenue return to the receiving state and that the public land trust model has numerous advantages that must be seriously considered, there is a cautionary note that runs through all of the studies and conclusions. That 900 pound gorilla is the cost of wildfire suppression. By every estimation wildfires are going to become more numerous, burn with greater intensity, and require extraordinary effort to achieve the level of human, structure, and resource protection deemed necessary. Federal firefighting costs have continued to steadily escalate reaching a level of \$1.7 billion in 2013 for control of fire that burned over 4 million acres. At the current rate of increase the day may soon arrive when the entire US Forest Service budget will be consumed by firefighting costs. Unlike the federal government, states cannot simply borrow more money to cover unexpected extraordinary costs associated with something like a severe fire season. Therefore, in any plan to assume fire protection responsibilities that accompany the transfer of federal land, special and thoughtful attention must be given as to how fire control and fire protection costs can be brought to manageable levels. Equipping and training more local initial attack personnel, pretreating particularly vulnerable landscapes, securing mutual aid agreements, and providing sustainable funding for the creation of statewide organizations of fire adapted communities must all be part of the wildfire threat reduction matrix that will cage the gorilla.

#### What About the Belief that People close to the Resource Will Make Better Decisions?

Among proponents of federal land transfer is the belief that better decisions regarding resource utilization can be made by those most affected and in closest proximity to the land, the resource, and the utilization practices being employed. One rather prominent example of what some call community-based land use decision-making is the experience of the Quincy Library Group (QLG). In the early 1990's a timber industry forester, a county supervisor, and an environmental attorney began private discussions recognizing that the "timber wars" in their region of Northern California were not serving a useful purpose for anyone. Tired of years of litigation and watching the area's once healthy and

managed forests become overgrown and diseased they began to meet in the Quincy, California library, and talk. Ultimately the group was joined by others until about 30 dedicated citizens were meeting on a regular basis. In 1993 the QLG adopted a proposed plan for the management of forests on two national forests and a portion of a third. The plan was entitled The Community Stability Proposal which ultimately found its way into a federal law entitled the Herger-Feinstein Quincy Library Group Forest Recovery Act. The QLG proposal set forth a suite of forest restoration treatments to simultaneously 1) improve the economic stability of the local communities, 2) reduce the size and severity of wildfires, 3) protect the habitat for the California spotted owl, and 4) improve the condition of water resources. In 2013 an independent science panel assembled by the Pinchot Institute for Conservation evaluated the success of this community-based pilot project in achieving the goals established. While improvements were noted in reducing the threat of wildfire, protecting sensitive habitats, reducing environmental impacts, and improving the forest condition, the pace and scale of treatments did not meet the expectations of the HFQLG Act nor the goals of the Community Stability Proposal. As a result the desired outcome of stabilizing the local economies was not achieved. In assessing the cause of the shortfall, the investigating panel concluded that variability in the willingness and ability of Forest Service employees to implement legislative directives coupled with an unwillingness of administrators and senior staff to adjust priorities and work flow was a major contributor. And, why did this happen? Appeals and litigation were important factors in slowing down or blocking project implementation. Large projects were shelved and others underwent major modifications to avoid being challenged. These changes seriously reduced the economic viability of the projects resulting in a 60% decline in forest products employment. Even though a community-based group developed a supportable and scientifically sound approach to the utilization and management of local, federally controlled natural resources, outside forces stymied the implementation of needed projects utilizing legal avenues available to them through the federal law. Land and resource management from the bench has had a debilitating effect on the morale of agency personnel and instituted a culture that favors modification of needed treatment to avoid legal challenge. Once again the land trust model for the transfer of federal land ownership to state control may well have changed the outcome of the QLG Community Stability Proposal.

One aspect of the desirability of local influence on land management decisions that is rarely if ever mentioned is the power of site specific, locally focused scientific inquiry. The desirability of science based decisions is replete through volumes of plans, assessments, legal challenges, and speeches from officials of every strip. Yet, funding to support critically needed research related to high priority Western states issues such as wildfire and water are seriously lacking. Coupled with the need for research is the companion requirement that research results be translated into practical applicable land

use activities. A recent example is the potential for utilizing late season cattle grazing to reduce the volume of the invasive, highly flammable annual grass known as cheat grass. While this management approach to reducing hazardous fuel shows promise, there is simply no funding available to support the expansion of the research needed to establish proof of concept. This is just one example among hundreds that illustrate the mission focused problem solving capability within the Agriculture Experiment Stations and their sister organization Cooperative Extension and the need for additional funding support. While both of these organizations receive federal support through the US Department of Agriculture, the decades old distribution formula is grounded in private land farming. Once again, the high proportion of Western land that resides in public ownership is a liability. At the same time, to the extent that funding permits, Experiment Station and Extension professionals carry out research and education projects to address the problems that arise on federally controlled lands. Given the struggles with the federal budget, establishing specific lines of funding within USDA or the federal land management agencies to address critically important Western states research and public education needs is highly unlikely. However, the judicious disposal of federal land through sale does represent a funding source with the potential to provide considerable assistance. The Western Region's agriculture college advocacy organization known as the Council for Agriculture Research, Extension and Teaching has fully endorsed this approach to enhanced funding. As explained in the brief attachment, the Southern Nevada Public Land Management Act has already established the precedent of federal land sales to support specific projects deemed to be in the public interest. An expansion of the long established principle of using disposable federal land to provide the financial footing for needed education and research could result in the science generated information that informs and legitimizes local decisions regarding land resource utilization.

## The Morrill Land Grant College Act of 1862 Revisited

The Western Region's CARET delegates fully understand the need for additional, new, and reliable sources of funding to advance the Western Region's agriculture enterprise through increased research, extension, and teaching efforts in our Colleges of Agriculture. By unanimous agreement, the Western Region's CARET delegates respectfully request the Administrative Heads Section to give serious consideration to using the principle of public land disposal as set forth in the Morrill Act as the basis for securing the additional funding required.

Rationale: In addition to the increasing gap between needs and available funding, Western CARET supports the initiation of this inquiry because:

- (1) The Bureau of Land Management and the US Forest Service have extensive landownership in small and large parcels interspersed with or adjacent to private land throughout the Western states, making many of these parcels difficult to manage and more appropriate for disposal.
- (2) Responsible and orderly community development as well as a more diverse and secure economic base requires enhanced funding for advances in research, extension education and career preparation, that can be achieved through the sale of certain Federal lands based on recommendations made by local government and the public.
- (3) Selling these lands will promote growth and expansions in areas poised for an expanding economy but are hampered by Federal control of the most promising parcels.
- (4) The infusion of funding to expand and promote needed research, extension education, and teaching in agriculture, science, engineering, and technology is required to achieve food security for our nation, enhance economic development and recovery, help stave off the potential of wide-scale famine for an expanding world population, and ensure a strong economic footing and competitive edge for future generations of Americans.

### **The Morrill Act of 1862**

This act established the principle of using the disposal of public land to generate the funds necessary to establish colleges for the benefit of agriculture and the mechanic arts. Under the provisions of this Act, each state received an apportionment of 30,000 acres of Federal land for each senator and representative in Congress. The money generated from the sale of this land was to be placed in an endowment and invested in "*stocks of the United States or some other safe stocks*" and constituted a perpetual fund the capital of which would remain undiminished. The interest from the endowed funds was to be appropriated by the states to support and maintain at least one college where the leading object would be, "*without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts.*" The purpose was to promote the "*liberal and practical education of the industrial classes in the several pursuits and professions in life.*"

### **Precedent – The Southern Nevada Public Land Management Act (SNPLMA)**

SNPLMA became law in October 1998. It allows the Bureau of Land Management (BLM) to sell public land within a specific boundary around Las Vegas, Nevada. The revenue derived from land sales is split between the State of Nevada General Education fund (5%), the Southern Nevada Water Authority (10%), and a special account available to the Secretary of Interior for:

- Parks, Trails, and Natural Areas
- Capital Improvements
- Conservation Initiatives
- Multi-Species Habitat Conservation Plan
- Environmentally Sensitive Land Acquisitions
- Hazardous Fuels Reduction and Wildfire Prevention
- Eastern Nevada Landscape Restoration Project
- Lake Tahoe Restoration Projects

Initially expenditure of the generated funds was confined to projects in Clark County. Later amendments expanded the areas within the State where projects could be proposed and funded. The BLM, the lead Federal agency in implementing SNPLMA, joined with state, local, and other Federal agencies to develop a unique partnership. These partners work together to facilitate the sale of Federal land as directed by Congress and to allocate and manage the revenue in the public's best interest. Funding for specific projects is obtained through a proposal submission and approval process administered by the BLM.

From 1999 through 2012 the BLM disposed of 40,356 acres receiving gross sale revenues of approximately \$3 billion. (SNPLMA Annual Report for FY 2012). More recent data shows that total land sales have generated over \$3.4 billion and funded over 1200 projects.