

COMMITTEE ON NATURAL RESOURCES
113th Congress Disclosure Form
As required by and provided for in House Rule XI, clause 2(g) and
the Rules of the Committee on Natural Resources

Subcommittee on Public Lands and Environmental Regulation
Legislative Hearing on **H.R. 3294 (Young)**, the "*State-Run Federal Lands Act*"
November 21, 2013

For Individuals:

1. Name: Robert H. Nelson
2. Address: [Information redacted for privacy]
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4. Phone Number: [Information redacted for privacy]

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For Witnesses Representing Organizations:

1. Name:
2. Name of Organization(s) You are Representing at the Hearing:
3. Business Address:
4. Business Email Address:
5. Business Phone Number:

For all Witnesses

Name/Organization: Robert Nelson

Title/Date of Hearing Subcommittee on Public Lands and Environmental Regulation, Legislative Hearing on **H.R. 3294 (Young)**, the "*State-Run Federal Lands Act*"
November 21, 2013

a. Any training or educational certificates, diplomas or degrees or other educational experiences that are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing.

Ph. D., Economics, Princeton University, 1971

b. Any professional licenses, certifications, or affiliations held that are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing.

None

c. Any employment, occupation, ownership in a firm or business, or work-related experiences that relate to your qualifications to testify on or knowledge of the subject matter of the hearing.

Professor, School of Public Policy, University of Maryland, 1993 to present; worked in the Office of Policy Analysis in the Office of the Secretary of the Interior from 1975 to 1993

d. Any federal grants or contracts (including subgrants or subcontracts) from the Department of the Interior that you have received in the current year and previous four years, including the source and the amount of each grant or contract.

None

e. A list of all lawsuits or petitions filed by you against the federal government in the current year and the previous four years, giving the name of the lawsuit or petition, the subject matter of the lawsuit or petition, and the federal statutes under which the lawsuits or petitions were filed.

None

f. A list of all federal lawsuits filed against you by the federal government in the current year and the previous four years, giving the name of the lawsuit, the subject matter of the lawsuit, and the federal statutes under which the lawsuits were filed.

None

g. Any other information you wish to convey that might aid the Members of the Committee to better understand the context of your testimony.

Witnesses Representing Organizations

Name/Organization: Robert Nelson

Title/Date of Hearing Subcommittee on Public Lands and Environmental Regulation, Legislative Hearing on **H.R. 3294 (Young)**, the "*State-Run Federal Lands Act*"
November 21, 2013

h. Any offices, elected positions, or representational capacity held in the organization(s) on whose behalf you are testifying.

N/A

i. Any federal grants or contracts (including subgrants or subcontracts) from the Department of the Interior that were received in the current year and previous four years by the organization(s) you represent at this hearing, including the source and amount of each grant or contract for each of the organization(s).

N/A

j. A list of all lawsuits or petitions filed by the organization(s) you represent at the hearing against the federal government in the current year and the previous four years, giving the name of the lawsuit or petition, the subject matter of the lawsuit or petition, and the federal statutes under which the lawsuits or petitions were filed for each of the organization(s).

N/A

k. A list of all federal lawsuits filed against the organization(s) you represent at the hearing by the federal government in the current year and the previous four years, giving the name of the lawsuit, the subject matter of the lawsuit, and the federal statutes under which the lawsuits were filed.

N/A

l. For tax-exempt organizations and non-profit organizations, copies of the three most recent public IRS Form 990s (including Form 990-PF, Form 990-N, and Form 990-EZ) for each of the organization(s) you represent at the hearing (not including any contributor names and addresses or any information withheld from public inspection by the Secretary of the Treasury under 26 U.S.C. 6104)).

N/A

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Our Languishing Public Lands

By ROBERT H. NELSON

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Our Languishing Public Lands

By ROBERT H. NELSON

ASIDE FROM THE original 13 states on the Eastern seaboard, most of the land in the United States at one time belonged to the federal government — a result of the Louisiana Purchase, the Mexican-American War, and other important events in American history. Federal policies for these lands such as the Homestead Act, the railroad land grants, and the land allocations to American Indians were among the most significant American government actions of the 19th century. The overriding policy goal was to transfer the lands out of federal ownership to private owners and to the states, both of whom received hundreds of millions of acres in total. Transferring the lands to new ownership was seen as a first step in putting them to productive use as part of the essential task of building a new nation.

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After this 19th-century “era of disposal,” the federal government shifted to a policy of retention of the lands in federal ownership around the beginning of the 20th century. It was a reflection of basic new political and economic ideas emerging in the United States during the progressive era. The progressive “gospel of efficiency” preached that scientific management could better serve the nation’s needs than the chaotic, trial-and-error processes of the free market. In much of the American economy, large American business corporations were in fact substituting internal private planning and administration for the old decentralized market processes. The progressives, however, were unwilling to transfer the federal lands to such large and concentrated private ownerships. Instead, they sought the scientific management of the

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lands through the creation of new public agencies with their own comprehensive internal planning and administration. The result was the establishment of the Bureau of Reclamation in 1902, the first federal wildlife refuge in 1903, the U.S. Forest Service in 1905, and the National Park Service in 1916. Democratic socialists advocated similar policies in Europe at the same time, if with less deference given to the need for ultimate democratic control.

Vast areas of federal lands are still present today in the West as the legacy of these progressive-era developments (the Bureau of Land Management, the other federal agency with major land management responsibilities, was not created until 1946, although still as a deferred application of the same progressive principles). Total federal ownership today covers about 50 percent of the land area of the American West. The state of California, remarkably enough, is 45 percent federal land. The lands managed by the Forest Service and the Bureau of Land Management are commonly known as “the public lands.”

Like a number of other applications of progressive ideas (regulation of interstate commerce, for example, by the Interstate Commerce Commission), the public lands have failed the test of time. Management of the lands has been neither scientific nor efficient. The old progressive mission of scientific management has been strongly challenged — and indeed sometimes altogether displaced — by new ideas advanced by the environmental movement. Yet, the original progressive institutional forms dating back 100 years remain with us little altered. The result is an antiquated and costly system of public land management that is unsure of either its goals or methods. There is now approaching a consensus among informed observers that public land management wastes large amounts of money while mainly serving the private interests and other narrow groups that benefit from the lands.

After an initial century of disposal of the lands, and then a second century of federal land retention and direct management, it is time for a new era that

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will redefine the history of these lands for the 21st century. This will require challenges to longstanding institutions and basic assumptions; such changes are always difficult in government. Long periods may go by in which little of real significance happens. It is difficult if not impossible to predict when the workings of glacial forces may suddenly break loose. It is at least a possibility, however, that the current fiscal crisis will prove to be a precipitating event in finally driving a basic rethinking and reorganization of the public lands in the West. Indeed, the public lands will be a good test case of national fiscal resolve. The public lands offer a leading candidate for government cost cutting.

Public land waste

JUST BY THEMSELVES, the national forests, managed by the U.S. Forest Service in the U.S. Agriculture Department, are 40 percent of the land in Idaho. In Nevada, the federal Bureau of Land Management (BLM) in the Interior Department manages an even larger portion of the State: 68 percent of the total land area. Truth be told, most of rural Nevada is still as much a federal territory as an independent unit under state governance.

On these public lands, the most important decisions typically concern matters such as the number of cows that will be allowed to graze, building of local roads, levels of timber harvests, leasing of land for oil and gas drilling, building and maintaining hiking trails, prevention and fighting of forest fires, determining areas that will be available to off-road recreational vehicles, and other such routine land management details. Outside the West, such matters are either private or are state and local responsibilities paid for by state and local governments. In the rural West, the federal government often pays — and also decides.

Although the progressives elevated expert planning and management and the attainment of maximum efficiency to their highest goals, 100 years of public land history have shown that the public lands have seldom been managed either expertly or efficiently. Rather, they have been managed mainly in response to strong political pressures. Under political management — and despite the possession of hundreds of millions of acres of land, and large oil and gas, coal, and other valuable mineral assets — the lands proved to be a money-loser for the federal government. The environmental results have not been much better.

In 2005, for example, the Government Accountability Office (GAO) released a detailed study of the 2004 revenues and costs of livestock grazing on public lands, the most common use of these lands. The BLM authorizes grazing on 138 million acres of public land “allotments” to specific ranchers, covering about six percent of the total land area of the United States. It is testimony to the arid character of most public lands — in many areas, vir-

tual desert — that such a low-revenue activity as livestock grazing historically has been their most economically valuable use. In 2004, according to the GAO, the BLM spent \$58 million nationwide on the management of livestock grazing, while collecting a mere \$12 million in grazing fees from the rancher users.

The GAO estimate of costs, moreover, probably is grossly understated. In many areas of the rural West managed by the BLM, the principal federal concern is to resolve issues generated by conflicts between livestock grazing and other uses. Absent the cattle and sheep on the BLM lands, a major part of the total BLM budget of \$1.1 billion might well be unnecessary. Indeed, if all the complications of the livestock presence did not exist, the states would

Historically, the most important use of the national forests has been not grazing but timber harvesting.

be well positioned to replace the BLM in managing hunting, hiking, fishing and other recreational uses of the lands. Other than minerals and energy management (which are a small part of the total BLM budget, and might themselves also be turned over to the states), there would be little remaining need for the BLM.

According to the 2005 GAO calculations, the losses on Forest Service lands were even greater; grazing management cost \$74 million on the national forests in 2004, overwhelming the minimal fee collections of \$5.7 million. Part of the reason for the small revenues on both BLM and Forest Service land is the very low fee charged — equal in 2004 to \$1.43 for each month a cow (often with a calf) spent grazing on the public lands (officially an “animal unit month,” or AUM). By comparison, although it is often alleged that the states are more in the thrall of private interests than the federal government, most western states charged considerably more for grazing on the substantial areas of their own state-owned lands. At the low end, Arizona, for example, charged \$2.23 per AUM in 2004 while Oregon charged \$4.32 and Montana collected a variable market-based fee with a set minimum of \$5.48. Even the collection of the full market value of federal grazing admittedly would still fall well short of the high federal costs of grazing management.

On the national forests, rather than grazing, the most important use historically has been timber harvesting. But the story there is much the same: government costs much greater than revenues for uses that are privately profitable to others. The Forest Service does not make it easy to compare revenues and costs by program area. In 2001, however, the Forest Service released an unusually detailed and revealing financial analysis of its timber management program for the year 1998, a year fairly typical of the 1990s and 2000s. Overall timber sale revenues in 1998 were \$546 million, again well below the Forest Service administrative costs of \$671 million for the timber program. From the perspective of the federal government alone, the

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losses were actually much larger because it was required by law to transfer \$213 million of timber sale revenues to state and local governments (while still absorbing all the costs).

The aggregate figures, moreover, mask large regional differences. Region 3 of the Forest Service, covering New Mexico and Arizona, spent \$22 million in 1998 in order to sell 94 million board feet of timber, obtaining a mere \$4.9 million in timber sale revenues. In Region 4, which includes Utah, Nevada, and parts of Idaho and Wyoming, selling 170 million board feet of timber cost \$37.9 million, significantly greater than the sale revenues of \$22.8 million. If to little avail, economists argued for decades that the Forest Service should abandon the many such “below-cost” sales in its timber program.

From economic to ecological goals

THE VOLUME OF timber sales on the national forests did in fact fall sharply in the 1990s. From 1960 to 1990, total Forest Service timber sales were routinely in the range of ten billion to twelve billion board feet per year, depending on the state of the economy and other demand factors. At the high point, this was around twenty percent of the total softwood timber harvest (the most desirable lumber) in the United States. By 1995, however, sales had plummeted to less than three billion board feet, a level where they have remained since. But the reasons had little to do with the unfavorable economics of so many timber sales.

In the 1990s the Forest Service abandoned its historic goal to maximize the “multiple-use” value of the national forests — as sustainable over the long run. Instead of the historic practice of “multiple use and sustained yield management,” the new guiding principle of the Forest Service became “ecosystem management.” As the federal Interagency Ecosystem Management Task Force explained the new thinking in 1995, it meant that “as a matter of policy, the federal government should provide leadership in and cooperate with activities that foster the ecosystem approach to natural resources management, regulation and assistance.” The new goal of the federal government should be “to restore and sustain the health, productivity, and biological diversity of ecosystems,” including prominently those found on the public lands.

Thus, rather than traditional economic and utilitarian purposes based on advancing a host of specific uses, the national forests should be managed by the Forests Service for wider ecological objectives. The national forests, according to the new official doctrine, should reach a “sustainable” or “healthy” natural ecological state. National forest and other ecologies, as environmentalists increasingly argued, had an “intrinsic worth” that transcended any traditional economic calculations. An ecology was valuable for its own sake, not because it advanced the economic interests of the nation.

The Forest Service today thus no longer justifies its timber management and other land use decisions by ordinary economic criteria. It is enough that progress is being made towards the desirable natural ecological end state of the forests. It has admittedly proven difficult to say precisely what constitutes a “natural” forest condition (or even that nature unaltered by human actions actually tends towards any such natural equilibrium at all). In administrative practice, “natural” has most often meant the historic ecological conditions that existed prior to the impacts of European settlement — the ecological state of the second half of the 19th century for most of the rural public land West. In the 1990s Forest Service researchers began poring over old photographs and otherwise seeking to determine the ecological state of that time as precisely as possible, thus hoping to set a benchmark for future national forest management.

Not surprisingly, the Forest Service’s decision to abandon its historic economic objectives under multiple use management has led to corresponding declines in economic benefits achieved, as shown by the Forest Service’s own calculations. The 2001 Forest Service financial analysis described above also detailed the trends during the 1990s in the economic “present net value” (PNV) derived from all national forest outputs. As the Forest Service reported, the “all resources PNV” for the whole national forest system — covering all the forms of use — fell from more than one billion dollars in total values realized in 1991 to about \$300 million in 1998. Most of this sharp economic decline was due to the precipitous drop in timber program PNV, but the abandonment of former timber sale activities did not yield any new gains in the PNV of recreation or other uses to balance things out. Ecosystem goals, however vaguely defined, increasingly were the ends in themselves — and the (lesser) economic outcome was a mere byproduct of the more important new ecological objectives.

The northern spotted owl

THE DEFINING MOMENT in the transition from an economic to an ecological management purpose for the national forests was 1990. In that year, the northern spotted owl was listed as a threatened species under the Endangered Species Act. Teams of biologists from the Forest Service, BLM, Fish and Wildlife Service, and other agencies were assembled to develop a “recovery plan” for the spotted owl and its federal forest habitat in the Pacific Northwest. Under the provisions of the Endangered Species Act, any losses of revenues from timber harvesting in the Pacific Northwest — the one region where the Forest Service had long profitably sold large volumes of timber — could not enter into recovery plan calculations.

After the owl recovery plan was adopted, federal timber harvests in the Pacific Northwest plummeted to about twenty percent of their former levels.

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On the signature Gifford Pinchot national forest in Washington State, named after the founder of the Forest Service, average timber sales in the 1980s had been more than 300 million board feet per year. By 1991, they had fallen to 110 million board feet, and then to virtually nothing in the next two years — twenty million board feet in 1992, and fifteen million board feet in 1993.

As a result of the spotted owl episode, total losses in future timber sale revenues to the federal government over the long run were in the range of \$20 billion. Few national taxpayers, admittedly, were aware of the size of the financial contributions they were making for spotted owl recovery and Pacific Northwest “virgin” forest preservation. The message of the spotted owl episode was clear; for large areas of the national forests, sustaining and restoring an ecological system to protect the owl and other forms of “biodiversity” would now trump any historic multiple use goals of the national forests. This message was then soon heard well beyond the Pacific Northwest, as Forest Service timber sales soon fell off a cliff throughout other regions of the national forest system as well (although they did continue at a high level in the South, the one region that was still making money from its timber sales).

It was not only the federal government whose revenues were affected. Traditionally, the federal government has transferred 25 percent of the gross timber sale revenues to the states where the sales occurred. The states then transferred the funds to the specific local counties for support of schools and other purposes. The drastic falloff in timber sales in the 1990s thus threatened the counties with large losses in federal transfers of timber revenues. But this would have violated the historic working relationship in which the federal government either delivers directly or provides much of the funding for many types of government services in the rural West. Finding this unacceptable, Congress therefore provided in 1993 for direct federal payments from the Treasury to make up for the losses in local county timber revenues in Oregon, Washington, and northern California, as attributable to the spotted owl. It extended this program in 2000 to all states and counties that historically had received federal timber payments but were now experiencing sharp reductions. In 2010, federal payments to mostly rural western counties for this purpose totaled \$389.7 million, including \$108.2 million in Oregon and \$30.1 million in Idaho.

As an ultimate irony, the spotted owl has fared poorly under its 1990s recovery plan, continuing to decline in population over much of its range. The biologists who developed the owl recovery plan gave little thought to the recent arrival of barred owls in the Pacific Northwest, these owls having migrated from their historic habitats in the East. Barred owls are bigger,

Because of the spotted owl, total losses in future timber revenues over the long run were in the range of \$20 billion.

have more flexible diets, and otherwise tend to prevail in any evolutionary struggle with spotted owls. Ecology no less than economics — witness the “great recession” of 2008 to 2010 — is subject to major unexpected and unplanned events, greatly complicating planning for any longer run periods. Since the early 1990s, barred owls have proliferated in the Pacific Northwest, often to the significant detriment of existing spotted owl populations occupying the same areas. Desperate to save the spotted owl, biologists and other forest managers have even been contemplating extermination campaigns against barred owls, however much this might conflict with the wider ecological goal of achieving a “natural” forest outcome. In the end, the many timber mills that went out of business and the thousands of forestry workers who lost their jobs in the Pacific Northwest in the 1990s might turn out to have made their sacrifice for no spotted owl benefit at all (although admittedly some remaining Pacific Northwest never cut forests were preserved, if perhaps offering little actual benefit to the spotted owl).

Few revenues and high costs

IN 2010, REFLECTING its new ecosystem management orientation, the Forest Service collected only \$109 million from timber sales of 2.1 billion board feet, a volume of sales at least 80 percent reduced from 1980s levels. Minerals have now become the leading source of revenue from the national forests, generating \$610 million in 2010 — although \$500 million of that was actually collected by the Department of the Interior, the agency officially responsible for administering mineral leasing on the national forests. Reflecting the usual politics of public lands, around half of the “federal” mineral revenue is then transferred to the western states themselves, while the federal government still bears all the costs.

Total federal revenues from all sources in the national forests in 2010 were \$953 million. This compares with total Forest Service spending in 2010 of \$6.1 billion, including around five billion dollars for direct management, fire prevention and suppression, and other national forest related activities (in other areas of its activity, the Forest Service also conducts basic forestry research, aids private and state forest owners around the United States, and undertakes other actions not directly related to the management of the national forests, all this costing about \$1 billion). That is to say, the ultimate net cost of national forest management borne by American taxpayers in 2010 was around \$4 billion — this on lands representing nearly ten percent of the land area of the United States and often containing valuable natural resources. These large deficits are being incurred at a time when worldwide demands for minerals, agricultural products, and other commodities has been soaring, driving up resource prices and in other places filling the coffers of nation states that are rich in natural resources.

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It might seem logical that Forest Service employment and spending would have declined correspondingly, as it shifted from serving timber harvesting and other traditional uses to the new ecosystem goals. In the long run, according to the tenets of ecosystem management, a natural ecology should function with a minimum of human impact — that is virtually the definition of what it means to be “natural.” Ecosystem management may therefore require expensive short term actions to restore ecologies to a former natural condition but should work in the long run to minimize future human acts of management themselves — and the associated government expenses.

But this of course would be naïve. It is seemingly an iron law of bureaucracy that it can expand but never contract. The Forest Service, moreover, was never all that enthusiastic itself about ecosystem management. To some extent it was dragged kicking and screaming. Going back to Gifford Pinchot, the historic agency culture had formally valued scientific and economic efficiency above all (admittedly greatly compromised in practice by political necessity). It was instead federal judges and outside politicians, encouraged by environmental activists, who imposed the spotted owl recovery plan on the Forest Service in the Pacific Northwest — and all that followed in its path elsewhere in the national forests as well.

Thus, even as it has officially endorsed a new agency way of thinking that seeks to deliberately minimize human management actions, Forest Service personnel numbers and total spending have not fallen at all. The Forest Service had 35,000 permanent employees in 2010, more than the 33,000 it had in 1990. Total spending specifically for national forest management purposes remained steady around \$1.5 billion throughout the 1980s, about the same level as it is today. But total Forest Service spending soared from levels of around \$3 billion per year during the 1980s to more than \$6 billion in 2010.

The “Fire Service”

ALARGE PART OF the explanation for the higher Forest Service budget is the greatly increased spending for forest fire prevention and suppression. Ecosystem management may have been the new official management philosophy but some wags have recently suggested that the Forest Service should now be renamed the “Fire Service.” Instead of minimizing human impacts as sought by ecosystem management, the emphasis shifted from timber harvesting to firefighting. (Such is the law of unintended consequences, one much in evidence throughout the 200-year history of the public lands. The government in the 19th century had planned to sell the public lands to capture large revenues, but legions of illegal squatters defeated that goal — and the government finally gave up and legalized squatting with the Homestead Act of 1862.)

The growing fire hazards are not a matter simply of increased drought or other bad luck in recent years. Instead, they have also resulted from misconceived past and current Forest Service policies. Over many decades of fire suppression (recall Smoky Bear), the Forest Service actively prevented lighter and more frequent natural fires that historically had worked in many western forests to remove the flammable understory of the forest (while such fires did little harm to the much larger and more mature trees). Without the historic cleansing role of low-level fire, wood stocks on the forests increased rapidly. Then, timber harvesting, another leading means historically of removing wood from the forests, was drastically curtailed. The resulting buildup of “excess fuels” in many western natural forests created a new

As is increasingly recognized, the historical fire suppression policies of the Forest Service had not a few negative consequences.

severely fire prone condition that the GAO in 1998 reported was posing “catastrophic” fire threats over much of the rural West.

Forest fires were indeed burning more frequently and with much greater intensity. Levels of Forest Service spending for fire-related purposes escalated from thirteen percent of the total budget in 1990 to 21 percent in 2000 and then to 45 percent in 2008. Because there was now so much wood fuel — an altogether “unnatural” condition by historic standards — the fires often burned with unprecedented intensities that consumed all the trees present at the site and every other form of vegetation, thus virtually baking the soil and limiting the capacity for future

replacement stands of trees to regenerate — as well as leaving bare land unprotected against rapid runoff of large sediment volumes into nearby rivers and streams. In 2010, forest fire related spending by the Forest Service was more than \$2.1 billion, the great majority in the American West. The Forest Service had discovered a new purpose to sustain its personnel numbers and budget — protecting the West from the newly threatening consequences of its own historic forest fire and timber program mismanagement.

As is increasingly recognized, the historical fire suppression policies of the Forest Service had other large negative ecological consequences. One of the most attractive western forest species is the whitebark pine, which somehow manages to survive at the highest mountain elevations, sometimes living to more than 1,000 years of age. Whitebark pines have been suffering greatly in recent years from warmer temperatures and attacks of blister rust and mountain pine beetles. As a 2011 environmental report indicated, another important factor was that “the U.S. Forest Service and other agencies carried out another policy that was bad for whitebarks — the aggressive suppression of wildfires beginning in the early 1900s. Whitebark pines evolved to be somewhat fire-resistant and able to colonize burned areas, so the war on wildfires effectively limited the amount of ground where they could spread and allowed competing species of trees to invade their stands.”

A dysfunctional system

ADMITTEDLY, THE LARGE economic and environmental failures on the national forests were not altogether the fault of the Forest Service. Even if it had wanted to, it probably would have been unable to address adequately the growing fire problem. An unwieldy system of environmental and land use planning mandated by Congress in the 1970s, a proliferation of law suits and resulting judicial oversight of management and policy decisions, increased congressional and White House direct political intervention, and other factors have created a dysfunctional federal decision making process for the national forests.

As early as 1997, whatever the high aspirations of ecosystem management (or perhaps partly because of the policy and management confusions relating to these aspirations), the GAO was reporting that “the Forest Service’s decision making process is broken.” An Idaho state task force in 1998 found that federal land management in the state (with the Forest Service the largest federal land owner there) was characterized by “uncertain decision making, destabilization of resource dependent communities, and deterioration in environmental quality.” An advisory Committee of Scientists assembled by the Forest Service itself declared in 1999 that the agency has “a planning process that has been both divisive and disillusioning for all involved,” including many of those seeking to advance environmental goals.

In 2002 the Forest Service lamented its own fate in an internal study, “The Process Predicament,” noting that it was beset by a “costly procedural quagmire” in which perhaps 40 percent of the direct work at the individual national forest level was now taken up in “planning and assessment” — paperwork activities which in the end often led nowhere. The overall result, as the agency characterized its own circumstances, was 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,” including, as noted above, the development of potentially explosive wood fuel buildups on many western national forests. If restoring an ecology requires effective planning and skillful implementation, this environmental goal is just as likely to be a casualty of the 2000s unmanageable Forest Service.

The benefits of federal dependence

DESPITE REPEATED FOREST Service appeals to Congress for relief from its procedural quagmire, none was forthcoming. The Forest Service was of course not alone in confronting a failing

national political system in recent years. As one upside, however, all this walking in place meant plenty of Forest Service jobs and funding for good paying work in attractive rural communities throughout the West. It was not only the Forest Service employees who could be thankful; the rural West as a whole benefitted significantly — in economic if not environmental terms — from the large secondary impacts of the major infusions of federal firefighting and other funds. Taxpayers from other parts of the nation were principally responsible for providing the necessary revenues to support the rural West.

All this was admittedly the latest installment in a longstanding western history. Since the federal government decided 100 years ago in the progressive era to maintain a permanent dominant presence in the rural West, the region has often complained bitterly of federal mismanagement. But federal management has also meant federal money, and lots of it. When push came to shove, the West has always chosen the money over steps to break free from federal control. More than 50 years ago Bernard DeVoto uttered perhaps the truest statement ever made with respect to the public lands and the rural West; the actual western view of the place of the federal government, DeVoto explained, is: “Go away and give us more money.”

The large inflows of federal funds to the rural West come at a price, however. The politics of decision making at the national level give a greater voice to environmental groups and others outside the region. Periodically, western resentments over the lack of full state and local control have built up, leading to populist explosions such as the Sagebrush Rebellion of the late 1970s that demanded a transfer of the public lands to state ownership — the Carter administration had been particularly tone deaf to rural western concerns.

Candidate Ronald Reagan in 1980 endorsed the demands of the rebels. When the Reagan administration entered office, however, the western leadership, then predominantly Republican, and following the DeVoto dictum, politely declined any interest in actually receiving a transfer to state ownership of the lands. It would cost too much. With the Reagan administration now in power, and with Republicans dominating western Congressional delegations, business as usual — the federal government heavily subsidizing the traditional rural West — did in fact return to the public lands.

Indeed, the electoral makeup of the Senate gives the rural West a virtual permanent constitutional lock on disproportionate amounts of federal money. Despite their frequent free market rhetoric, moreover, it is usually Republicans who deliver the goods. As an almost completely rural state, Wyoming has 544,000 people and two Republican senators. The two Democratic senators from California represent 68 times as many people per capita. With 698,000 residents, Alaska did elect a Democratic senator in 2008, but he was the first in 28 years. Although Montana with 975,000 people has a more mixed voting record, another western state with a small population of 1.5 million, Idaho, has a recent history of two Republican

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senators. Utah has not had a Democratic Senator since 1977. The seven most rural western states have fourteen percent of the total votes in the Senate and just 3.7 percent of the total U.S. population.

This translates into real dollars for the West. According to detailed calculations made by the Tax Foundation for 2005, New Mexico and Alaska received \$2.03 and \$1.84, respectively, in federal spending for every dollar sent to Washington in federal taxes and other revenues, ranking them first and third nationally in this respect. Arizona, Idaho, Montana, Utah, and Wyoming all received more federal money than they contributed to federal revenues. Among regions, the South — again a heavily Republican area — did best in capturing federal money, with four states (Mississippi, Louisiana, Alabama, and Virginia) in the top ten. No leading “blue” state made it into the top ten in 2005. Indeed, New York, Connecticut, Minnesota, California, Illinois, and New Jersey ranked in the bottom ten in terms of a favorable federal spending/federal revenues ratio. New York and California received only \$0.79 and \$0.78 in federal spending dollars, respectively, for every federal revenue dollar sent to Washington in 2005.

The Republican Party has a dirty little secret: It does better than the Democratic Party in the competition for federal pork. The farm states — North Dakota and South Dakota also ranked in the top ten states in terms of their federal spending/federal revenue ratio — are leading symbols of a wider Republican political schizophrenia. The farm states commonly elect “free market” Republicans who specialize in Congress in perpetuating a U.S. system of “agricultural socialism.” The high levels of spending for the public lands in the rural West are the equivalent in that region of the large federal farm subsidy programs for the Midwest states.

The newly elected Tea Partiers and many other Republicans in Congress have recently said that they want to change all this, even including proposals to curb farm subsidies. The Republican Party, they say, should finally practice what it preaches, even if it may sometimes be at the expense of historic pork barrel benefits to Republican constituencies themselves. Like the farm belt, the public lands in the rural West will be a good test case of this asserted new Republican commitment to high principle.

Mounting pressures for change

THERE MIGHT ADMITTEDLY be a surprising breadth of bipartisan support for such major public land change. Given the follies of public land management in recent years, western leaders of all political stripes have increasingly been wondering whether all the federal money is still actually worth the price that has to be paid. Daniel Kemmis is the former Democratic Party speaker and minority leader of the Montana House and mayor of Missoula. Also a Harvard graduate and prolific author — he might be described as a Daniel Patrick Moynihan of the West —

Kemmis wrote in 2007 that “our public lands, the vast majority of which are in the eleven western states and Alaska, are burdened by a steadily more outdated regulatory and governing framework.” Kemmis spoke for more and more westerners in declaring that they often experience the public land system as a “frustrating, alienating bureaucratic paternalism.” Even if some financial sacrifice perhaps was required, the West should unite “behind an agenda of ecologically responsible devolution of authority” that would “transfer responsibility for public lands to western institutions” grounded in actual local western democratic control.

Among the leading national commentators on the public lands, there is surprising agreement. Professor Sally Fairfax of the University of California,

Ranchers cannot simply be evicted from their old allotments on the public lands to make way for new and higher bidders.

Berkeley, America’s foremost political scientist in studying the public lands, observes that the creation of the national forests established “a relationship between the national government and the western states that is usefully described as colonial.” The current management practices of the U.S. Forest Service are so “maladapted . . . to current social and political realities,” reflecting the past influence of “explicitly anti-local ideas of centralized, top-down management” inherited from the progressive era, that she suggests a radical public land system reorganization will be necessary.

Roger Sedjo is the longtime director of the forest economics program at Resources for the Future in Washington, D.C., a leading natural resource and environmental think tank. He finds that “local users of national forest lands are highly disenchanted and discouraged . . . Nobody is happy with the Forest Service.” He suggests that it may be “time to think the unthinkable,” to seriously debate “whether the federal land management problems of the 21st century may not require the creation of new, streamlined, integrated organizations — or perhaps even the application of new and different types of institutions — to replace the outmoded agencies of the past century.”

Such radical steps would have been politically impossible until at least recently. But the federal government today, if anything, is in even worse long-run financial shape than state and local governments (its credit card borrowing habits, denied to the states, cannot go on indefinitely). Public confidence in federal governing capacities continues to fade. A wide range of observers now proclaim that Washington must change its fundamental ways of doing business. Nevertheless, while their core skepticism about the corrupt ways of national politics in Washington is refreshing, the proponents of large budget cuts and major institutional change in governance at the federal level often lack the detailed knowledge to convert their populist zeal into realistic concrete plans for change.

A plan

A FIRST THOUGHT MIGHT be simply to sell off much of the public lands and apply the large sale revenues (potentially hundreds of billions of dollars) to reducing the national debt — as a business corporation might sell off its money losing divisions. At one time, that might have been a good idea. But too many years have now passed, creating implicit historic entitlements that will have to be recognized. Ranchers, for example, cannot simply be evicted from their historic allotments — formally established in the 1930s following the enactment of the Taylor Grazing Act — to make way for new higher bidders. In matters of property rights, “possession” is a first principle. It is not only ranchers but hunters, hikers, and many other types of recreational users who have had open access to the public lands for many decades and perceive this access as a matter of “right” that cannot simply be abrogated by federal government fiat. Any plan that would result in the dispossession of ranchers, recreationists and other rural westerners of their de facto rights would be a political non-starter.

On public lands, rather than privatization, two goals should be paramount. The first is to raise greater revenues from and to reduce sharply the bloated costs of the current federal management of the public lands, thus contributing to the resolution of the nation’s fiscal problems. Second, this must be done in a way that effectively promotes national economic and environmental goals and also meets basic standards of fairness to historic users and other involved parties such as national taxpayers.

Consider how these principles might be advanced on the vast areas of the rural West that historically have been used for public land livestock grazing. Ranchers should first be freed of government routine micromanagement of their livestock operations. Instead of the current ten-year “permits,” they should be issued 30-year “forage leases” for use of the grazing land forage. As is presently the case, ordinary recreational users such as hikers and cross country skiers would continue to have open access to the lands — subject to their not doing any harm to the grazers. The responsibility for regulating more intrusive uses such as hunting and off-road vehicle use would be turned over to the states. Energy and other minerals management would also become a state responsibility, with the federal government and the states splitting equally any royalties obtained and other minerals revenues (the federal government, as still the ultimate owner, would set the required royalty).

The longer tenure would create a greater private incentive for the ranchers to manage the grazing forage resource for long-term sustainability. States and private conservation groups could work with ranchers to promote non-livestock uses of rangeland forage. In addition, government would establish overall environmental performance standards that ranchers would have to satisfy, with evaluations, say, every five years. Unlike current grazing per-

mits, the new 30-year forage leases would be saleable and transferrable to any nonranching party such as a hunting club, environmental organization, wilderness society, bird watching organization, or whatever. Once such an organization held a lease, it would be free to manage the forage resource for its own purposes. The government itself could also purchase forage leases in willing buyer/willing seller transactions, in order to advance other public aims. If it wanted to lease public land for a new solar energy facility, for example, the government — or the solar company — would have to buy out the relevant forage leases.

In short, there would no longer be public “livestock grazing lands” but the lands would become private “forage control areas” — with the control

The public lands have been left to function without a clear purpose or sense of direction, mirroring the nation’s general policy gridlock.

over forage use now a saleable right in the market. With these changes, the time consuming, cumbersome, and costly environmental review, land-use planning and other micro-level administrative functions of the BLM and Forest Service relating to livestock grazing would no longer be necessary, saving the federal government hundreds of millions of dollars in lower administrative costs.

The federal forests are a different case. Because federal timber has been sold historically to the highest bidder, there is no one identifiable private party with any real historic basis to assert a “right” to the timber in any particular area of federal forest. Local counties, however, by law receive 25 percent of the gross revenues from Forest Service timber sales — and 50 percent of the gross revenues from BLM timber sales on the “O&C lands” in western Oregon, the only federal lands with valuable timber managed by the BLM. One might thus say that the counties have had the leading ownership “rights” to federal forest lands.

In light of this, federal forests could be reorganized as follows. First, the lands would have to be classified into three categories: 1) forest lands of significant national environmental and recreational interest; 2) lands of significant state and local environmental and recreational interest; and 3) lands of exceptional timber value that in other respects are “ordinary” federal forests. Three alternative ownership and management regimes would reflect these differences.

The nationally significant lands would remain in the federal land system, but transferred to the National Park Service or the Fish and Wildlife Service. The federal forest lands of significant state and local recreational interest would be transferred to the local counties as the new owners. As a means of implementation, local “public timber corporations” might be formed and the counties given all or the majority of the controlling ownership rights in these corporations (including the rights to their share of dividends). The corporations would be established in a manner to give them considerable insu-

Our Languishing Public Lands

lation from short run interventions of state and local politics. For example, they might be given a formal “trust” status — with the net revenues formally dedicated to schools or other public purposes — as federal lands transferred to the states in earlier eras commonly were managed by assigned school trustees.

Otherwise ordinary lands of exceptional timber value would be privatized, either by means of a direct forest land auction or an initial public offering of stock in new private forest corporations. As simply a rough guess, perhaps twenty percent of the federal forests lands might fall in the national lands category (1) above, 60 percent in the state and local lands category (2), and 20 percent in the privatization category (3).

On both federal grazing and forest lands, under this plan the BLM and the Forest Service — the managers of “the public lands” — would no longer exist in their present forms. Their current administrative resources would be reassigned within the federal system or newly hired outside this system to fit the new public and private organizations that would emerge. The BLM and Forest Service together now spend about \$5 billion per year on public land management. If the political system is willing, some significant part of this current level of federal spending could be saved. Both the economic and environmental final results would also likely be much improved.

FOR THE FIRST century of federal land management, the nationally accepted goal was to dispose of the lands to new state and private owners. For the second century, the national goal was to apply scientific and administrative expertise to the management of newly created public land agencies in a manner to maximize the net economic benefits to the nation over the long run. As a third century begins, there is no similar national consensus. The public land agencies have recently adopted a new goal under the rubric of “ecosystem management,” but the true meaning and the management implications of ecosystem management remain elusive. The public lands thus have been left to function without a clear purpose or sense of direction — mirroring policy confusions and a state of gridlock seen more broadly over much of the federal domain in Washington and elsewhere.

Unlike some areas of federal activity such as national defense, there is nothing intrinsically national in scope in the majority of management responsibilities of the public land agencies. Indeed, much of what they do is more closely parallel to historically state and local government roles in the United States such as zoning, road construction and maintenance, and fire-fighting. In the current political environment, the attempt to impose one set of national values and management methods on a domain as diverse as the public land in the rural West has yielded agency dysfunction. The public lands today incur large federal costs while falling well short of achieving their potential economic and environmental benefits for the nation.

The solution is to be found in first identifying those areas of the public lands which are capable of yielding a national consensus as to their manage-

Robert H. Nelson

ment purpose — likely to be the most environmentally attractive parts of the public lands, such as wilderness areas. The operative goals on the remaining, less nationally significant lands should be decentralization and privatization. Where the circumstances of the lands allow for a workable system of private property rights (both the main benefits and the main costs can be assigned to the same private party), the lands should be privatized (or transferred to long-term private leases). Where the circumstances of the land involve more beneficiaries and larger transaction costs of group decision making, some new collective governing instruments will be required. In some cases, private collective ownerships — the rise of private community associations in recent years may offer a model — may be feasible. Perhaps more often, the lands will have to remain in the public sector, but their management should be decentralized to new lower-level units of governance where broad agreement on goals is more likely and where effective management purposes and methods can thus more easily win acceptance. In the public sector, the newly decentralized units of land governance might be a state, a county, a municipality, or limited segments of such. In some cases a brand new government unit might be created specifically for public land purposes such as a form of public corporation.

The final details will have to emerge from the normal give and take of politics. But let the discussions begin.

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Op-Ed

Free the American West

Get the federal government off public lands that are of no national importance.

By Robert H. Nelson

March 7, 2012

Like much else in government, U.S. public land policy is a vestige of the past, established in 1910 when America's population was just 92.2 million and a Western state such as Nevada had only 81,000 residents.

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Today our needs are much different and much greater. The United States can no longer afford to keep tens of millions of acres of "public" land locked up and out of service. Some of these lands have great commercial value; others are environmental treasures. We need policies capable of distinguishing between the two.

Few Easterners realize the immense magnitude of the public lands. The federal government's holdings include about 58 million acres in Nevada, or 83% of the state's total land mass; 45 million acres in California (45% of the state); 34 million acres in Utah (65%); 33 million acres in Idaho (63%); and more than a fourth of all the land in Arizona, Colorado, Montana, New Mexico, Oregon and Wyoming.

Most public land decisions are made by two federal agencies, the U.S. Forest Service and the Bureau of Land Management, and involve matters such as the number of cows that will be allowed to graze, the areas available to off-road recreational vehicles, the prevention and fighting of forest fires, the building of local roads, the amount of timber harvesting, the leasing of land for oil and gas drilling, mineral rights and other such details. Outside the rural West, most such decisions are made by private landowners or by state and local governments. In the West, Washington acts as if it knows best.

Like other grand designs of the "progressive" era, public land policy has failed the test of time. Public lands have not been managed efficiently to maximize national benefits but instead in response to political pressures.

Past mismanagement has turned many national forests into flammable tinderboxes where intense crown fires reaching to the top of the trees — once a rarity — consume entire forests.

Rural Westerners receive significant financial benefits when the federal government pays for many of their local roads and conservation services and provides many high-paying local federal jobs. Increasingly, however, they are questioning the trade-offs involved.

Daniel Kemmis, the former Democratic speaker and minority leader of the Montana House and onetime mayor of Missoula, the state's second-largest city, has lamented that "our public lands ... are burdened by a steadily more outdated regulatory and governing framework," which he describes as a "frustrating, alienating bureaucratic paternalism."

Professor Sally Fairfax of UC Berkeley observed that the creation of the national forests established "a relationship between the national government and the Western states that is usefully described as colonial." Little has changed, even as the federal system has become more and more dysfunctional.

The fact is that probably no more than 20% of the tens of millions of acres of public lands are nationally important, requiring federal oversight and protection. This includes 45 million acres of Forest Service and BLM lands in the national wilderness system and other environmentally special areas such as BLM's Grand Staircase Escalante National Monument in southern Utah.

An additional 60%, perhaps, are ordinary lands, used principally for recreational purposes, such as hiking, hunting, fishing and off-road-vehicle use. Most of the remaining public lands are useful primarily for commercial purposes, such as the timber-rich forests in the Pacific Northwest.

A rational public lands policy more suited to current and future needs would put the nationally important lands into a newly reorganized federal environmental protection system. Ordinary recreational lands would be managed at the state and local level, perhaps by transferring them to local counties. What better steward of a local recreation area than the people who live in the area?

The commercially most valuable lands, meanwhile, would be transferred to new ownership or put under long-term federal leases. Lands that have real commercial value could produce a double benefit: revenue from leases and land sales, and additional revenue from the jobs, minerals, oil, gas, lumber and other commodities the freed-up lands would produce.

It is time to end outdated federal land policies that are draining our country's wealth, tying up valuable resources in red tape and bureaucracy, and harming the environment. The transition to a new system would take time, but it might reasonably be completed over a 10-year period, the same time frame Washington is using for deficit-reduction planning.

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