TESTIMONY OF ROBERT H. NELSON TO THE HOUSE SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION, CONCERNING H.R. 3294, THE "STATE-RUN FEDERAL LANDS ACT,"

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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 and a senior fellow of The Independent Institute. 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 BLM.

I am pleased to be able to testify today on such an important subject. The public lands are an important part of 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 and Grazing Service (a forerunner to the BLM) in the first half of the twentieth century. The federal lands still represent today 28 percent of the land area of the United States, including around 50 percent of all the land in the western states.

I should say at the outset that I am encouraged by the introduction of H.R. 3294, the "State-Run Federal Lands Act." For reasons that I will briefly review, there has been a near consensus since the 1990s among public land experts that the federal land management system is not working well. The inability to deal effectively with forest health and western wildland fire in recent years is only the most visible symptom of a wider set of public land management dysfunctions.

Major change of some kind is therefore desperately needed. The relationship between the federal government and the western states for the management of the public lands is based on outmoded ideas that are now 100 years old. This relationship needs to be rethought in light of contemporary realities. H.R. 3294 can valuably help to open the discussion.

Especially promising is the proposal for a federal-state relationship for significant areas of public lands in which the federal government retains the underlying land ownership, and certain broad oversight responsibilities, but the management function is devolved to the state level -- and in some cases probably even lower to the local government level. I would also recommend in other cases making provision for devolving management responsibilities to non-governmental citizen groups organized at the local level and including a board of directors of the group. This would build on the widespread development in recent years of self-organized local advisory bodies in the West seeking to work with the Forest Service and BLM in hopes of overcoming some of their large management problems.

At this point I review briefly some of the history that has brought us to our current state of such deep dissatisfaction with public land management. In this long history, the management objective of the federal government has changed radically three times. In the nineteenth century, the goal was to dispose of the federal lands which resulted in the transfer of 1.3 billion acres to private parties and to the states. 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 one of making the management of the lands more efficient in the service of the public interest. As it was believed at the time, this could best be accomplished by retaining the remaining public forests, rangelands and other lands in federal ownership for their management by government experts.

By the 1970s, there was ample evidence that this progressive-era vision was failing. Mostly trained to maximize the uses of the lands, the government experts were paying insufficient attention, many people thought, to the environmental amenities of the lands. Partly owing to the politicization of the management of public lands, leading economists such as Marion Clawson, a former director of the BLM, then located at Resources for the Future, sharply criticized the economic inefficiency of federal land management. Others pressed for a more democratic system of decision making that would include a greater role for public participation.

Responding to these 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 a more comprehensive and effective systems of land use planning for the national forests and the BLM lands, including both the writing of formal written plans and environmental impact statements.

The Congress had 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 failed to provide an adequate basis for decision making to address the most pressing current public land problems.

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, replacing the previous longstanding public land management philosophy of multiple use and sustained yield. This shift occurred after 1990 and was closely associated with the spotted owl controversy in the Pacific Northwest and the large changes in land management that occurred there on the national forests and BLM lands.

Ecosystem management was troubled, however, by an inability to resolve fundamental tensions between the environmental goal to preserve nature in a wild state and continuing strong public demands to put the lands to good use. By the 1990s, the word "dysfunctional" was increasingly being heard at conferences and other meetings of public land experts with respect to the workings of Forest Service and BLM land management. The strong criticisms in those days were heard on a bi-partisan basis including many Democrats such as 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.

Congress, however, failed to address the large management problems on the public lands that were becoming evident by the 1990s. No major public land legislation has passed since the 1970s. The courts continued to play an active role but the slow and cumbersome judicial procedures often merely aggravated the public land management problems.

The Forest Service in 2002, almost in desperation, pleaded to Congress for relief from its troubled circumstances, as described in an agency published document, *The Process Predicament*, declaring that it was operating "within a statutory, regulatory, and administrative framework that has kept the agency from affectively addressing rapid declines in forest health," including the development of explosive wood fuel buildups on many western national forests. Writing about the Forest Service, Sally Fairfax, a leading student of the public lands at the University of California at Berkeley, would ask in 2005 about "what to do when an agency outlasts its time."

As recently as an October 2013 report, Professor Jay O'Laughlin, 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.

As noted, H.R. 3294, the subject of the hearing today, offers an opportunity to revisit the historic federal-state relationship for the management of the public lands in the West. I have long proposed that the federal lands be divided into three categories. Some public lands are of clear national significance where a large federal role is most appropriate but I would estimate these as probably no more than 20 percent of the national forests and BLM lands.

A much larger area of public lands is of primarily state and local significance, most heavily used by hikers, ranchers, hunters and other people from the surrounding area. These are the lands for which a basic rethinking of the federal-state relationship is most necessary. 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 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.

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). 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. Some of the commercially most valuable public lands might be privatized outright. 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.

H.R, 3294 is at present an outline of a plan for rethinking the federal-state relationships on the public lands. But the states, working with their local governments, 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 key 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 greater freedom of land management experimentation.

It is a little known fact that the state with the highest percentage of state-owned land is New York State, equal to 37 percent of its total land. 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 these 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 reluctant to extend a similar prerogatives to develop their own internal state land management strategies to western states.

In proposing the administrative devolution of public land responsibilities, a useful analogy might be the establishment of charter schools in large public school systems that often serve the disadvantaged. A growing body of research from leading scholars at universities such as MIT, Harvard and Princeton is concluding that the better-run urban charter schools, free to pursue educational innovations previously unavailable in traditional public school systems, have been achieving remarkable gains in student achievement and parental satisfaction.. The current Secretary of Education is among those who agree with this assessment.

Perhaps we should be similarly flexible and innovative in trying out land management innovations on the public lands that might be analogous in many ways to charter schools. Local boards of directors, like those of charter schools, could have wide latitude in hiring staff, contracting out work, and other important management matters. While H.R. 3294 is an encouraging step, there are many possible approaches to public lands administrative devolution and many details would need to be resolved for each such approach, possibly on a state by state basis.

The most important role for the Congress at present is to create a statutory basis for opening up a much wider range of devolved public land management alternatives and to set the terms for subsequent oversight of these alternatives as they are put into practice. There should be opportunities not only for state governments but also local governments and private local non-governmental groups to propose innovative devolved land management strategies and a process by which these proposals can be fairly and expeditiously reviewed at the federal level.

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 and policies, reflecting the actual greater diversity of the United States at present.

Additional Comments on H.R. 3294

The title of the bill, "State-Run Federal Lands Act," perhaps might be changed. Some people might read "state-run" to mean "government-run." Also, while the states would necessarily play a prominent role in any devolution plans, other public and nongovernment groups within the state might also be significantly involved, proposing appropriate boundaries for land units, developing a plan for their devolved administration, and ending up with many of the final management responsibilities. An alternative possible title might be the "Federal Lands Administrative Devolution Act."

Including all the federal land agencies might be too much for one bill. It might be better to have separate bills for the national forest system and the BLM lands. The National Park System is a special case, combining national treasures such as the Grand Canyon and Yellowstone with some national park units of minor national significance. If one federal land agency had to be chosen to pioneer new administrative devolutionary approaches, it might be the Forest Service, the oldest of the federal land systems, and the one currently experiencing many of the most severe problems of adaptation to new land use demands and forest health.

The development of innovative proposals for public land administrative devolution does not need to be limited to state governments. Others within the state, public and non-governmental, might be able to devise their own proposed management plans and devolution strategies, perhaps submitting them directly to federal officials and negotiating the details with these officials (with overall state approval of such efforts).

Where the state would assume the primary administrative role itself, the state would be the one to submit directly a land administration devolution plan. For example, states might propose that state trust land administrators add new manage responsibilities for current federal lands – with some arrangements provided for the allocation of some portion of the revenues from

these lands to the trusts. Given the importance of energy minerals, states might want to take direct responsibility for the devolved administration of such critically important lands through some new state administrative mechanism. (It is questionable that a game changing event such as the oil shale development of the Bakken formation in North Dakota could ever have occurred within the current federally run system of management for the public lands.)

Rather than one instrument for administrative devolution as proposed in H.R. 3294, the use of a "cooperative agreement," it might be appropriate to offer a tool kit of possible administrative devolution instruments, including separate provisions and procedures in the law for various forms of devolution to states themselves, to local governments, and to local non-government organizations. The legislative provisions could then be tailored more specifically to the forms and circumstances of each type of administrative devolution instrument.

Some state proposals for public land administrative devolution might be so large and important that they should be approved by the Congress itself (rather than the relevant Secretary). Other proposals might be more routine and could be handled within the executive branch alone. Provision might be made in the law for such a distinction and separate approval procedures established.

After administrative devolution, the federal government would no longer directly manage the lands. However, it would be appropriate for the federal government to set some certain broader goals and standards for the devolved administration. Environmental "sidebars" of performance, for example, might be established. There might be formal federal reviews say every five or ten years. In cases of severe mismanagement, the federal government might step in immediately to cancel the devolution agreement. Such provisions should probably be spelled out more explicitly in the legislation.

The issue of existing rights in public lands should probably be more explicitly and fully addressed in the legislation. What would happen, for example, to rancher grazing permits that traditionally have always been renewed.? How much if any discretion would state, local or non-governmental administrators have in altering the terms of livestock grazing. If a non-government body took over the responsibility, for example, for administering a wilderness area, how much discretion would it have in implementing wilderness use policies?

Given the very large expenditures currently being made in the West for fire fighting, this important area of federal-state relations probably should be addressed specifically in the legislation. How would fire fighting responsibilities be handled for newly devolved administrative units? How would the costs be shared? What would be the continuing federal government role in fire fighting in the West?

It might prove difficult to fully resolve some of these issues on a general basis in a short time. The first steps of public land administrative devolution thus might have to occur more incrementally. Perhaps somewhat in the manner of a wilderness designation approval package, state governments might be authorized to put together packages of administrative devolution plans for specific areas and specific kinds of devolved administrative bodies, and to submit these to the Congress for its negotiation and approval on a state by state basis.