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For more than thirty years, national forest management has been a source of controversy and community strife. Environmentalists have focused on clearcutting, below-cost timber sales, overgrazing, and road construction as causes of problems with fish and wildlife, water quality, recreation, and aesthetics. Resource users have focused on commodity outputs, forest health, community stability, and fire control problems.

In 1997 I helped to bring together nearly two-dozen environmentalists, resource users, Forest Service officials, and forest experts to find a way to resolve these problems. The Forest Options Group, as the group called itself, agreed that national forest controversies stemmed from a variety of sources and noted that several solutions have been proposed to address these problems.

The only way to find the correct solution or combination of solutions, the group agreed, was to test the proposals on selected national forests. In its 1999 final report, the Forest Options Group proposed testing various reforms on selected *pilot forests* on one or two forests each. The group's entire report can be read at http://www.ti.org/2c.html.

Since the Bush administration endorsed the idea of *pilot charter forests* last February, most people have used the term *charter forests*. My testimony will use *pilot forests* and *charter forests* interchangeably.

The Forest Options Group proposed five pilot proposals, but the group recognized that many variations are possible. The details of the five pilots are less important than the fundamental elements that went into those pilots.

Collaborative management is one of those fundamental elements, and two of the five Forest Options Group pilots proposed to test variations of collaborative governance. But the group also urged that two other important ideas be tested: *self funding* and *trusts*.

Self funding is based on research that I and other people did in the 1980s. My 1988 book, *Reforming the Forest Service*, shows that most if not all national forest controversies result from the incentives that face forest managers and users. Most of these incentives are derived from the Forest Service budgetary process.

For example, the Knutson-Vandenberg (K-V) Act is a well-intentioned law that allows national forest managers to keep an unlimited share of timber receipts to spend on reforestation and, after 1976, other sale area improvements. This law has the unfortunate effect of rewarding forest managers who lose money on timber sales. It also promotes clearcutting when other cutting methods may be as effective and, from an aesthetic viewpoint, far superior.
The law works this way. Sale preparation and road engineering costs are paid out of appropriations. In the 1980s these costs averaged about $50 per thousand board feet. If the Forest Service sold a timber sale for, say, $100 per thousand board feet, it would appear to earn a $50 profit per thousand.

In fact, managers can keep as much of the receipts as they need for reforestation and other activities, while the Treasury gets whatever revenues are left over. Managers soon come to regard any revenues turned over to the Treasury as losses because they lose control of those funds. So they arrange timber sales to maximize their budgets and minimize returns to the Treasury. This means that the Treasury often gets far less than the $50 per thousand it put up for the sale.

The fact that the Washington, regional, and supervisors offices all get a share of K-V funds for overhead gives every level of the Forest Service hierarchy an incentive to lose money. Since Congress expanded the use of K-V funds to include wildlife, recreation, and other resources, non-timber resource experts bought into the K-V process in order to get funds for their activities. This resulted in a loss of critical perspective over timber sale design.

For example, the K-V process favors clearcutting over other cutting methods because clearcutting imposes higher reforestation costs than shelterwood or selection cutting. A few forest types such as lodgepole pine do well with clearcutting. But most forest types, including Douglas-fir and ponderosa pine, would do just as well if not better with other cutting methods.

In 1950, most national forests were proud that they did not use clearcutting because of its aesthetic and environmental costs. But by 1970 the K-V fund had pushed most forests to adopt clearcutting as their major harvest method. The subsequent debate over clearcutting led Congress to pass RPA and NFMA.

The K-V fund also influenced the debate over roads and roadless areas. While wilderness users regarded roads as an irreversible destruction of the resources they valued most, the Forest Service hastened to build roads as fast as possible because it feared that it would lose the option to earn K-V funds in the roadless areas. In effect, the K-V fund produced a strong bias in favor of overcutting and against any resource that conflicted with timber.

The K-V fund is less important today because of lower timber sale levels, but the law is still on the books and this fund and other funds like it (salvage sale fund, brush disposal fund, road maintenance fund) still contribute more than $200 million a year to national forest budgets. This gives environmentalists good reasons to distrust any Forest Service pronouncements about the need to cut trees for forest health or any other purposes.

Another perverse incentive comes from a law that has been repealed; yet it still influences national forest management. In 1908, Congress created the emergency fire suppression fund, which essentially gave the Forest Service a blank check for putting out wildfires. Wildfire expert Stephen Pyne writes that this fund "gave the Forest Service power, and this power subtly corrupted the Forest Service."

The 1920s and 1930s saw a vigorous debate both inside and outside the Forest Service over the value of prescribed burning and of letting natural wildfires burn in remote areas. As described in Ashley Schiff's 1961 book, *Fire and Water*, the fire suppression fund so biased the Forest Service against prescribed fire that it distorted its research results to support its view.

Given unlimited funds, the Service set a goal of suppressing every fire by 10 AM after the fire is detected. The agency often spent enormous resources and risked the lives of many firefighters to fight fires that, in retrospect, not only would have done little damage but would have maintained and improved forest health.

Meanwhile, the agency campaigned hard against prescribed burning on private lands, often calling the people who did such burning "vandals." Today, we call them "ecosystem managers"

or "forest health specialists."

Congress repealed the emergency fire suppression fund in the 1980s, but it still reimburses the Forest Service after an expensive fire season. Although Forest Service officials today all agree that fires are a natural part of many forest ecosystems and that fire suppression has led to a decline in forest health, the agency still has an out-by-10 o'clock mentality which contributed to the deaths of four Washington state firefighters who were assigned to put out a fire last summer in an area where planners had said that fires should be allowed to burn.

Based on these and other observations, I concluded in *Reforming the Forest Service* that genuine reforms would happen only when budgetary incentives were changed. The best way to do this is to fund forests out of their own income rather than out of tax dollars. Funding out of fixed share of receipts would discourage below-cost activities and level the playing field between timber and other marketable resources such as recreation, fish and game, and even (depending on local water laws) water quality.

The trust idea is based on research done by Professor Sally Fairfax and her colleagues at the University of California at Berkeley in the 1980s and 1990s. Concerned that the debate over federal land management focused on an overly narrow range of institutions, Dr. Fairfax studied state lands and found that they were often managed as fiduciary trusts. This structure is very different from the federal land model and produces a very different set of outcomes.

Many institutions may be called trusts, but they are not true fiduciary trusts unless they include all of the following elements:

- A *settlor*, i.e., the creator of the trust;
- A trust *instrument* that expresses the intent or goal of the trust;
- A trust *asset* that is to be managed to meet the goal of the trust;
- A trust *beneficiary*; and
- A *trustee* or trustees.

The Valles Caldera Trust, for example, has no specified beneficiary, and thus the courts would probably not interpret it to be a fiduciary trust. On the other hand, something that has the above elements would probably be interpreted as a trust even if the word "trust" did not appear in its name.

When a trust is established it invokes an enormous range of rules, defined over centuries in British common law and more recently in American common law, codified with some state-by-state variations, and which are enforceable in the courts. Among these rules is the principle of *undivided loyalty*, that is, that the trustee cannot divert trust resources to anyone but the beneficiary.

The trustee is also held fully accountable for trust management and, in a sort of freedom-of-information act, must make trust records available to the beneficiary. Trust accountability is exactly the opposite of federal land manager accountability. The Supreme Court gives deference to federal land managers unless they clearly violate the law. But trust law assumes that trustees will be tempted to better themselves at the expense of beneficiaries and gives deference to beneficiaries who challenge trustee management, not to the trust managers.

This transfer of deference from the managers to the beneficiaries can actually lead to less controversy and litigation as long as trust goals are clearly stated. The trust goal may be to maximize profits, recover an endangered species, or restore an historic site. The clarity of this goal

combined with trust accountability should greatly reduce controversy and litigation.

Trust law also requires the trustees of perpetual trusts (as national forests trusts would be) to always preserve the corpus of the trust. This turns out to be a stronger sustained yield requirement than the federal Multiple-Use Sustained-Yield Act of 1960, which the courts say, "breathes with discretion at every pore."

Once the trust is created, the settlor no longer has a say in trust management unless the trust instrument specifically provides a way for the settlor to terminate the trust. For national forests, this would depoliticize trust management. But it also means that Congress would need to include a way to terminate trusts if the trusts are deemed unsuccessful. I propose one such method below.

The Forest Options Group developed a pilot forest that creatively uses trust law to manage and protect both marketable resources, such as timber and recreation, and non-marketable resources, such as many endangered species. The pilot or charter forest would be managed to produce maximum revenues for the beneficiary. To reinforce this goal, the forest would be funded out of its net receipts, thus giving managers an incentive to earn a profit.

The beneficiary would be a second entity, perhaps itself a trust, whose goal is to maximize non-market stewardship values. The non-market trust would use the revenues from the forest trust, plus any other revenues it could produce from, say, foundations and donations, to give forest trust managers an incentive to produce non-market resources.

The non-market trust could, for example, buy conservation easements on the forest or pay the forest to do certain forest health or ecosystem restoration projects. Separating the for-profit forest trust and the non-market trust ensures that trust managers have clear goals and do not face a conflict of interest when deciding how to manage the resources in their care.
Dr. Fairfax and I are also concerned that existing public involvement processes create incentives for polarization. The forest planning process gives interest groups incentives to be as extreme in their views as possible for both fundraising purposes (since any group that fails to be extreme is portrayed as selling out) and to push the apparent center in their direction.

Forest Service managers benefit from this polarization because it gives them maximum discretion to do what they want and still appear to be in the middle. The old saw that "if everyone is unhappy I must be doing something right" simply encourages managers to make everyone unhappy.

Collaborative groups aim to find a method of public involvement that brings people together rather than drives them apart. Other methods of public involvement can also be considered.

User fees provide an alternative form of public involvement. Instead of expressing your preference for a certain form of management by writing letters and filing appeals, you express your preferences by paying fees for the things you like. Anyone who has been to a supermarket lately can see how well this system works in providing an abundant diversity of goods and services.

But user fees may not be entirely satisfactory in national forest management, when many resources are not marketable. To supplement fees, Sally and I have proposed the creation of "friends of the forest" groups for at least some pilot forests. You can find the details of this proposal, which Dr. Fairfax and I developed since the Forest Options Group published its report,

at http://www.free-eco.org/rfp/pdf/SF-ROT-U.pdf.

Under our friends proposal, a friends of the forest group would monitor the pilot forest. Anyone could join the friends group by paying a nominal annual fee, such as ten or twenty dollars a year, thus insuring that the people who most care about a forest, no matter where they live, would have a say in forest management.

The friends group would also have three important powers. First, it could elect some of the members of the pilot forest board of directors. Other members might be appointed by the secretary of agriculture or the governor of the state in which the forest is located, but having the friends group elect some members would give the directors a perspective that reflects the national, regional, and local interest in that forest.

Second, the friends group would monitor pilot forest performance and publish an annual report on that performance. This would give the forest trustees a special incentive to pay attention to the concerns of the friends group.

Third, if members of the friends group believed that the pilot was failing to do a good job of stewardship, a vote of the majority or supermajority of the group could recommend to Congress that the pilot be terminated. This would provide people with assurance that charter forests will not somehow get out of control.
This would also be an excellent way for Congress to allow termination of trusts. Until the friends group votes to terminate a trust, Congress would keep its hands off. But if the trust fails to live up to expectations, the friends group could make its vote and Congress could terminate the trust.

Friends groups could do additional things such as collect donations and use those funds to do worthwhile projects on the forest. But their most important jobs would be to elect board members, monitor the pilot, and be prepared to terminate the pilot if it fails.

The friends group might an alternative to a collaborative board of directors. Otherwise, however, collaborative management, self funding, and trusts are three different but not mutually exclusive ideas. All three could be tested alone or together in various permutations. We could test collaborative trusts, self-funding collaborative management, or self-funding collaborative trusts.

Some people have suggested that it is not appropriate to use a valuable public resource such as the national forests for such experimentation. But we have been experimenting with national forests ever since they were created.

It was a great experiment to give the national forests to scientific foresters in 1905. This experiment seemed to be succeeding in the 1950s but seemed to be failing (probably because of budgetary incentives) by the 1970s. Congress then turned the forests over to the land-use planners, a huge experiment that clearly failed in the 1980s.

In the 1990s the administration turned the forests over to wildlife biologists and other scientists, an experiment in progress that has not clearly failed but is not holding much promise. Outside forces are also experimenting with forest management by litigation and court order, an experiment that some would say is succeeding but most would not.

It is foolish to conduct such experiments, one at a time, on the entire 192-million acre National Forest System. What the Forest Options Group recommends is a systematic program of testing

various proposed reforms on one or two forests at a time so that the results of these experiments can be compared and, if successful, applied to other forests. Instead of conducting one experiment each generation, we can conduct dozens of experiments in a decade.

To carry out these experiments, the Forest Options Group proposed several common features for all of the pilot forests.

- The forests would be exempt from following Forest Service manual and handbook provisions and memo direction, but would still be required to obey all laws and regulations (with possible exemptions from FACA and other purely administrative laws).
- All pilots would have *open-bucket budgeting*, meaning they would not have to deal with fifty to seventy-five different line items in their budgets.
- All would nominally report to an Office of Pilot Projects (or, as some have called it, "Region 7") rather than to their geographic regional offices.
- Most of the pilots would be allowed to charge a full range of user fees subject to valid existing rights.
- Self-funding pilots would get seed money equal to 175 percent of their recent annual budget and would be allowed to carry over unspent funds to future years. They would also enjoy a safety net equal to half of their recent budget.
- Pilot forest tests would last for a minimum of five years, and even more time may be needed to truly determine the success of many tests.

Although the Forest Options Group did not suggest it, I would suggest that the Forest Service create an expedited appeals process for the pilot forests. This would preserve the public's right to appeal forest decisions but give managers a rapid resolution to those appeals.

The group realized that these ground rules alone represent significant changes that could themselves form a charter forest. But making these changes alone would fail to address the problems of accountability and incentives that led to the controversies and the creation of the existing Forest Service hierarchy, a lengthy Forest Service Manual, and a line-item budget. The rest of the Forest Options Group pilot proposals are aimed at addressing these problems.

The Forest Options Group developed a detailed plan for selecting and implementing pilots that would encourage local forest managers and users to develop pilot proposals. The secretary of agriculture would select pilots in consultation with congressional delegations and state governors. Congress should encourage the secretary to select a full range of possible pilots.

The name *charter forests* obviously calls to mind charter schools, and since charter schools are controversial this may be unfortunate. But I briefly reviewed the literature behind charter schools and educational reform in general and found some interesting parallels between educational reform and forest reform.

School reformers agree that educational problems lie in overly centralized and regulated school systems, the lack of incentives for schools and teachers to do a good job, and funding problems. In *Fixing Urban Schools*, Paul Hill and Mary Beth Celio say that educational reform strategies must respond to each of these problems through deregulation/decentralization, new incentives, and new funding systems. This is almost precisely the findings of the Forest Options Group with respect to the national forests. Thus, the term charter forests accurately represents the goals of the Forest Options Group.

In conclusion, Congress should give the secretary the authority to test a broad range of pilots. The

Forest Options Group recognized that the Forest Service could test some pilots without specific Congressional authority. But the crucial idea of a fiduciary trust would require specific Congressional authorization, and Congress should give that authorization to the secretary while insuring that the trust can be terminated in some way if necessary. The group also felt that specific Congressional direction to test a broad range of charter forests might be needed to motivate the Forest Service to do so.
Beyond authorization, Congress should require that the Forest Service test a full range of alternative pilots, and not just ones likely to increase a national forest's budget. Self-funded pilots are likely to have smaller budgets than pilots that keep both appropriations and user fees, so anyone proposing a pilot will be tempted to ask for both user fees and continued appropriations from Congress.

We should accept for the possibility that there is no one-size-fits-all solution to national forest ills. Collaborative management may work on some forests but not others. Self funding may be appropriate for many forests, but some may not be able to generate enough revenues for basic resource stewardship. Trusts may be appropriate in many cases, but not in others.

National forests are complex systems, and if people say there are simple solutions to national forest problems, they are fooling themselves. To find out which tools work and where they work best, Congress should encourage the Forest Service to do as many experiments as possible.

Finally, I would urge you to think about the distinction between *decentralization* and *local control*. Charter forests have been widely portrayed in the press and by opponents as turning control of national forests over to local residents. I don't know of a single pilot or charter forest advocate who wants to do this.

Instead, supporters of collaborative management, self funding, and trusts all support decentralization. Decentralization does not mean local control. It means making decisions in response to local forest conditions as well as local, regional, and national values, and not in response to political whims that emerge from inside the beltway.

The June 2, 1952, issue of *Newsweek* magazine featured Smokey the Bear on its cover. Noting that national forest management actually produced a profit in 1951, *Newsweek* called the Forest Service "one of Uncle Sam's soundest and most businesslike investments" and added, "Most congressmen would as soon abuse their own mothers as be unkind to the Forest Service." The magazine credited the agency's success, profitability, and popularity to the fact that it was decentralized. The centralization of the agency in the 1970s has played a key role in its failure since that time.

On-the-ground national forest managers are greatly frustrated over their inability to get anything done. One district ranger told me that his entire permanent work force spends all its time fulfilling data requests from Washington, DC. Many of these managers are eager to try charter forest ideas, and I hope that Congress will give them that opportunity.