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My name is Robert H. Nelson. I am a professor in the School of Public Policy at the University of Maryland specializing in land and environmental policy. 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 Bureau of Land Management (BLM).

I am pleased to be able to meet with the members of Congress who have joined together in the Federal Lands Action Group to discuss such an important subject as the future of the public lands. The public lands have played a large role in the history of the United States, dating to the Louisiana Purchase, the Homestead Act and the railroad land grants in the nineteenth century and then to the creation of the Forest Service, the Minerals Leasing Act, and the Taylor Grazing Act and Grazing Service (a forerunner to the BLM) in the first half of the twentieth century. Early in the twenty-first century, the United States may now be on the verge of another historic reconsideration of the public land system.

### Overview

The federal government owns large parts of the forests, deserts and other rural areas of the American West – in total around half of all the land in the Rocky Mountain and Pacific Coast states. This pervasive federal presence is a product of policies championed at the turn of the 20th century.

Throughout the nineteenth century, the federal government aggressively disposed of its land holdings to private landowners and state governments, seeking to advance economic development and the pursuit of "manifest destiny." In the period from 1890 to 1920, however, American Progressives successfully argued that the remaining public lands would be more expertly managed in federal hands. The Forest Service, for example, was created by President Theodore Roosevelt in 1905.

After more than 100 years of experience, we now know otherwise. Instead of much greater efficiency -- progressivism is often described by historians as the "gospel of efficiency" -- federal land management turned out to be wasteful – typical of many government-owned enterprises around the world over the course of the 20th century – as well as commonly detrimental to the land itself.

Federal "multiple-use" lands (excluding national parks and other special use lands) averaged \$7.2 billion in costs per year from 2009 to 2013, according to a 2015 report from the Property and Environmental Research Center (PERC). At the same time they brought in just \$5.3 billion in revenues (mostly royalties from oil, gas and coal leases in a few energy rich western states). Over the same period, the report finds, similar state-owned lands returned \$14.5 for every dollar spent on management while achieving comparable or better land results in areas such as the use of forest and rangeland resources.

There is today agreement on a bipartisan basis that the management of federal lands by the Forest Service and BLM exhibits many of the dysfunctions that have afflicted other policy and

management responsibilities at the federal level as well. Because federal lands play such a large part in the governance and economics of Western states, the wider federal dysfunctions disproportionately affect these states. One option therefore would be to remove significant areas of public lands from the traditional system of federal ownership and management.

Even if they wanted to, it would be difficult for federal land managers today to bring whatever expert skills they possess to bear. Over the years, layer upon layer of requirements for environmental impact statements, comprehensive land use plans and other regulatory and procedural steps have created a suffocating burden of red tape. In 2002 in *The Process Predicament*, the US Forest Service begged for relief, declaring that “unfortunately, the Forest Service operates within a statutory, regulatory and administrative framework that has kept the agency from affectively addressing rapid declines in forest health.”

No relief was forthcoming, however, as the forest health problems continued to mount. Poorly managed western forests, for example, became overstocked with large volumes of “excess fuels” that from the 1980s onwards increasingly erupted into large, environmentally damaging conflagrations with the need then to spend often billions of federal dollars annually for forest fire suppression. Wildfire costs have increasingly dominated the budget of the Forest Service, crowding out other areas of expenditure. From 2000 to 2013, example, the Forest Service spent \$24 billion in dealing with wildfire problems created in significant part by its own past forest management failures.

Beyond the executive branch, federal courts have also become heavily involved in public land decisions, drastically increasing their role since the 1970s and now often dictating even local land management details. The great extent of disruptive and time consuming litigation has been a leading obstacle to more effective federal management of the public lands.

The United States has been experiencing an energy revolution in recent years owing to new methods of extracting oil and gas from shale deposits. Because of the cumbersome federal land bureaucracy, the lack of incentives and other constraints, however, this revolution has largely bypassed the public lands.

Thomas Merrill, a professor at Columbia law school, noted in the *Case Western Reserve Law Review* in 2013 that in “looking at a map of the United States where fracking activity is underway, and comparing it to a map showing areas of land and associated mineral rights that are controlled by the federal government,” one finds that “there is very little overlap” -- and not due to any lack of oil and gas shale resources in the West.

None of this is news, admittedly. As I can say from personal experience, at public land conferences since the early 1990s, economists, political scientists, retired federal managers and other professionals have lamented the failing public land system. Yet, the problems have persisted and even worsened.

The policy and management gridlock is also, however, partly a result of the deep ambivalence felt by many Westerners about reducing the federal presence. The large flows of “wasted” federal money from a national perspective also represent an important economic asset for the

rural West, paid for by national taxpayers. In their attitudes towards the public lands, it has been said with considerable truth that westerners historically have wanted the federal government to “go away and give us more money.” If they want real change on the public lands, westerners will have to rethink this common attitude of the past.

The federal government, whatever many westerners might have hoped, has not gone away. With the level of Western frustration growing, and the federal government increasingly strapped for funds to send to the West, the pressures for change have mounted in recent years. Some of the Western states have begun to explore with renewed interest the possibility of a transfer of large areas of the public lands from federal to state government ownership.

### Shifting Public Land Paradigms

Part of the dysfunctions of current public land management have intellectual roots, as the shifting management philosophies and understandings of the purposes of the public lands have today resulted in a state of deep confusion. In the nineteenth century, as noted, the goal was to dispose of the federal lands as a source of revenue and to promote the social and economic development of the western territories and later states. The pursuit of this goal eventually resulted in the transfer of 1.3 billion acres of federal land to private parties and to the states, as seen today in the land tenure patterns of Midwestern states such as Illinois, Missouri, Iowa and the Dakotas. The states themselves received a total of 328 million of these acres.

In the progressive era around the beginning of the twentieth century, the federal goal shifted to retaining the large remaining areas of public lands with the purpose to more efficiently and effectively manage them in the service of the economic progress of the nation and the overall public interest. As it was now believed, this could best be accomplished by keeping the public forests, rangelands and other lands in federal ownership where the federal government would be most capable of assembling and applying the skills of leading professional experts to their management. At the time, similar ideas were gaining favor in Europe under the banner of various forms of socialist thought. The public lands were thus to be guided by an economically based management philosophy of “multiple use and sustained yield” of lands that were seen as a “natural resource” for human economic progress and overall national benefit.

By the 1960s and 1970s, there was evidence on various fronts that this progressive-era vision was failing. Partly owing to the politicization of the management of public lands, leading resource economists such as Marion Clawson sharply criticized the economic inefficiency of federal land management. Another concern was that, mostly trained to maximize the direct economic uses of the lands, the government experts were paying insufficient attention, as many people thought, to the environmental amenities of the lands. Others pressed for a more democratic system of decision making that would include a greater role for public participation. Because science and policy were inextricably mixed, it seemingly would not be possible to achieve the progressive-era goal of a strictly “scientific management” of the public lands.

Responding to such public concerns, Congress in the 1970s enacted a host of major public land laws including the Resources Planning Act of 1974, the National Forest Management Act of 1976 and the Federal Land Policy and Management Act of 1976. At the heart of the new

legislation were requirements for more effective systems of land use planning for the national forests and the BLM lands, including both the writing of formal written comprehensive land use plans and environmental impact statements for individual forests.

The Congress failed, however, to resolve the large tensions between the still influential progressive ideal of management by government experts and a new post-1960s concern to give non-government organizations and popular democracy a much larger role in management decisions. Federal land use plans soon became bogged down in public controversy and litigation. As they emerged after many years frequently in their preparation, they typically still failed to provide an adequate basis for decision making to address the most pressing public land issues.

As has been the case in many areas of American governance in recent decades, the federal judiciary stepped in to fill a vacuum. This increasing judicial role was a major factor in the third radical shift in the goals of public land management, the move to a new philosophy of “ecosystem management” focused on environmental goals such as biodiversity and protecting the “intrinsic value” of wild nature, replacing the previous longstanding management philosophy of multiple use and sustained yield for more direct human purposes.

This shift occurred after 1990 and received a large push from the spotted owl controversy in the Pacific Northwest and the large changes in land management that occurred there on the national forests and O&C lands under BLM management. As timber harvesting on public lands was drastically reduced across the West, the economic mainstay of many rural communities collapsed. In the future the cutting of timber on public lands would typically have to be justified as serving wildfire prevention or ecological purposes, rather than production of wood to meet the needs of the nation..

Ecosystem management was itself troubled, however, by an inability to resolve fundamental tensions between the widely held environmental goal to preserve nature in a wild state and continuing strong public demands to put the lands to good human use. Moreover, leading students of environmental thought such as William Cronon in the mid 1990s and Emma Marris more recently pointed to the troublesome philosophical underpinnings of even the very basic concept of “wild” nature. Long ago, Native Americans often actively managed their natural surroundings. With invasive species, many other pervasive human impacts on nature, climate change and other developments, the wilderness ideal of an area “untrammeled by man” has become increasingly problematic as a conceptual guide.

In the resulting intellectual and management confusions, words such as “dysfunctional” were increasingly being heard from the 1990s onwards. The strong criticisms in those days were made on a bi-partisan basis including Frank Gregg, the former director of the BLM in the Carter administration, Jack Thomas, the first chief of the Forest Service in the Clinton administration, and Daniel Kemmis, a prominent western public intellectual who had also served as a Democratic Party leader at the state level in Montana.

Gregg in 1992 recalled the enthusiasm of the 1970s with its high hopes for a new era in public land management based on the recently enacted public land laws. Unfortunately, as he wrote

then, “we have now amassed considerable history participating in and judging the revised system, and we agree that we are in another generation of dissatisfaction,” characterized by a decision making process of common “gridlock” and “polarization”—sometimes less economically and environmentally rational in its outcomes than the old public land system it displaced in the 1970s.

Congress, however, failed to address the large management problems on the public lands that were becoming widely evident by the 1990s. No major public land legislation has passed since the Alaska National Interests Land Conservation Act in 1980. The courts continued to play an active role but the slow and cumbersome judicial procedures often merely aggravated the public land management crisis.

In an October 2013 report, Professor Jay O’Laughlin, then Professor and Director of the College of Natural Resources Policy Analysis Group at the University of Idaho, wrote that “large areas of federal lands in the western states are currently at high risk of severe wildfire and have many insect and disease problems, indicating a significant decline in forest health and resilience,” recommending more active management measures but wondering how they might be accomplished under the existing public land management regime.

### Classifying the Public Lands

The creation in 2015 of the Federal Land Action Group offers an opportunity to revisit the historic federal-state relationship for the management of the public lands in the West. For this purpose, the public lands might be divided into three classifications. Some public lands are of clear national significance where a large federal role is most appropriate. I would estimate these as probably no more than 20 percent of the national forests and BLM lands. A much larger area of “ordinary” public lands is of primarily state and local significance, most heavily used by hikers, ranchers, hunters and other people from the surrounding area for dispersed recreation. These are the lands for which a basic rethinking of the federal-state relationship is most desirable.

On the western public lands of mainly state and local significance, the types of decisions made are those that elsewhere in the United States would be made by state and local governments. It is difficult to understand why the federal government is still spending its scarce resources to decide over hundreds of millions of acres the times and places where federally determined numbers of cows, owned by local ranchers, can be grazed. The federal administrative costs of all this greatly exceed any federal revenues returned by grazing fees. The federal government is in effect the local zoning planning authority and zoning appeals board of the rural West.

Other public lands serve mainly commercial purposes such as the 57 million acres of federal mineral rights below privately owned surface lands (about 2.5 percent of the United States). It is again difficult to understand why these subsurface mineral rights are still retained in federal ownership when the federal government lacks authority for their surface management. Indeed, they are today leading candidates for outright privatization.

The O&C lands in Oregon, owing to their unique history, were long managed by BLM for mainly timber harvesting purposes, providing large revenue streams to local counties that are now much missed. These and some of the other commercially most valuable public lands might be privatized outright -- or in the case of the O&C lands transferred to the local counties. This might also include an expanded program of land sales for those current public lands with a high private value for real estate and other developmental purposes, including particularly high quality sites for more intensive recreational development.

For public lands that are of greatest value for dispersed recreational use and lack outstanding national features, a transfer to long term state ownership may be the preferred option. It is the states, working with their local governments, that are better positioned to make the changes in public land management that are now so greatly needed. In recent years, it has often been state governments, not the federal government, that have taken the key leadership roles in American government efforts to deal with pressing domestic policy problems and issues.

With a greater state role, there would likely be differences in land management approaches from one state to another, appropriately reflecting their diverse state circumstances, as compared with the current one-size-fits-all federal system. States could also learn from a trial and error process if each of them had a new freedom of land management experimentation -- the old idea of laboratories of democracy.

It is a little known fact that one of the states with the highest percentages of state-owned land is New York State. In 1894, New York State exercised its management prerogatives to set aside Adirondack Park, now equal to 6 million acres, 2.6 million owned by the state, setting a management policy to keep the state lands "forever wild" long before the wilderness concept was introduced to the federal lands. Other eastern states with large acreages of state owned land include New Jersey (16 percent), Florida (14 percent) and Pennsylvania (13 percent), more than any western state except Alaska (29 percent). It is ironic that eastern states have often been among the most reluctant to extend a similar prerogative to western states to develop their own state land management strategies to meet their own particular western public land circumstances.

The creation of the existing public land system 100 years ago was predicated on an assumption that clear goals and policies could be established for the whole nation, including the uses of the public lands. That was the time of the American "melting pot" when common national values were taken for granted. Today, however, the American nation has become more diverse. When core values are being contested, it is more difficult to establish nationwide goals and policies, an important contributing factor to the large current problems of federal land management. Devolution of greater administrative responsibilities to state-level bodies would allow for greater diversity in land use goals, policies and management methods, reflecting the actual greater diversity of the United States at present, now a nation of more than 300 million people.

Congress should thus act to create a statutory basis for opening up a much wider range of devolved public land management alternatives in the states and to set the terms for subsequent oversight of these alternatives as they are put into practice. There might be opportunities not only for state governments but also local governments and local non-governmental groups to

propose innovative devolved land management strategies. Some but not necessarily all of these alternatives would involve the transfer of public land areas to non-federal ownership.

### Fiscal Impacts of a Transfer of “Ordinary” Federal Lands to the States -- The Case of Utah

Although there is a long history of western discontent with federal land management, the citizens of western states have been well short of having a unanimous agreement about the desirability of a transfer of public lands to each state. Partly, it is simply a fear of the unknown when such a sharp departure from longstanding practice is being contemplated in an area as fundamentally important as the system of land ownership. Many people in the states are deeply invested in existing land tenure patterns that are tied at least in part to the current details of federal land ownership.

There are also specific questions such as the effects of a land transfer to the states on the current federal grazing permits of ranchers, the status of existing federal mining claims, the degree of continuing public recreational access to lands newly transferred to the state, impacts on hunting opportunities, and so on and so forth. Another large unknown has been the fiscal impact on the state of taking ownership of federal lands. Many westerners historically have been concerned that resulting new management costs at the state level might be so large as to be fiscally untenable for the state to handle.

Before a large transfer of public lands to a western state is undertaken, citizens of western states should reasonably expect that such questions will be carefully explored and at least tentative answers provided. It is fair to say that no western state has yet done that at a full level of detail. The State of Utah, however, took a large step forward with its November 2014 report, *An Analysis of a Transfer of Federal Lands to the State of Utah* (henceforth “the Report”). More than 700 pages long, it 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 and the potential impacts on the state of a large land transfer. Much of the information in the Report has previously been either difficult or impossible to obtain.

Although not included in the Report itself, using the large body of data amassed in the Report, it is now possible to estimate with greater accuracy the 2013 potential fiscal impacts on the State of Utah and on the federal government that would have resulted from a 2012 transfer to Utah of BLM lands, Forest Service lands, Fish and Wildlife lands and the Utah portion of the Grand Canyon Recreation Area -- the areas of federal land proposed by the Utah legislature in 2012 for a large scale transfer to the state. Examining the potential fiscal impacts for 2013 has the advantage that it can be based on actual historic revenue and cost outcomes, since the Report provides detailed actual 2012 management costs and 2013 revenue data that make this feasible.

In assessing Utah fiscal impacts, a critical question will be the future disposition of the Utah oil and gas and coal royalties and other revenues from federal mineral leases. At present the federal government and the state roughly share the revenues 50/50. Under a full transfer of ownership, however, it might be assumed that Utah would now receive 100 percent of the mineral revenues

from oil and gas and coal leases that would now be state owned. (This would of course be a subject of possible negotiation between the federal government and the state.)

### *2013 Federal and State of Utah Fiscal Impacts*

The full details of the fiscal impacts will be important to Utah and other western states in exploring the implications for them of a federal land transfer. The Utah calculations also shed a useful light on the situation of other western states. In 2013, as the Utah Report reveals, the total oil and gas and coal royalties and other federal mineral revenues on public lands in Utah were \$308.0 million. With the addition of 2013 surface revenues from federal land in Utah of \$23.7 million, the total 2013 revenues from public lands in Utah proposed for transfer was \$331.7 million.

According to the Report, the total federal management costs for 2012 in Utah for these lands 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). Based on these actual 2012 federal management costs, and assuming that Utah would have incurred the same management costs in 2013 as the federal government in 2012, the total new land management costs that would be incurred by the State of Utah in 2013 as a result of a transfer of federal land responsibilities would be a total of \$251.4 million.

The Report states that PILT payments in Utah were \$35.4 million in 2013 and that they would be continued by the State under Utah ownership. Adding in PILT, we can estimate the grand total of State of Utah new land and minerals management costs plus PILT costs in 2013 to be \$286.8 million under the land transfer proposed by the state legislature in 2012.

On the revenue side, assuming that Utah now receives 100 percent of former federal mineral leasing revenues, it would receive an additional \$169.7 million in mineral leasing revenues in 2013 (equal to the previous federal share). It would also gain \$20 million in surface revenues (again, the previous federal revenues). In net terms, the additional management costs facing Utah in 2013 of \$286.8 would have exceed the additional minerals and surface revenues coming to the State of Utah by \$97.1 million. This would be the additional fiscal burden on the State of Utah in 2013 from the proposed land transfer.

On the federal side, if the federal lands had been transferred to Utah in 2012, with Utah administration to begin in 2013, the management cost burden on the federal government in 2013 would have been reduced by \$286.8 million, now to be borne by the State of Utah. The federal government, however, would lose its existing share of federal mineral revenues in Utah. According to the Report, the State of Utah received \$138.3 million and the federal government received \$169.7 million as their shares of the total 2013 revenues from federal mineral leases in Utah of \$308.0. The federal government loss of mineral revenues thus would be \$169.7 million under a transfer.

Summing up the net 2013 fiscal impact on the federal government of the proposed 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 current 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 management 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. To simplify, we might say a federal fiscal gain in Utah would have been about \$100 million in 2013.

### *Other Considerations*

Such fiscal impacts do not in themselves make a case that a transfer of federal lands to the State of Utah, as proposed by the legislature in 2012, would not be beneficial for Utah. Many important impacts of a land transfer cannot be translated into monetary terms such 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. Some might say that \$100 million a year is a cheap price for Utah to gain its freedom.
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 federal oil and gas and coal leases 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 November 2014 Report 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.
3. A further important consideration is that the fiscal estimates, as used above and given in the Report itself, assume that the State of Utah essentially replicates the federal revenues and costs of land management. It is likely, however, that the State of Utah would be able to significantly increase these revenues and reduce these costs if the lands were transferred to its state ownership. Both the numbers of employees per acre and the management costs per acre are much lower at present for Utah state trust lands administration than for the BLM or Forest Service management of federal lands.
4. It is also likely that Utah could increase many 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 later years. The 2012 surface revenues on state managed 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.

5. 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 costs 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 prevention and 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 wildfire in Utah.

#### *An Estimate for All Western States*

The total federal mineral leasing revenues for each of the western states (AL, AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY) are readily available up to 2014 from the Interior Department. To my knowledge, however, other western states besides Utah do not have available the level of detail concerning federal management costs within the state to make similar calculations as in Utah. But it is possible to extrapolate on the basis of the BLM and Forest Service management costs in Utah to the West as a whole.

Utah has 5.0 percent of the total Forest Service lands in the western states. If the Utah management costs per acre were the same in other states, the total western state management costs for the Forest Service would have been \$2.15 billion in 2012. Utah has 9.2 percent of the total BLM lands in the western states, similarly implying that total western state management costs for the BLM were \$1.34 billion in 2012. The total mineral leasing revenues for the western states were \$4.35 billion in 2014, distributed roughly equally to the states in which the revenues are collected and to the federal government.

Again, the handling of mineral revenues becomes critical. For all the western states the fiscal impact of a westwide transfer of BLM and Forest Service lands on the federal government would be as follows. If the western states received all the future mineral revenues, the federal government would shed \$3.49 in Forest Service and BLM management costs. But it would lose its current half share of \$2.18 billion in federal mineral leasing revenues. So the net fiscal impact on the federal government would be positive, equal to a fiscal gain of about \$1.31 billion

in 2014 for all the western states (and similar amounts in future years), even with the loss of its current mineral leasing revenues.

If the western states continued to receive only their current approximate half share of federal mineral leasing revenues, and thus did not capture the other half of the mineral revenues as a part of a transfer, the total fiscal benefit for the federal government for all the western states would be much greater, equal to all of the \$3.49 billion in reduced land management costs. In that case, however, the negative fiscal impacts experienced in the western states collectively would be correspondingly increased by about \$2 billion.

These are aggregate figures for the whole West. In considering individual state circumstances, it is important to keep in mind that federal mineral leasing revenues are highly variable among the western states. Federal mineral leases in Wyoming alone provide 48 percent of the total federal mineral revenues in the West, an amount equal to \$2.09 billion in Wyoming in 2014 (of which the State of Wyoming received about \$1.05 billion). Federal mineral leases in New Mexico alone provided 27 percent of the total federal mineral leasing revenues in the West, equal to \$1.191 billion (of which the State of New Mexico received about \$595 million) in 2014.

By contrast, federal mineral leases in Alaska, Arizona, Idaho and Nevada all had less than \$40 million in revenues in 2014 (and the states thus received less than \$20 million). There are almost no federal mineral leasing revenues coming from Oregon and Washington.

So Wyoming and New Mexico would benefit greatly in fiscal impact terms from a transfer of federal lands that now included the future receipt of 100 percent of the former federal mineral leasing revenues. But even with a 100 percent share of mineral leasing revenues, other western states would experience some initial net fiscal losses (at least if their management costs replicated the high costs of the federal government for the Forest Service and BLM). In the case of Utah, as indicated above, even with substantial new mineral leasing revenues the fiscal impact would be negative by about \$100 million per year.

The net fiscal impacts for those western states with few mineral revenues would likely be more negative, although this should not necessarily determine the state policy with respect to a federal land transfer. The citizens of each western state, however, should have the best numbers that can be estimated in order to inform their public discussion of land transfer issues.

### New Forms of Public Land Management With Continued Federal Ownership

Among other factors, such individual state fiscal impact considerations might cause some of the western states to want to examine major reforms of federal land management that do not involve an outright transfer of land ownership to the states. These states might then continue to receive greater federal funding for the management of the federal lands within the state. In terms of the politics of western land management reform at the national level, even major changes in federal management might be more politically acceptable if the land remains federally owned. Some

local westerners might also be skeptical of their own state governments, and prefer that transfers of land management authority should bypass the state level to lower levels of more local management authority. Again, such devolved arrangements might involve maintaining the traditional ownership of the lands in federal hands, even as local authority for management decisions is much increased.

Another consideration is that, rather than seeking a comprehensive single solution to the problems of dysfunctional federal management of the public lands in the West, a bottom-up approach would allow more room for experimentation in management arrangements and learning by trial and error. Under such an approach, a new tool kit of land management arrangements might be developed and selectively applied state by state and locally in accordance with the specific circumstances of public land areas across the West. The longstanding assumption that there should be one dominant “public land management philosophy”-- even as it has changed over time -- may no longer be appropriate in light of the economic, cultural and other diversity of the contemporary West.

In order to reform the land system incrementally in this fashion, a basic approach might be to retain federal land ownership but to pass legislation to significantly alter the legally allowable methods of management of public lands within a continuing federal system. The idea might be to provide greater decentralization and state and local autonomy without altering the politically charged principle of federal ownership in itself. Even though the lands might remain “federal,” a set of major management innovations might be introduced for Western public lands. This might involve substantial restructuring of the roles in the West of the Forest Service and the BLM, including significant reconsideration of the numbers of personnel they would need.

No one such alternative need be imposed from above. Rather, local individuals and groups in the West interested in pursuing a new management regime might come forward with proposals. The proposals might then be reviewed and approved outside the traditional Forest Service and BLM processes of decision making. Some alternative ways to move in this direction include the following.

**1. Charter forests (and charter rangelands)** – This approach would follow the model of charter schools that are having growing success in inner city areas across the United States where the old centralized and bureaucratic systems of public schools have been failing their students for decades (like the old centralized and bureaucratic system of public land management has been failing in the West for decades). In a charter forest, the land would remain federal but the management would be free of the rigidities and other obstacles that have limited past management reform efforts. Like a charter school, there would be a board of directors to oversee the charter forest. Hiring would be done outside traditional federal civil service requirements. The charter forest would be exempt from various other existing regulatory barriers to flexible, innovative and efficient actions to improved public land management of a local forest.

**2. Privately contracted public land management** – This would be similar to a charter forest but the management would be overseen by a private contractor, rather than a 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. The agreement would set out the management goals including tight environmental standards. Like a charter forest, the contractor would work outside the existing federal hiring system and the rigidities of the existing public land management system.

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

**4. Public land corporation** – This would establish a public corporation, based on models of other public corporations widely used in the United States, to manage a particular area of public lands. The public corporation would again operate outside the constraints of the current public land system. It might have authority to set fees and other charges for land use and to establish efficient management systems. In some cases, the public corporation might be expected to collect sufficient revenues to cover its costs.

**5. 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 is difficult to establish sufficient certainty of timber supplies under the current gridlocked 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 agreements with private mill owners that would ensure them of sufficient timber supplies from a specific dedicated forest area to justify future mill operation. Management of the area might be contracted to the mill owner(s), subject to environmental and other outside oversight and full public access as compatible with timber harvesting operations.

**6. Forage Leases** – This would allow the holder of a grazing permit to convert that permit into a long term “forage lease” for the allotment – say 20 or 30 years. The lease holder would in a sense become the long term management contractor. Similar to contracted public land management, the holder of the forage lease would agree to achieve certain long run forage sustainability goals including observance of strict environmental standards. The lease would specify amounts of forage that would be available to wildlife. Beyond that, the lease holder, not the federal land management agency, would decide the best uses of the available forage, including the option of no livestock grazing use. The lease holder would be exempt from existing EIS, comprehensive land use planning and other constraining public land rules and regulations. Leases would be saleable and purchasable among private parties under normal willing seller/willing buyer arrangements. The lands would remain open for public dispersed

recreational access and other uses that did not involve a direct conflict with the use of the privately available forage.

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

### Charter Forests

Charter forests might be a particularly promising way for making major reforms of public land management within a framework of continuing federal ownership of the land. In a recent report I prepared for the Property and Environment Research Center (PERC) in Bozeman, MT, I proposed a new management approach for national forests, the creation of “charter forests.” It would be a sharp turn away from the Progressive-Era thinking that still significantly shapes our public land institutions. My proposal draws heavily upon the example of another sharp departure from a progressive educational legacy, the creation of charter schools in large cities as an alternative to failing inner city traditional public school system..

By 2013, 42 states had charter school laws, and around 7,000 charter schools have now been established nationwide. From the school year 1999–2000 to 2013-2014, the percentage of American public school students who attended charter schools rose from 0.7 to more than 5.0 percent. Of particular significance, charter schools spread most rapidly in those large older cities with dysfunctional inner-city public school systems. By 2013-2014, more than 40 percent of all the public school students in three of the historically worst inner-city traditional public school systems (New Orleans, Detroit, and Washington, D.C.) were enrolled in charter schools.

Extending the model of charter schools to another dysfunctional management system, the traditional Forest Service management of the national forests, the creation of a charter forest might work according to the following principles:

1. A charter forests would be freed from the tight control of the traditional U.S. Forest Service. In the case of charter schools, this has meant transferring management responsibilities from a central school bureaucracy to a system of substantially autonomous individual charter schools. In the case of charter forests, it would mean transferring management responsibilities to similarly autonomous individual forests within the national forest system.

2. Even as management responsibilities would be transferred to more local levels, a charter forest would remain in federal ownership as public land. In the case of charter schools, they remain public schools that are part of the citywide public education system. In the case of charter forests, they would likewise remain public forests that are part of the national forest system.

3. A charter forests would be relieved from existing legal and regulatory requirements that inhibit the adoption of innovative and locally responsive forest management. In the case of charter schools, this has meant freedom from central curricula and other educational administrative requirements. In the case of charter forests, this would mean freedom from the environmental assessment requirements of the National Environmental Policy Act (NEPA), from the land use planning requirements of the Resources Planning Act (RPA) and National Forest Management Act (NFMA), from the open meeting, public involvement and reporting requirements of the Federal Advisory Committee Act (FACA), and from other administratively constraining federal laws and regulations that create significant barriers to more locally responsive and effective forest management.

4. Like charter schools, charter forests would operate under new and less restrictive hiring practices. In the case of charter schools, this has meant freedom from the traditional requirements for professional education credentials and membership in a teachers union. In the case of charter forests, this would mean freedom from traditional Forest Service requirements for professional forestry or other natural resource management credentials, as well as from federal civil service hiring procedures and federal pay scales.

5. Charter forests would be subject to the overall governance of a board of directors for each forest. In the case of charter schools, this has meant a board of directors is elected by the parents of attending students. In the case of charter forests, it would mean a board would be chosen—possibly by direct election—from among the users of the charter forest lands and from others with major concerns relating to the use and management of these lands. In this respect, beyond the existence of a board of directors, the analogy between a charter school and a charter forest is less exact and will require further exploration.

6. A system of charter forests would be overseen by a national charter forest board. In the case of charter schools, there is a city-wide charter school board located outside the traditional public school system that approves the initial creation of a charter school, periodically reviews charter school performance, and can terminate a charter school in cases of malfeasance. In the case of charter forests, there would be a national charter forest board administered outside the Forest Service that would have similar functions to approve the creation of new charter forests and to monitor their performance.

7. The boundaries of charter forests would be approved by the national forest charter board. Most charter schools do not serve specific boundaries within their city, accepting students from throughout the city. In the case of charter forests, each charter forest would have specific geographic boundaries. Much as students can choose to attend a particular charter school, most users of the national forests could choose to hike, hunt, camp, and participate in other activities among a range of charter forests—many of which may be managed for different purposes

8. As public lands, charter forests would receive public support to cover part of their operation costs. In the case of charter schools, a school receives a certain payment per student

from the city, based in part on the citywide average costs of education per student in the traditional public school system. In the case of charter forests, a forest would receive a certain payment based in part on past funding for the management of those national forest lands by the U.S. Forest Service and, in part, on the levels of various forms of public use of the charter forest (see the further discussion below).

9. Charter forests would have the authority to set fees for the users of the charter forest lands and resources as a way to help cover their costs. The charter forest would retain the revenues from these fees. A charter forest could hold timber sales and collect grazing fees, again retaining the revenues. Some charter forests might have net positive revenues, in which a full distribution of the forest “profits” could be made to some local public body such as the local county public school system.

10. The federal government would continue to have responsibility for wildfire prevention and suppression on national forests, including charter forests. The Forest Service might enter into contracts with charter forests to facilitate forest management steps that would reduce the risks of future large forest fires. This continued federal responsibility for forest fires would reflect the fact that the current high risk of dangerous forest fires is in part the result of past national forest mismanagement.

### Conclusion

Even in the early 1980s as part of an edited book collection on *Rethinking the Federal Lands*, and observing the failure of public land management to live up to his own progressive ideals, Marion Clawson, a former director of the BLM, and a leading public land student then located at Resources for the Future, declared that “I reject any idea that we today are less imaginative and resourceful than men and women who pressed for the establishment of the national forests, national parks, and grazing districts. We too can innovate; let us try.” Thirty years later, there is even more reason to innovate.