

No More Standoffs: Protecting Federal Employees and Ending the Culture of Anti-Government Attacks and Abuse

Testimony before Subcommittee on National Parks, Forests, and Public Lands

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Thank you for the opportunity to testify before you today and for your interest in examining federal lands issues. Decision making on federal lands has been contentious for decades, if not longer. The Hammond and Bundy cases are unfortunate, more recent examples of conflict that escalated to the loss of one man's life and put many others in danger.

In some respects, it is not surprising that there is such potential for conflict. While not exclusively a Western issue, federal management covers vast tracts of the West. This has major implications for states and individuals, and their ability to foster a promising place to live with economic diversity; property and other tax revenue for services like education and public safety; physical space; and access to lands for a variety of cultural, recreational, and economic activities.

Further, management of these massive and diverse lands is disjointed, being spread across multiple departments and bureaus governed by a complex of overlapping and often conflicting laws, missions, and regulations as well as historical uses and arrangements predating certain federal laws. Different administrations have interpreted and implemented the same laws guiding management in drastically different ways to either encourage access to federal lands or heavily restrict their use. Special interest groups leverage these complexities to pressure elected leaders and bureaucrats to enact policies that benefit powerful constituencies. A litigation culture all but invited by broad, unclear, or outdated laws has led to perverse incentives. Non-action by federal agencies is rewarded not because bureaucrats are generally bad or incompetent, but because federal employees soon learn that taking no action is safe. Delay, study, hearings, and rehearings are "acceptable" activities. Deciding something may create a job-threatening political firestorm.¹ At worst decisions are never reached, and at best agencies expend extensive resources not on management but rather to bullet proof decisions with reams of analysis for the inevitable legal

¹Jack Spencer, ed., *Environmental Conservation: Eight Principles of the American Conservation Ethic*, The Heritage Foundation, July 27, 2012, <http://www.heritage.org/research/projects/environmental-conservation#EightPrinciples>.

challenge. When people feel they are not being listened to or the levers of power are out of reach, tensions spill over.

So, it is unsurprising that people are passionate about federal lands. Conflict comes in many shapes and sizes. There of course were the cases of the Hammonds and Bundys which made national headline news. But there are dozens of other cases that, though they do not make national news, are no less impactful to the local communities and individuals. Controversial national monument designations in Utah and off the coasts of Massachusetts, or just last week, the issue of roadless area designations in Alaska, are ready examples of conflict over federal lands, all the way down to the use of cabins in Ottawa National Forest in Michigan and eminent domain issues in Smokey Mountain National Park.

When it comes to conflict, individual district and unit offices of the federal land agencies should not be irresponsible and ensure their staff are adequately equipped for their own safety. Just as important, staff should be trained to handle and diffuse conflict toward solutions, if possible. However, to go overboard is to miss the point and federal actions can wittingly or unwittingly create unnecessary tension. While it is popularly easy to caricature and parade the faults committed by private land owners in the Bundy and Hammond cases, federal land managers and bureaucrats were not faultless, either. That incident aside, federal actions to slow walking leases and permits, being unwilling to seek compromise or inflexibility to seek agreeable alternatives, failing to be present and available to the community, and escalating the severity of charges can create or exacerbate conflict. Management of federal lands is a two-way street at least.

That said, I would like to use the remainder of my testimony to focus on ways conflict on federal lands has been or could be resolved. Ultimately, I believe Congress needs to take a wholesale review of the federal estate and the morass of conflicting and overlapping laws governing it. However, even in this broken system there are examples of collaboration amongst conflicting interests that have yielded good results. Those successes boil down to some basic principles of cooperative federalism.

1. Solutions Are Site and Situation Specific. Rather than centralized policies, site and situation specific decisions reflect the unique circumstances, histories, and priorities of communities and land users. Americans can and do successfully pursue varied and sometimes competing interests on federal lands. Coming to creative compromises requires relying on people who will directly benefit from wise management decisions or be marginalized by poor ones.

Coming to such solutions is hard, complicated work. Take for example the process to reach a compromise for land use plans on Forest Service (USFS) and Bureau of Land Management (BLM) lands in northern Arizona. Within the protracted national debate, study, and re-analysis of wilderness area designations, a coalition of interests came together to try to resolve land-use issues in a more timely fashion for an area in northern Arizona known as the Arizona Strip.

It is perhaps worth noting that the federal government's inability to move forward in Arizona caused tension, apparently among all parties. According to Representative Mo Udall (D-UT):

“Since 1979 Arizonans who used the forests for livelihood, for recreation, for scientific purposes, and for much more, have labored under the uncertainties of interim management... This has hurt people in Arizona, causing frustration and confusion. Miners are not sure where to invest their exploration in development dollars. Ranchers wonder about the future management of their grazing allotments. Conservationists fear the loss of critical, sensitive lands in the fragile Arizona environment.

The Forest Service goes about its job without any clear direction from the Congress. Lawsuits in other States threaten court-imposed land management regimes that would benefit no one. The current administration launches a senseless, costly and resource-wasting process called RAREII [Roadless Area Review and Evaluation II] to paw over the inventory again.”²

Consequently, an attempt at more timely resolution was initiated by a group of private companies and environmental interests. Months of extensive discussion began between Energy Fuels Corporation, Western Nuclear Corps, the Wilderness Society, National Parks Conservation Association, National Wildlife Federation, Sierra Club, Grazing Advisory Board, local chambers of commerce, and, ultimately, the BLM, USFS, and Arizona’s federal delegation. Discussion resulted in an all but universally satisfying compromise with the Arizona Wilderness Act.³

The compromise created nine wilderness areas, including the BLM’s first designated wilderness areas. It also allowed for uranium mining and timber production within painstakingly negotiated boundaries. It represents the concept of multiuse lands enshrined in the Federal Land Policy and Management Act⁴ and is itself, in the words of BLM’s Director Robert Burford, a “unique piece of legislation” of hard-won consensus among competing interests. The National Parks Conservation Association described the Act as an “exciting adventure in the democratic process” which it was pleased with in substance and process and supported “with great enthusiasm.”⁵ The legislation had the support of both Senator John McCain (R-AZ) and Representative Udall, longtime chairman of the House Interior Committee.

Subsequent federal land management plans by the BLM and USFS reflected this compromise. Unfortunately, the Obama Administration unilaterally rescinded this arrangement in 2009 and

²“Additions to the National Wilderness Preservation System,” Subcommittee on Public Lands and National Parks, Committee on Interior and Insular Affairs, U.S. House of Representatives, September 13, 1983, http://www.azwater.gov/AzDWR/SurfaceWater/Adjudications/documents/SRP_Initial_Disclosure/SRP08318%20-%20SRP08765.pdf (accessed October 21, 2019).

³Arizona Wilderness Act of 1984, H.R. 4707, 98th Congress, 2nd Sess.

⁴Federal Lands Management and Policy Act of 1976, §102, 94th Congress: “[I]t is the policy of the United States that...public lands be managed in a manner which recognizes the nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands.”

⁵“Additions to the National Wilderness Preservation System,” Subcommittee on Public Lands and National Parks, Committee on Interior and Insular Affairs, U.S. House of Representatives, September 13, 1983, http://www.azwater.gov/AzDWR/SurfaceWater/Adjudications/documents/SRP_Initial_Disclosure/SRP08318%20-%20SRP08765.pdf (accessed October 21, 2019).

formally withdrew over 1 million acres from mining activities for 20 years in a 2012 public land order by the Secretary of Interior.⁶

While not always perfect, local expertise leads to successful environmental policy that is more responsive and better suited to unique landscapes. Time and again, states and communities have been able to come to creative, nuanced compromises that reflect their unique circumstances, priorities, and histories.

2. Solutions Respect the Role of Private Property Owners. Rather than barriers to public land management solutions, private property owners can be great assets. In fact, ownership is a powerful incentive for stewardship. Property rights turn environmental resources into assets rather than liabilities, and markets lead to more creative and desirable solutions. Unfortunately, federal approaches can disincentivize collaboration and partnerships with private property owners. Conflict often arises when property owners are seen as opponents or irrelevant to a solution. Current regulatory and management approaches often devalue private property, and federal management often fails to utilize market based solutions that could make land and resources more profitable to the benefit of federal lands.

Take, for example, Utah's voluntary Grazing Improvement Program (GIP) set up in partnership with the state, federal government, and private property owners. Grazing is a deep part of Utah's heritage and an important part of the local economy. However, the sheer volume of federal lands is itself a source of tension for Utahans. Sixty-three percent of Utah is owned by the federal government, and, consequently, federal land management plans and designations acutely impact the livelihoods of residents. According to the Utah Farm Bureau:

“There are 45 million acres of rangeland suitable for livestock grazing in Utah. Of that, 33 million acres or 75 percent is controlled by the BLM and Forest Service. The Director of the BLM manages more land in Utah than the Governor elected by the people of Utah. Our future in Southern Utah, in most of Utah and across the American West is being dictated by a distant, disconnected central government. And that distance is not just based on geography.”⁷

For decades, government responses to environmental degradation on rangelands have revolved around reducing access to land and reducing permissible herd sizes.⁸ This naturally exacerbated frustration and economic hardship for ranchers, but further did not solve rangeland and

⁶*Federal Register*, Vol. 77, No. 11 (January 18, 2012), pp. 2563-2566.

⁷Utah Farm Bureau, “Monument Review, MS-1530,” Statement of the Utah Farm Bureau to Secretary Ryan Zinke, U.S. Department of Interior, undated, <https://www.utahfarmbureau.org/Article/File/get?path=Files%2Farticle-109549%2FBears%20Ears%201.pdf> (accessed October 21, 2019).

⁸Utah Department of Agriculture and Food, “Change in Utah Federally Permitted AUMs 1940-2005,” <https://ag.utah.gov/wp-content/uploads/2019/05/History-of-AUM-Reductions.pdf> (accessed October 21, 2019). See also Utah Department of Agriculture and Food, “GIP History,” May 21, 2019, <https://ag.utah.gov/farmers/conservation-division/utah-grazing-improvement-program/gip-history/> (accessed October 21, 2019).

watershed damage. As described by Utah's Department of Agriculture and Food, there was a "disconnect between the regulatory regime and good grazing practices."⁹

Passed in Utah's legislature in 2006, the GIP aims to bring together ranching, environmental, and state and federal government interests together to apparent good effect for both ranchers and the environment.¹⁰ The GIP established local and state advisory boards to engage at the local, state, and federal levels to develop and propose consensus recommendations for federal lands management decisions, and implement rangeland projects. This involves groups like the U.S. Department of Agriculture, BLM, state agriculture and natural resource departments, Utah Farm Bureau, Nature Conservancy, Utah Cattlemen's Association, Grand Canyon Trust, Utah Wool Growers Association, Trout Unlimited, local landowners, and state universities.¹¹

Importantly, the program is proving effective from both ranching and environmental perspectives. Rather than overemphasizing herd size, Utah's approach emphasizes actively managing herds, distribution, and rotation to keep cattle from overusing lands and streams. Installing water systems, fences, and new plants have reduced soil erosion, improved streams and water quality, decreased the spread of invasive plants and species, and reduced dry underbrush that is fuel for wildfires. This has further benefitted ranchers with healthier, more productive rangeland for herds.

Under a system of property rights and rule of law, they have power incentive to maintain and enhance their environment.

3. Solutions Empower States and Communities. Perhaps a variation on the themes of the first two points, empowering states and communities to drive decision-making has proved effective. While there are many degrees of and ways to accomplish this, one good example is the experience of the White Mountain Apache Tribe.

Management of forests on tribal lands contrasts starkly with neighboring federal lands, to great environmental and economic benefit for the White Mountain Apache Tribe. The White Mountain Apache Tribe manages their own forests, mimicking the natural burn and growth cycle by clearing logs and brush that could become fuel for fires. Doing so also provides jobs for the tribe, which boasts its own logging industry.

While they work with the Department of Interior and Forest Service to develop land-management plans, critically, the tribal council is in the driver's seat. According to Robert

⁹Doug Warnock, "Utah's Grazing Improvement Program Develops Key Principles," Capital Press, December 29, 2016, https://www.capitalpress.com/ag_sectors/livestock/utah-s-grazing-improvement-program-develops-key-principles/article_f7fb1059-45ab-50a0-9e94-4bebc3a7c102.html (accessed October 21, 2019).

¹⁰Ashley Longmore and Troy Forrest, "The History and Overview of Utah's Grazing Improvement Program," *Rangelands*, Vol. 38 No. 5 (October 2016), <https://www.sciencedirect.com/science/article/pii/S0190052816300554?via%3Dihub> (accessed October 21, 2019).

¹¹Michele Straube and Lorien Belton, "Collaborative Groupon Sustainable Grazing for U.S. Forest Service Lands in Southern Utah: Final Report and Consensus Recommendations," December 2012, <https://ag.utah.gov/wp-content/uploads/2019/05/Sustainable-Grazing-for-Southern-Utah-Forests.pdf> (accessed October 21, 2019). For a BLM example, see Bureau of Land Management, "BLM Seeks Public Comment on the Bison Fence Environment," U.S. Department of Interior, August 16, 2018, <https://www.blm.gov/press-release/blm-seeks-public-comment-bison-fence-environmental-assessment> (accessed October 21, 2019).

Lacapa, former forest manager with the Bureau of Indian Affairs for the White Mountain Apache Tribe: “Our constituency is on the reservation, and we have about 16,000 tribal members. Nobody from New York. Nobody from California. Our primary interest group is right here.”¹² This protection allows the Tribe to complete more forest treatments more quickly according to the interests of the tribe. It has paid off—the damage and intensity of forest fires on tribal lands has been markedly less than on neighboring federal lands.

Reflecting on the stark contrast between tribal and federally managed lands, Lacapa stated:

“Unfortunately for the Forest Service, they can get somebody back East or back West that can put a stop to any of their [National Environmental Policy Act requirements]. The public has really limited their effectiveness in using prescribed burns and harvesting as tools. And that’s really bad for us. It’s not just about what we can do here locally [on the reservation], but on a landscape basis.”¹³

The simple truth is, the White Mountain Apache Tribe has powerful incentives to be good stewards of their environment as part of their livelihoods, economic opportunity, culture, recreation, and other uses of the land around them. Their community directly benefits from good management decisions and is hurt by poor ones. Fortunately, their unique situation allows them to plan as a community and utilize local expertise and priorities.

There are other small-scale examples worth considering to empower states and communities.

- Under its Good Neighbor Authority, the Forest Service has contracted with 32 states to complete management work on national forests.¹⁴
- The EPA and Nuclear Regulatory Commission have partnered with many states, which under formal agreements may assume certain regulatory authority under the Clean Water Act and Atomic Energy Act, respectively.
- The Antiquities Act grants the state of Wyoming an exemption from unilateral presidential action by requiring congressional approval for any monument designation.
- The South Nevada Public Land Management Act of 1998 made 68,000 acres of federal land near Las Vegas available for purchase and generated proceeds for Nevada’s General Education Fund, the Southern Nevada Water Authority, and federal conservation and maintenance projects.¹⁵

¹²Valerie Richardson, “Apaches Stave Off Wildfires with Timber Industry, Active Forest Management,” *Washington Times*, September 2, 2018, <https://www.washingtontimes.com/news/2018/sep/2/apache-forest-management-fights-wildfires/> (accessed October 21, 2019).

¹³Ibid.

¹⁴Jason Hayes, “Conflict to Cooperation: Collaborative Management of Federal Lands in Michigan,” Property and Environment Research Center and the Mackinac Center, October 30, 2018, <https://www.perc.org/2018/10/30/conflict-to-cooperation-collaborative-management-of-federal-lands-in-michigan/> (accessed October 21, 2019). See also U.S. Forest Service, “Good Neighbor Authority,” U.S. Department of Agriculture, <https://www.fs.fed.us/managing-land/farm-bill/gna> (accessed October 21, 2019).

¹⁵Bureau of Land Management, “Southern Nevada Public Land Management Act (SNPLMA),” U.S. Department of Interior, https://www.blm.gov/sites/blm.gov/files/documents/files/SNPLMA_New%20About%20Page.pdf (accessed October 21, 2019).

- The Federal Lands Freedom Act proposed by Senator James Inhofe (R-OK) in the 115th Congress, though not passed, would have allowed states to submit their own regulatory programs for energy permitting and development on federal lands in lieu of federal requirements.

There does not seem to be a sustained drive in Congress to expand the role of states on federal land-management decisions. However, states can utilize local creativity and accountability without the added baggage of national political battles and federal regulatory processes. States already share the cost of the maintenance of federal lands, whether by the liability of no management, the lost opportunity of poor management, or the infrastructure needed to support development of resources.

The way forward through collaboration is rarely clear cut and easy with an obvious outcome. If it were, we would not be having discussions like this today. Shifting more control from Washington to those with direct knowledge of the land in question and a clear stake in the outcome of decisions would be a step in the right direction. But the more Congress can encourage, agencies pursue, and states and private individuals initiate collaborative approaches, the better the chances of reaching solutions through conflict – solutions that offer better, nuanced, and creative approaches to benefit people and the environment.