Measuring the Scope of Federal Land Ownership

Angela Logomasini

During much of American history, land-use regulation was not a federal issue. The American system was biased against an active federal role in land ownership and long-term management. It focused instead on limiting federal powers to those specifically enumerated in the U.S. Constitution, such as individual rights and protection of private property. Accordingly, newly acquired federal lands were to be dispensed to the public, eventually becoming private lands that would be put to productive use. However, in modern times, these trends have been signficantly reversed. Federal controls on public and private lands have grown and continue to expand, affecting private property, recreation, and small businesses involved in resource industries—putting many of them out of business.

Background

After the Louisiana Purchase and acquisition of the western lands of the United States, the federal government owned about 80 percent of the total U.S. territory. Given the constitutional bias for private property, the government eventually transferred 1.1 billion acres to states and private parties under various federal programs.[1] In particular, the Homestead Act of 1862 granted freehold property to anyone who assumed control of 160 acres of government land, which they were to improve by growing crops or at least keeping a home on the property. An indi-

1. Betsy A. Cody, *Major Federal Land Management Agencies: Management of Our Nation's Lands and Resources* (Washington, DC: Congressional Research Service, 1995), http://cnie.org/NLE/CRSreports/Natural/nrgen-3.cfm.

vidual who worked or lived on such a plot for five years would then gain full ownership. Stewardship of these lands would result from private effort or state-level regulation at the most.

During the first half of the 20th century, the limited government philosophy gave way to progressivism in many areas, including environmental policy. Progressives ensured that their views were articulated in numerous public policies, shifting the federal focus from divestiture toward acquisition and management.

At the same time, land management policy moved away from resource use toward conservation and preservation goals, eventually limiting access for ranchers, foresters, recreationists, and those seeking access to energy resources. Such trends continue even though the federal government could facilitate resource use in a manner consistent with environmental goals. As an example, resource extraction can prove beneficial, particularly when it eliminates diseased trees and reduces fire risk.

Scope of Federal Land Ownership and Control

One of the most comprehensive reviews of land management and ownership policy was produced by the General Accounting Office (now the Government Accountability Office—GAO) in 1996. It reported on ownership and use of federal lands managed by four agencies: the Department of Agriculture's U.S. Forest Service and the Department of the Interior's Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service.

According to GAO, these four agencies have jurisdiction over and and regulate 95 percent of federal lands. The Department of Defense controls the rest. Total federal land ownership is substantial, amounting to about 30 percent of the U.S. landmass or about 650 million acres.[2] Most federal ownership is concentrated in the Western United States, exceeding 50 percent in 5 western states and 20 percent in 12. Hence, the impact of land-use regulations is very substantial in some markets.[3]

GAO reported that overall federal landownership between 1964 and 1994 for the four environmental agencies declined from 700.8 million acres to 622.8 million.[4] One might conclude that such a reduction indicates that federal land-use regulation has declined in at least one area. However, closer inspection reveals a different story.

Federal land ownership increased for three out of the four environmental agencies involved: U.S. Forest Service territory expanded by about 5 million acres, Fish and Wildlife Service territory expanded by about 65 million acres, and National Park Service territory expanded by about 49 million acres.[5]

The agencies that gained greater control over lands are those whose missions are more consistent with the progressive environmental movement's emphasis on preservation than with a conservation emphasis that allows resource use and recreation. Based on these missions, a logical ranking of the agencies from most resource-use intensive to most focused on conservation seems as follows:

- Bureau of Land Management: "It is the mission of the Bureau of Land Management to sustain the health, diversity, and productiv-

2. U.S. General Accounting Office, *Land Ownership: Information on the Acreage, Management, and Use of Federal and Other Lands*, GAO/RCED-96-40: (U.S. General Accounting Office,Washington, DC, 1996), 14.

3. Ibid., 23–24.

4. Ibid., 2.

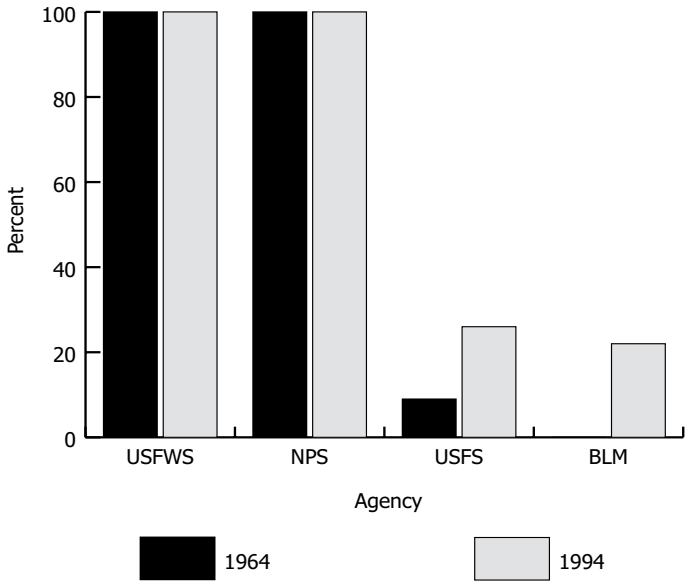
5. Ibid., 19.

ity of the public lands for the use and enjoyment of present and future generations."[6]

- U.S. Forest Service: "The mission of the USDA Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."
- U.S. Fish and Wildlife Service: The U.S. Fish and Wildlife Service describes its mission as "working with others, to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."[7]
- National Park Service: "The National Park Service preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country."[8]

GAO confirms this ranking by assessing the amount of land that each agency has available for conservation and preservation. The Bureau of Land Management is the least conservation focused, followed by the U.S. Forest Service. The National Park Service and the U.S. Fish and Wildlife Service, according to GAO, have always dedicated 100 percent of their property to conservation and preservation goals. Also of note, GAO shows a considerable shift from resource use to conservation between 1964 and 1994 (see figure 1).

Figure 1. Federal Land Managed for Conservation



Source: U.S. Government Accountability Office.

Not surprisingly, the Bureau of Land Management—whose mission is the most focused on resource use—is the only agency that saw a decline in landholdings. It relinquished control of 197 million acres between 1964 and 1994. However, its reduced landholding is not indicative of reduced federal controls overall, nor does it indicate increased development of public lands. In fact, not much of this land was privatized or turned over for resource use. More than 113 million acres were simply transferred

6. Bureau of Land Management, Office of Public Affairs, "BLM Facts," Bureau of Land Management, Washington, DC, June 7, 2006, http://www.blm.gov/nhp/facts/index.htm.

7. U.S. Fish and Wildlife Service, "Who We Are," U.S. Fish and Wildlife Service, Washington, DC, June 7, 2006, http://www.fws.gov/who.

8. National Park Service, "The National Park Service: Caring for the American Legacy," November 25, 2007, http://www.nps.gov/legacy/mission.html.

to the state of Alaska and Native Alaskans. And even with that shift, GAO reports that in 1994, the federal government still owned 63 percent of the state of Alaska.[9]

Agencies with greater focus on preservation—reflecting progressive environmental ideals—gained the most. The more conservation-focused Fish and Wildlife Service received 49 million acres of Bureau of Land Management land; the National Park Service received 41 million acres.[10] Such shifts represent movement away from resource use policies toward more preservationist ones.

The growth of federal land control and ownership is apparent in most states. The number of acres managed by land agencies increased in 46 states and decreased in only 4. In some states—Arizona, California, Florida, Nevada, and Wyoming—the shift toward federal ownership was substantial, with more than 1 million acres becoming federal property. Federal ownership declined in Alaska, Idaho, New Mexico, and Utah.[11] These findings indicate that the federal government is in general accruing land in states that have higher-valued real estate, such as California and Florida, while dispensing with lands in lower-valued areas such as Utah and Alaska.

The amount of federal land managed for conservation purposes—that is "national parks, national wildlife refuges, wilderness and wilderness study areas, wild and scenic rivers, and areas of critical environmental concern"[12]—has grown by 66 million acres.[13] In total, more than 272 million acres out of 622.8 acres—or about 44 percent—were managed for conservation rather than resource use by 1994, according to GAO.[14] Again, this trend lends support to the contention that federal land policy has shifted in favor of environmental interests.

In addition to expanding conservation- and preservation-related territories, the federal government also increased its rights of use on 3 million acres of nonfederal land.[15] These rights include rights for the public or government agencies to cross lands owned by private parties, nonprofit organizations, or nonfederal government entities.

Also of note, GAO reports that between July 1964 and September 1994, environmental organizations transferred 3.2 million acres of land to the federal government.[16] Such transfers are indicative of environmentalist support for federal land management policies, because few such organizations would transfer lands unless they had some assurance that the federal government would promote the environmentalist agenda of preservation of such lands—shifting them away from resource use activities and public access.

Since 1994, total land ownership by the four environmental agencies has grown from 622.7 million acres to 629.3 million acres. The U.S. Forest Service grew from 191.6 million acres in 1994 to 193 million acres by 2006.[17] The U.S. Fish and Wildlife Service land management portfolio grew from 87.5 million acres in

9. U.S. General Accounting Office, *Land Ownership*, 24.

10. Ibid., 20.

11. Ibid.

12. Ibid.

13. Ibid., 6.

14. Ibid., 24.

15. Ibid., 6.

16. Ibid., 7.

17. For the 1994 figures, see U.S. General Accounting Office, *Land Ownership*, 6; for the 2006 figure, see U.S. Forest Service, "About Us," U.S. Forest Service, Washington, DC, January 30, 2007, http://www.fs.fed.us/aboutus.

1996 to 96 million acres of wildlife refuges in 2006.[18] The National Park Service land ownership grew from 76.6 million acres in 1994 to 79.3 million acres in 2006.[19] As occurred in the prior two decades, the Bureau of Land Management continued to lose property, while more conservation-focused agencies gained. Land managed by the Bureau of Land Management declined from 267.1 million acres in 1994 to 261 million acres by 2006.[20]

Growth of Wilderness Regulation

Another way to demonstrate the trend toward preservation on public lands involves assessing the amount of land designated as wilderness in the past several decades. The National Wilderness Act of 1964 created the National Wilderness Preservation System, a network of public lands that receive special protections from development and other uses.

Under the act, Congress periodically designates land as "wilderness." The act declared that, once designated by Congress, wilderness areas "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness."[21] The intent of such designations was to reduce their use for resource industries and focus on "recreational, scenic, scientific, educational, conservation, and historical use."[22] Although all resource use was not eliminated, wilderness designations can limit such use considerably; the growing number of wilderness areas reflects the emphasis on preservation over resource use.

Figure 2 shows a considerable and steady expansion of the amount of federal land designated as wilderness. In 1980, Congress added more than 56 million acres to the system with the passage of the Alaska National Interest Lands Conservation Act. Since then, Congress has continued to add land, but at a slower pace.

The federal government also implements a similar law for wild and scenic rivers. Congress can designate rivers for protection under the Wild and Scenic Rivers Act, which states that these rivers

> shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

18. For the 1994 figures, see U.S. General Accounting Office, *Land Ownership*, 6; for the 2006 figure, see U.S. Fish and Wildlife Service, "President Seeks More than $2 Billion for U.S. Fish and Wildlife Service in 2007 Budget," press release, U.S. Fish and Wildlife Service, Washington, DC, February 6, 2006, http://www.fws.gov/budget/2007/FY07%20press%20release.htm.

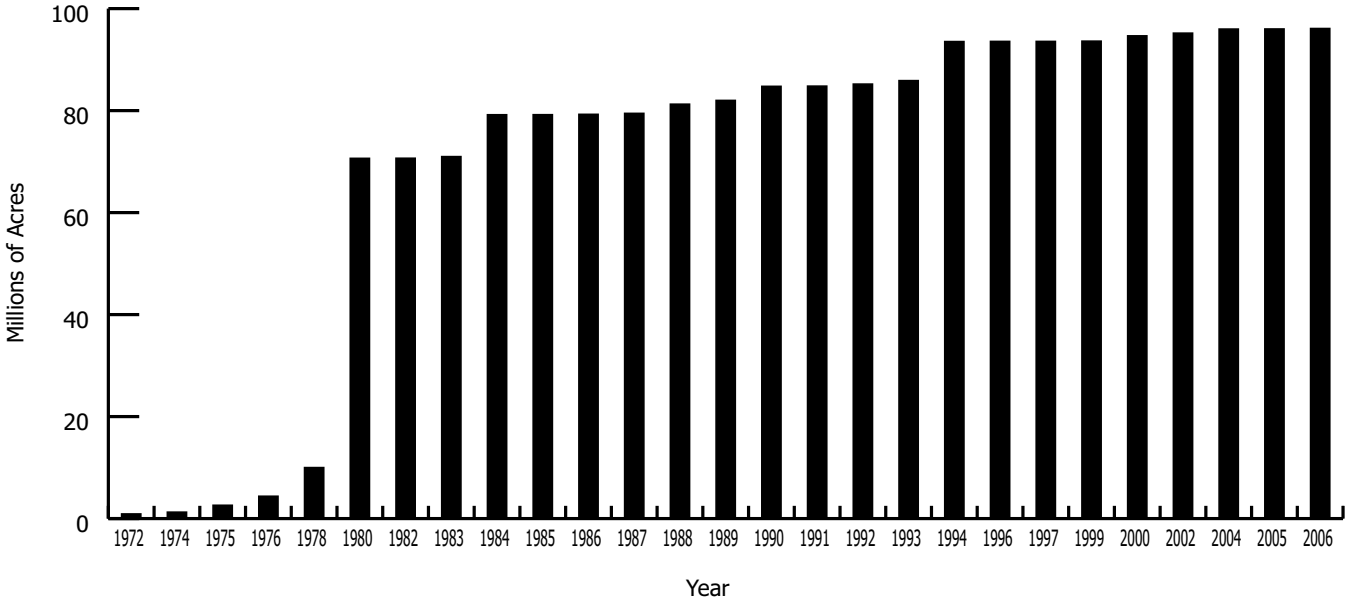
19. For the 1994 figures, see U.S. General Accounting Office, *Land Ownership*, 6; for the 2006 figure, see National Park Service, "The National Park System Acreage," National Park Service, Washington, DC, June 8, 2006, http://www.nps.gov/legacy/acreage.html. The National Park Service states that it was responsible for managing "83.6 million acres [in 2006], of which more than 4.3 million acres remain in private ownership," meaning 79.3 million acres were government owned.

20. For the 1994 figures, see General Accounting Office, *Land Ownership*, 6; for the 2006 figure see Bureau of Land Management, Homepage, Bureau of Land Management, Washington, DC, June 8, 2006, http://www.blm.gov/nhp/index.htm.

21. National Wilderness Act, Public Law 88-577, section 2(b).

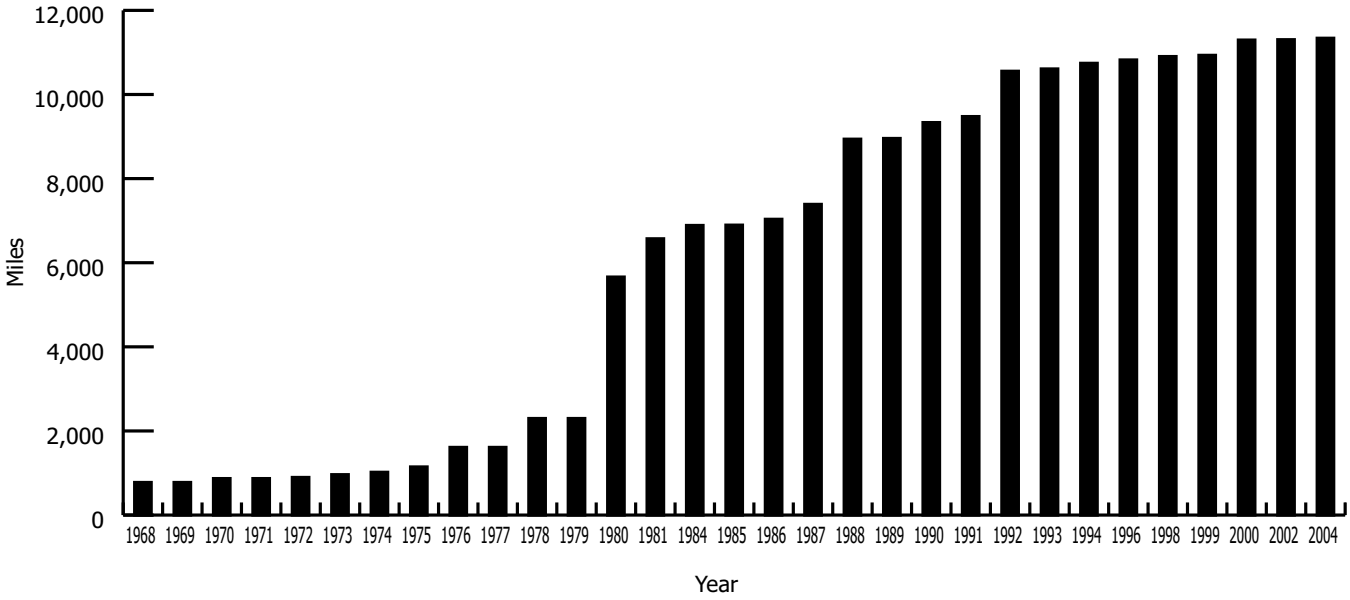
22. Ibid., section 4(b).

Figure 2. Wilderness Acreage by Year



Source: Wilderness.net, a partnership of the University of Montana, the Wilderness Research Institute, and the National Wilderness Training Center.

Figure 3. Miles of River Designated as Wild and Scenic



Source: National Park Service.

> The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.[23]

As with the wilderness designations, nearly every year since the Wild and Scenic Rivers Act was passed Congress has added more miles of river to the list, expanding regulation and protection along them (see figure 3).

The data show that federal land-use controls are growing—in terms of both ownership and management. Subsequent policy briefs will show that such politically driven preservationist management over an increasing amount of land has actually undermined environmental goals substantially. In addition, other policy briefs document how privately managed lands suffer far less from serious environmental problems and are managed to allow long-term resource renewal.

23. Public Law 90-542, section 1(b).

Updated 2008.