

51. Interior Department and Public Lands

Congress should

- privatize the lands held by the Forest Service and the U.S. Department of the Interior, or, failing that;
- reform the public land agencies by turning individual forests, parks, refuges, and Bureau of Land Management districts, or combinations of those units, into fiduciary trusts;
- allow those trusts to charge a broad range of user fees at market rates;
- fund the trusts exclusively out of a share of those user fees;
- dedicate some or all of the remaining user fees to special stewardship trusts whose goal is to maximize the nonmarket, stewardship values of the land;
- transfer fire suppression programs to the states by having public land agencies join state fire protection districts; and
- reform the Endangered Species Act to compensate private landowners for protecting wildlife habitat and to allow privatization of some wildlife to promote recovery efforts.

The occupation of the Malheur National Wildlife Refuge in Oregon in early 2016 focused attention on federal lands and prompted proposals to turn some or all of those lands over to the states. The ranchers who engaged in the Malheur protest were almost certainly wrong in their belief that public lands should belong to them, but environmentalists and other user groups can be just as dogmatic about their views of public lands. Such conflicts are an inevitable result of political management of resources: the various parties take extreme positions so that whatever compromises are made will end up closer to their preferred outcome.

For most of U.S. history, private landownership has been a driving force of the American economy. Yet more than a quarter of the United States remains in federal ownership. Most of that land is managed by the Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM), National Park Service, and Fish and Wildlife Service. The 618 million acres of land managed by these four agencies is slightly less than the combined land areas of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington.

Many Americans are proud of the legacy offered by federal lands for present and future generations, especially the national parks, forests, and other lands that provide significant amounts of recreation. Yet that pride overlooks several problems with public land management:

- Federal land management currently costs taxpayers more than \$8 billion a year.
- Much of that money is spent on things that are not necessarily good for the environment.
- A relatively small number of people get most of the benefits, while everyone pays the costs.
- Among the biggest beneficiaries are the bureaucracies themselves, which skillfully manipulate public opinion and members of Congress to increase their budgets.

Several Cato Institute studies have endorsed privatization of the public lands, a solution that is strongly resisted by environmentalists, recreationists, and many other public land users. A second-best solution that will both enhance the values sought by environmentalists and public land users and correct the fiscal problems of the current system is to turn the public lands into "fiduciary trusts." In this proposal, the United States would retain title to the lands, but the rules under which they are managed would be very different.

Fiduciary trusts funded out of their own revenues would make federal land managers more responsive to public land users, especially recreationists who would probably be the source of the vast majority of revenues. Besides saving taxpayers billions of dollars per year, trust management would be sustainable and sensitive to a wide range of environmental concerns.

Public Lands Cost Taxpayers \$8 Billion a Year

In 2015, taxpayers spent \$8.85 billion managing national forests, parks, wildlife refuges, and BLM lands. In return, not counting energy and

mineral revenues, those four agencies collected less than \$2 billion in revenues. Worse, Congress allowed the agencies to keep, or directed them to turn over to states and counties, virtually all of that \$2 billion, leaving none for the U.S. Treasury. In fact, national forest payments to counties were \$21 million more than the revenues, meaning the lands lost money for American taxpayers even without counting the costs of management.

The only real revenues earned by public lands were on-shore oil, gas, coal, and other mineral revenues collected by the Interior Department's Office of Natural Resources Revenue. These revenues totaled about \$3.8 billion in 2014, nearly half of which was shared with the states and more than a third of which went into a reclamation fund. That left just \$584 million going to the U.S. Treasury—less than 7 percent of the cost of managing the lands. Almost all of this revenue came from coal, oil, and gas extracted from less than 1 percent of the federal lands, which means the other 99 percent cost taxpayers more than \$8 billion and returned virtually nothing.

Most government agencies lose money. Yet the lands and resources managed by these agencies are so valuable, it seems incredible they could lose so much. The basic problem is that Congress has blocked the agencies' ability to make money and, in some cases, has actually given the agencies an incentive to lose money. Those directives, in turn, lead to other problems, including environmental damage due to misallocations of resources, over-production of subsidized resources, inequitable distribution of benefits, and unfair competition with private landowners who market many of the same resources.

Forest Service studies show that, if the agency was allowed to charge market rates for all resources, it could collect more than \$10 billion per year. Similar fees could no doubt be collected on other federal lands.

In other words, federal land user fees would be more than sufficient to pay the costs of managing the public lands if only Congress would allow managers to charge market rates for all forest uses. In addition to saving money, funding public lands out of user fees would give managers incentives to protect and produce the resources that users value the most. Moreover, freed from unfair competition from public lands, owners of private land would have an incentive to charge fees for recreation and to alter their management to favor the scenery, wildlife habitat, and other features that people value for recreation.

If public lands are as valuable as people say, they should pay their own way. This means Congress should

- allow public land managers to charge fair market value for all resources;

- allow managers to keep a fixed share of the receipts for all resources; and
- reduce appropriations to zero and fund the lands exclusively out of their own receipts.

Wildland Fire

Wildfire is probably the biggest federal land issue today. Paradoxically, though Congress has significantly increased wildfire budgets, more acres are burning than ever before, and wildland fires destroy hundreds of homes and other structures each year.

After the Cerro Grande fire destroyed hundreds of Los Alamos, New Mexico, homes in 2000, Congress asked the Forest Service and the Interior Department to prepare a National Fire Plan. Under this plan, wildfire budgets have more than quadrupled from levels of the early 1990s. Yet the number of acres burned has grown, more homes are burned, and Forest Service research has shown that thinning and prescribed burns do little to protect structures on adjacent lands. “Wildland fuel reduction for reducing home losses may be inefficient and ineffective,” says Forest Service fire scientist Jack Cohen.

Historically, Congress has given the Forest Service a blank check to suppress wildfires. As a result, the agency spends wildly compared with Department of the Interior agencies and state fire protection districts. The Forest Service routinely spends more than five times as much money on suppression per national forest acre burned as the Interior Department spends on its lands. In 2015, the Forest Service spent a record amount of money on fire suppression even though the number of national forest acres burned was less than two-thirds of the record number.

Thanks to the Forest Service’s skillful manipulation of the fire story, most proposals from Congress call for giving the agency even more money, which is like trying to put out a fire by throwing gasoline on it. Short of complete reform of the agencies as described below, a better response would be for the Forest Service and other agencies to contract out fire protection to the states, which the Bureau of Land Management already does on some of its lands. This would involve paying the states a fixed amount per acre per year, similar to what private landowners pay, and then letting the states handle the fire suppression.

Endangered Species

The Fish and Wildlife Service manages national wildlife refuges and, in addition, is responsible for endangered plants, wildlife, and freshwater

fish. Congress passed the Endangered Species Act with the noblest of intentions. But the law's methods of carrying out those intentions unfairly places the burden of recovering endangered species populations on any landowner whose land happens to be home to an endangered species.

Landowners naturally resist this burden, so it is no surprise that few species have actually been recovered by the Endangered Species Act. Even public land managers have been known to resist recovery efforts when those efforts interfere with what the managers perceive to be their primary missions. Efforts to streamline the Endangered Species Act have focused on reducing costs to private landowners, but they have failed to create incentives that would motivate landowners to actually protect species.

To truly reform the act, Congress needs to create a trust fund or funds that can be used to pay landowners to protect wildlife habitat. Congress should also give the Fish and Wildlife Service the option to privatize some species of wildlife. Private owners are likely to develop innovative ways of protecting and restoring depleted wildlife populations. Such private ownership is common in Britain, but the closest we have come has been the successful efforts by private bird lovers to recover the peregrine falcon. Private ownership of selected species of wildlife could harness entrepreneurial energy on behalf of entire species.

A private owner of, say, black-footed ferrets, Columbian white-tailed deer, or northern sea otters would have the right to own individual members of the species, breed them in captivity, release them into the wild, and defend them from hunters, polluters, or others who would harm them. The wildlife owner would have to negotiate with landowners to protect habitat but may have designated rights to habitat on public lands. Private owners of the little Kern golden trout or upper Columbia River chinook salmon might own all of the fish of that species in a particular lake or watershed and would have the right to defend them from fishing, pollution, and, where their habitat occurs in waters of the state, habitat destruction. Private ownership of ocean fisheries has been a successful conservation tool in Iceland and New Zealand; this proposal merely extends this to other fish and wildlife.

Privatization or State Control

One state where privatization is essential is Nevada—85 percent of which is owned by the federal government, far more than any other state. Federal ownership has clearly inhibited growth in that state, particularly in the Las Vegas and Reno urban areas. The federal government should

accelerate efforts to privatize land for urban growth in Nevada. Moreover, the provision in the Southern Nevada Public Land Management Act of 1998 that dedicates 80 percent of revenues from land sales to the purchase of more land should be repealed. Such land purchases counteract the benefits of selling land for urban growth.

Turning federal lands over to the states offers little benefit: the states are just as poor land managers as the federal government. A Cato review of more than 150 state land agencies found that most of them suffer from the same financial problems and environmental conflicts as federal lands. The exceptions are state land trusts, and what makes them exceptional is not that they are state owned but that they are legally treated as fiduciary trusts.

Fiduciary Trusts

Fiduciary trusts are an institutional structure that can ensure long-term protection for nonmarketable resources while improving the fiscal management of the lands. A fiduciary trust is a legal construct based on hundreds of years of British and U.S. common law. A trust consists of four components:

- a “trustor,” the person or entity who creates the trust;
- the “trustee,” the person or people managing the trust;
- the “beneficiary,” the person or people for whom the trust is managed; and
- the “trust instrument,” the legal document that dictates how the trustor wants the trustee to manage the trust.

Trusts are significantly different from the bureaucracies that now manage federal lands. Trust law imposes strong obligations on trustees to preserve the productive capacity of trust resources, produce benefits for the trust beneficiaries, and fully disclose the costs and benefits of their actions. To create a trust, the trustor—Congress—is also obligated to give the trust a clear mission—something that many people would say today’s federal land agencies lack.

With more than 1,000 forests, parks, refuges, and BLM districts, Congress need not turn all federal lands into trusts at one time. Instead, Congress can test the trust idea on selected administrative units. Tests can compare methods of governance, funding mechanisms, alternative geographic sizes, and other aspects of the trust concept. The results of the tests can point the way toward improving management on the remaining federal lands.

Conclusion

The 618 million acres managed by the Forest Service and Department of the Interior cost taxpayers more than \$8 billion per year and continually produce major controversies and conflicts among users. Fiduciary trusts offer a way to solve these problems. Congress should test the trust system on selected national parks and other federal lands. If the tests are successful, Congress should reform all federal land agencies into a series of trusts. The results should satisfy those who care about natural environments and cultural resources, as well as those who care about fiscal responsibility.

Suggested Readings

- O'Toole, Randal. "The Endangered Endangered Species Act." *Different Drummer*, Winter, 1996.
- . "A Matter of Trust: Why Congress Should Turn Federal Lands into Fiduciary Trusts." Cato Institute Policy Analysis no. 630, January 15, 2009.
- . "The Perfect Firestorm: Bringing Forest Service Wildfire Costs under Control." Cato Institute Policy Analysis no. 591, April 30, 2007.
- . *Reforming the Forest Service*. Covelo, CA: Island Press, 1988.
- . "Should Congress Transfer Federal Lands to the States?" Cato Institute Policy Analysis no. 276, July 3, 1997.

—Prepared by Randal O'Toole