LANDS AND WILDLIFE

OVERVIEW

Environmental lobbying organizations seem preoccupied with visions of man-made ecological catastrophe. Many groups report of a deteriorating natural resource base and that we are now in a state of crisis. Yet, while resource problems and shortages do occur, our resource base is a long way from catastrophe. In fact, in most respects, resource trends are getting better, not worse.

The late Julian Simon wrote, "[I]f history is any guide, natural resources will progressively become less costly, hence less scarce, and will constitute a smaller proportion of our expenses in future years."[1]

- As a case in point, over the last 50 years America has been the world's leading timber producer. During this period, total forest area remained stable, and total standing timber volume increased significantly.[2]

- The U.S. Forest Service, the Bureau of Land Management, and other federal agencies own and manage about 34 percent of all forestland.[3] But 86 percent of all reforestation in America occurs on private land.[4]

Despite these improving market trends, more and more of America's natural resource base is being converted to government control and management. Land management by the federal government fosters environmental degradation and wastes taxpayers' dollars. While state and private land managers manage their natural resources for a net benefit, federal land management results in net losses of billions of dollars a year without protecting America's environmental heritage.

To end this horrendous waste of taxpayers' dollars and to provide for better environmental stewardship, policy makers should seek to divest the federal government of most federal lands, devolving land ownership to state governments, donating ecologically sensitive parcels to conservation organizations, or selling lands to private organizations. America was built upon a tradition of private property, and the federal land policies should uphold that tradition.

[1] Julian L. Simon, *The Ultimate Resource 2* (Princeton: Princeton University Press, 1996), 6.
[2] Roger A. Sedjo, "Forests: Conflicting Signals," in *True State of the Planet,* ed. Ronald Bailey (New York: Free Press, 1995), 177-209.
[3] David R. Darr, "U.S. Forest Resources," *Our Living Resources: A Report to the Nation on the Distribution, Abundance, and Health of U.S. Plants, Animals, and Ecosystems* (Washington, D.C.: U.S. Geological Survey, National Biological Information Infrastructure, 1995), http://biology.usgs.gov/s+t/noframe/m1103.htm.
[4] Simon, *The Ultimate Resource*, 155.

Federal Land Management

We're so used to calling this one-third of our nation, federal land, isn't it time we remembered that the very term means it belongs to us — to the people of America?

— Ronald Reagan, *Reagan, In His Own Hand*

- The federal government is the largest landowner in the United States. Recent estimates show that it owns approximately 25 percent of all the land in the United States — one in every four acres.[5]

- Federal ownership of land is most pervasive in the western United States, where the federal government owns nearly half of the land. For example, the federal government owns 45 percent of the state of California, 62 percent of Idaho, and nearly 80 percent of Nevada.[6]

- The total federal land estate exceeds the size of the total land area east of the Mississippi River.[7]

Expansive government control of land means that many land-use decisions are based upon political considerations, rather than on economic or environmental grounds. Often, bureaucrats in Washington, D.C. make management decisions with little regard for the needs and concerns of wildlife and local communities. As a result, federal lands are routinely mismanaged and are a drain on the American taxpayer. Moreover, federal ownership of lands often entails the imposition of land-use controls on neighboring communities, increasing the total burden of federal ownership.

Compounding the problem of federal land management decision making is the fact that numerous government entities manage federal lands. These entities include:

- The Bureau of Land Management: A division of the Department of the Interior (DOI) that oversees 264 million acres of public land, almost 12 percent of the total U.S. landmass.

- The Bureau of Reclamation: A division of DOI that manages and develops water and related resources in mostly western states.

- The National Park Service: A division of DOI that promotes and regulates the use of about 81 million acres of national parks.

- The Fish and Wildlife Service: A division of DOI oversees fish, wildlife, plants, and their habitats. It has 91 million acres directly under its control.

- The Forest Service: A division of the U.S. Department of Agriculture manages 191 million acres of public lands in national forests and grasslands.

This duplication of responsibilities is inefficient. The inefficiencies are compounded by the fact that different land agencies often work at cross-purposes and fail to coordinate important activities such as fire control.

[5] U.S. Bureau of the Census, *Statistical Abstract of the United States: 1999,* Table no. 394, 240.

[6] Ibid.

[7] The federal government owns about 563 million acres of land in the United States, while the total landmass east of the Mississippi is 548 million acres; U.S. Bureau of the Census, *Statistical Abstract of the United States: 1999,* Table no. 394, 240.

Congress also made effective federal land management more difficult. In the 1970s, Congress adopted a new statutory framework for public land management.[8] Land-use planning and other procedural steps required under legislation created wide policy-making confusion. It frequently transferred control over public land decisions to persons outside the federal agencies, and created cumbersome processes of land-use planning appeals and other opportunities for delay and protest that gave de facto veto powers to groups with enough lobbying resources. Echoing the conclusions of many nongovernmental studies, the General Accounting Office informed Congress in 1997 testimony that "in summary ... the Forest Service's decision-making process is broken."[9] The new laws had resulted in a state of management "gridlock."[10]

Recommendations

Divest Control to the States, Conservation Organizations, and the Private Sector. The federal government should divest itself of significant portions of its landholdings by transferring lands to the states, donating ecologically sensitive parcels to conservation organizations, or selling lands to private interests. One way to do this would be for Congress to appoint a commission to inventory all federal lands and evaluate what uses are appropriate on which lands. Those lands that are primarily used for logging, ranching, or other resource development purposes could be the first to be transferred into the private sector. After all, the private sector is more than capable of providing for such economic concerns. The commission also could identify which lands, if any, must remain under federal control because of environmental sensitivity or other compelling concerns. This process also could be used to consolidate the numerous federal land agencies to increase the efficiency of land management and to prevent federal land agencies from working at cross-purposes.

Unlike the federal government, states earn a profit on their land. Many acres of state land are school trust lands. Because the states are forced by law to manage school trust land to provide funding for their schoolchildren in perpetuity, states have the incentive to manage the land to provide money today, as well as practice sustainable management techniques to ensure money for tomorrow's schoolchildren. For all these reasons, Congress should transfer lands from the federal government to states or the private sector.

Barring the wholesale transfer of federal lands to state governments and the private sector, two key reforms should be implemented to ensure that the federal government is more responsible and efficient in its management of federal lands: (1) Adopt a policy no-net loss of private property, and (2) make federal lands self-sufficient.

"No Net Loss of Private Property." The federal government owns and mismanages more than enough land as it is; the federal estate should not be allowed to grow any further. Therefore, Congress should enact a policy requiring federal agencies to sell or otherwise dispose of an offsetting portion of land before engaging in any further land acquisition. Thus, if a federal agency wished to purchase a 2,000 acre wilderness area, it could do so only if it transferred 2,000 acres of federal land into the private sector. The federal government owns thousands of acres for no good purpose. This policy would force federal agencies to reevaluate their landholdings on a regular basis and would slow

[8] See, for example, Forest and Rangelands Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act of 1976.

[9] Roger A. Sedjo, *Forest Service Vision: or, Does the Forest Service Have a Future?* Discussion Paper 99-03 (Washington, D.C.: Resources for the Future, October 1998).

[10] Robert H. Nelson, "The Religion of Forestry — Scientific Management," *Journal of Forestry* 97, no. 11 (November 1999): 4-8; also in that issue see Jack Ward Thomas and James Burchfield, "Comments on 'The Religion of Forestry: Scientific Management," 10-13.

the unneeded acquisition and subsequent mismanagement of land.

Self-Sufficiency. Congress should require each federal land unit that is used for commercial or recreational purposes to become self-sufficient. That is, land managers would be forced to cut wasteful bureaucracy or increase user fees for resource development and recreation so that the individual units no longer lose money. Such efficient management occurs on private and state lands; it should occur on federal lands as well.

The briefs in this section provide additional analyses of federal land management as it relates to forests and forest health, roadless (wilderness) designations, and grazing policy. The first brief in this section discusses the Endangered Species Act and recommendations for its reform.

— David Riggs

ENDANGERED SPECIES ACT

Former Interior Secretary Bruce Babbitt once called the Endangered Species Act (ESA) "the most innovative, wide-reaching and successful environmental law that has been passed in the past quarter century."[1] Yet the truth is far different. "The ESA is dishonest legislation. Species are listed but not recovered, and the costs of carrying out the act's public purpose are disproportionately borne by private landowners."[2] The ESA successfully *lists* species, but has yet to *help one single species* recover in spite of the "protections" the act provides.

Background

Signed into law by President Nixon in 1973, the ESA's broad scope was set forth in a Supreme Court decision, *TVA v. Hill* (1978), focusing on the tiny snail darter. Although the overall framework of the act had remained the same since 1973, amendments were adopted in 1978, 1982, and 1988.[3]

The Secretaries of the Departments of Interior and Commerce implement the ESA. In Interior, ESA duties and obligations are delegated to the U.S. Fish and Wildlife Service (USFWS). Most of the species in the act come under the jurisdiction of USFWS. The National Marine Fisheries Association, an agency with the National Oceanic and Atmospheric Administration of the Department of Commerce, also has responsibilities with ESA implementation.

When it was first passed, the ESA was not very contentious, but over the years it has become very controversial, making reauthorization difficult. In fact, its authorization for appropriation expired in 1991, but congressional appropriations have continued to give it the force of law. In recent years, several revised ESA bills have been proposed: the Endangered Species Conservation and Management Act of 1995 (H.R. 2275); the Endangered Species Act of 1995 (S. 1364, the "Kempthorne" bill); and an alternative bill, to provide incentives for the conservation and recovery of endangered species, in 1996 (H.R. 3811).

The Endangered Species in Practice

Enacted in 1973, the ESA's stated objective is to "conserve" species of animals and plants that federal regulators list as "endangered" or "threatened." That means "to bring any endangered species or threatened species to the point at which [the act's protections] are no longer necessary." Thus the goal of the ESA is to "recover" species, "whatever the cost."[4] Federal regulators determine which species need protection and then place them on lists, designating them as "endangered" or "threatened." Between 1980 and 1999:

- Seventy-two percent of the new species listed as endangered or threatened were plants.[5]
- Fourty-four percent of new animal species listed as endangered or threatened were invertebrates.[6]
- Nine hundred twenty-four new species were listed for a total of 1,231.[7]

[1] Bruce Babbitt, "The Triumph of the Blind Texas Salamander and Other Tales from the Endangered Species Act," *E Magazine,* March-April 1994, 54-55.
[2] Randy Simmons, "The Endangered Species Act: Who's Saving What?" *Independent Review* 3, no. 3 (Winter 1999): 310.
[3] National Wilderness Institute, "Conservation under the Endangered Species Act," *NWI Resource* 7, no. 1 (Spring 1997).
[4] *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184 (1978).
[5] U.S. Fish and Wildlife Service, "Number of U.S. Listed Species Per Calendar Year" (Washington, D.C.: USFWS, December 31, 2000), http://endangered.fws.gov/stats/count.PDF.
[6] Ibid.
[7] Ibid.

Despite these listings, the protections provided by the ESA are not saving endangered species. Although it has made many attempts, the act has failed to recover a single endangered species.

In May of 1998, Interior Secretary Bruce Babbitt held a press conference to celebrate the removal of many species from the endangered species list. He said, "In the near future many species will be flying, splashing and leaping off the list. They made it." But half of his allegedly recovered species were being delisted because of extinction or error, and the ESA did not seem to do anything to "save" the other half.[8] The sad truth is that many of the species the Interior Department cited actually died off the list. Five species included in the announcement went extinct.[9] Four species were actually being delisted because they were taxonomically invalid. They were thought to be different from more common species when added to the list and were later determined to be the same species.[10] At least 10 of the species were delisted or downlisted due to data errors. Their range or population was underestimated, or their threat overestimated at the time of their inclusion in the ESA.

ESA Has Failed Species and People

Cindy and Andy Domenigoni are fifth generation farmer/ranchers. Their farm has traditionally been home to the Stephens' kangaroo rat, listed as endangered in 1988.

In 1990, the U.S. Fish and Wildlife Service (FWS) ordered the Domenigonis to stop cultivating their 800 tillable acres, stating this would constitute a "taking" of the rat, for which they would face impoundment of their farm equipment, a year in jail, and/or a $50,000 fine for each and every taking of an individual rat. For three seasons their fields lay idle and they lost $84,000 in foregone crops each season.

In 1993, after a fire destroyed 25,000 acres, including kangaroo rat and human habitat, FWS biologist John Bradley authorized the family to plow their fields, having determined that the kangaroo rat no longer lived in the area. However, Bradley said the k-rats had left before the fires because the brush and weeds had grown too thick for them.

In addition, 29 homes were destroyed in the fire because the residents were afraid to clear brush and vegetation away from their homes to create a firebreak, as they usually do when the Santa Ana fire season approaches. It turns out they had been notified by the FWS that disking a firebreak might harass the rats.

The species whose populations have improved have done so regardless of, or perhaps in spite of, the ESA. For example:

- The tidewater goby population has increased because of the cessation of a drought.
- The bald eagle, peregrine falcon, and brown pelican recoveries are due to reasons entirely unrelated to the ESA. According to FWS documents, the shooting of bald eagles declined from 62 percent to 35 percent in the decade *preceding* the listing of the eagle in the ESA. The private Peregrine Fund increased the population of the falcon.
- The Columbian white-tailed deer benefited primarily from the establishment of a refuge prior to enactment of the ESA.

[8] National Wilderness Institute, *Babbitt's Big Mistake: The Real Story behind His Endangered Species Act Announcement* (Washington, D.C.: NWI, 15 July 1998), http://www.nwi.org.

[9] The Mariana mallard and Guam broadbill were included in the press release of animals to be delisted. But, according to FWS information, this status was sought because they are extinct. Three species of the Oahu tree snail also were included for delisting, and the FWS says they have not been observed since early this century.

[10] The truckee barberry, Virginia round leaf birch, Lloyd's hedgehog cactus, and Ewa Plains "akoko" were determined to be taxonomic errors.

- Threats to the Robbins' cinquefoil were reduced by rerouting hiking trails in White Mountains National Forest, planting cultivated seeds, and limiting access.

Perverse Incentives

In addition to not saving species, the ESA is plagued with perverse incentives. Landowners who happen to have threatened or endangered species on their lands or who simply have habitat that might be used by endangered species are routinely prevented from using their lands or property, for such activities as harvesting their trees, planting their crops, grazing their cattle, irrigating their fields, clearing brush along fence lines, disking firebreaks around their homes and barns, or building new homes. Sadly, the ESA's punitive structure creates incentives for landowners to destroy endangered

ESA's Perverse Incentives

Ben Cone of Greensboro, N.C. bought 8,000 acres of timberless, cut over land on the Black River. He and his son, Ben Cone Jr., allowed the forest to grow back over many years and managed it for wildlife values. Their policy of environmentally and silviculturally sound prescribed burns and selective thinning maintained a healthy forest and created ideal habitat for species and environmental amenities for many others. It also created a near ideal habitat for the red-cockaded woodpecker.

A real estate appraiser determined that the value of the land without the woodpeckers was $1.7 million; with the woodpeckers and the accompanying land-use controls, the value was a mere $260,000. Few people can afford million-dollar losses. So, to mitigate losses, Cone clear-cut all his land that was not yet inhabited by the bird.

As Sam Hamilton, former Fish and Wildlife administrator for the state of Texas has said: "The incentives are wrong here. If I have a rare metal on my property, its value goes up. But if a rare bird occupies the land, its value disappears. We've got to turn it around to make the landowner want the bird on his property."[11]

The unfortunate result from threatening landowners with uncompensated losses is to encourage them to get rid of wildlife habitat and sterilize their lands. It creates the "shoot, shovel, and shut-up" syndrome whereby wildlife is viewed as a liability, not as an asset. Larry McKinney, director of Resource Protection for the Texas Parks and Wildlife Department, said, "While I have no hard evidence to prove it, I am convinced that more habitat for the Black-capped Vireo, and especially the Golden-cheeked Warbler, has been lost in those areas of Texas since the listing of these birds than would have been lost without the ESA at all."[12]

Periodically, a member of Congress will offer legislation to reduce the ESA's perverse incentives by including "safe harbors" or "habitat conservation plans" (HCPs). The purpose of these programs is to save species by getting landowners to choose ESA's land-use restrictions. In effect, safe harbors and HCPs get landowners to compensate the government in exchange for the permission to use their own land. These "reforms" will not solve the fundamental problem of perverse incentives and thus will not result in an ESA that is good for species or for people.

[11] Sen. James Inhofe et al., *Big Government and Bad Science: Ten Case Studies in Regulatory Abuse*, policy report no. 151 (Lewisville, Tex.: Institute for Policy Innovation, 1999), http://www.ipi.org/ipi%5CIPIPublications.nsf/PublicationLookupFullText/1C84DBE6BCD5AEE98625683A001A354C; "Saving the Species," *Orange County Register*, 29 September 1995.
[12] Jonathan Adler, "ESA's Dubious Track Record after 25 Years," *Washington Times*, 28 December 1998.

Recommendations

In an attempt to counteract the act's perverse incentives, efforts have been made in recent years to insert positive incentives. But attempting to sprinkle a few incentives over a regulatory nightmare is a recipe for continued disaster. If the end result is total (or even partial) loss of control of one's own land, landowners will not rush to participate. The regulatory framework of the ESA must be completely overhauled if the act is going to have positive results for species and people.

A quarter of a century of failure provides enough evidence for all to recognize that a fresh, innovative plan is needed. Because the ESA should work for people, plants, and animals, we should:

- replace the existing compulsory, regulatory act with a voluntary, nonregulatory, incentive-based act;
- prohibit government taking or regulating private property without adequately compensating the property owners;
- develop mutually compatible, voluntary, contractual arrangements with the landowner to protect habitat on private lands; and
- ask the government to pay foresters to delay harvest for a certain number of years, or pay landowners to plant and grow certain types of habitat.

— David Riggs and Allison Freeman

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FOREST HEALTH

Federal forest management has allowed dead and dying amounts of wood to accumulate in forests, which increases the likelihood of severe fires, threatens the lives and property of people that live near the forest, and damages the ecological health of forests. While forests require more intensive management, federal land management agencies have mismanaged lands in the past by suppressing all fires and now limit management options to prescribed burns. New approaches to forest management that complement, or even replace, the current regulatory solutions will depend on the creativity and ingenuity of private stewards, associations, and organizations.

Forest Facts

- Today, forests cover about 32 percent of the United States' total land area.[1]
- American forests contain diverse species of trees, provide habitat for a wide variety of plants and animals, purify air, prevent run-off, and inhibit erosion by anchoring topsoil.
- In addition to their ecological value, in 1997 American forests produced $98 billion of timber-related manufacturing.[2]
- Despite the United States being the world's number one timber producer, U.S. forest resources are on the rise. For the six forest inventories taken in the United States between 1950 and present, net forest growth always exceeded harvests.[3]
- Moreover, despite the federal government being the largest landowner in the United States, about 86 percent of reforestation is done by the private sector, with the remaining being done by government.[4]

Mismanagement and Forest Fires

Private lands, on the whole, tend to be managed better than public lands. When a private landowner mismanages land, that owner bears the cost, economic and otherwise, as the value of the land declines. Federal land managers, however, bear none of the costs of land mismanagement. For example, many forests on federal lands are overstocked and unhealthy:

- In Congressional testimony, Professor Robert H. Nelson provided summary evidence showing that more than 40 million acres of the national forest system are rated "very unhealthy" and face an extremely high fire hazard because of past fire suppression.[5]
- Over 60 percent of national forest and other federal resource lands are either "very unhealthy" or in "deteriorating health."[6]

[1] U.S. Census Bureau, *Statistical Abstract of the United States: 1999*, table no. 1150, p. 698.
[2] U.S. Census Bureau, *Statistical Abstract of the United States: 1999,* table no. 1147, p. 697.
[3] Roger A. Sedjo, "Forests: Conflicting Signals," in *True State of the Planet,* ed. Ronald Bailey (New York: Free Press, 1995), 177-209.
[4] Julian L. Simon, *The Ultimate Resource 2* (Princeton: Princeton University Press, 1996), 155.
[5] Robert H. Nelson, *Policy Lessons of the Los Alamos Fire for Federal Land Management,* Testimony before a Joint Hearing on "Fire Management on Federal Lands" of the Subcommittee on Forests and Forests Health and the Subcommittee on National Parks and Public Lands, Committee on Resources, United States House of Representatives, 7 June 2000, http://www.cei.org/RemarksReader.asp?ID=1029. Nelson's use of Healthy, Deteriorating Health, and Unhealthy corresponds to the Forest Service categories of Class 1, Class 2, and Class 3 lands, respectively.
[6] Ibid.

- In the southwestern region of the United States, where the Los Alamos fire burned, fully 85 percent of all national forest lands are considered in poor health and fire-prone.[7]

- From January to November 2000, wildfires burned over seven million acres of land in the United States.[8]

- The 84,960 fires that burned between January and October destroyed at least 852 structures and cost over $100 per acre to suppress for a total of almost $878 million.[9]

Before the government began to suppress forest fires in the early 20th century, frequent small fires cleaned out the underbrush. Large ponderosa pines, for example, often grew in open stands with densities between 20 and 50 trees per acre. Now, as a result of preventing forest fires, smaller, crowded, less healthy trees often grow in the same places with densities of 300 to 700 trees per acre.[10]

In these unhealthy, overstocked forests, when a forest fire breaks out, it burns much more intensely than the lighter fires that historically were a normal part of the natural ecological workings of many forests. In short, fire suppression policy does not prevent forest fires; it merely defers them into the future and makes the situation all the worse when large fires do eventually break out.

Recommendations

Fire suppression and decreasing levels of timber harvesting have caused the total volumes of wood in the national forest to increase steadily for years, creating the present condition of densely packed stands of trees — virtual kindling wood for fires. The decrease in timber harvest has also left some rural communities in the west economically depressed.

The Clinton Administration turned almost solely to prescribed burning for forest management. But prescribed burning is inhibited by the risk, as seen at Los Alamos, that a prescribed fire will get out of control, and decades of fire suppression have greatly increased this likelihood. The total costs of planning and controlling prescribed fires can reach billions of dollars. Plus, the weather conditions have to be just right, and the fires can create air pollution problems. The main alternative is simply to remove much of the excess fuels by mechanical means.

These excess fuels can supply pulp for paper production, be a source of biomass to generate electricity, or be a supply of various wood products like firewood, posts, poles, house logs, wafer board, and laminated lumber. The timber industry in the United States has shifted in many areas toward the use of chips and particles from lower quality trees and wood. In short, a market for the small diameter trees is possible.

With appropriate government policies, forest health can be improved, fire risk reduced, and wood supplies created. Much increased utilization of small-diameter trees can improve forest health and bring in substantial revenue to the federal government. Action is needed, but large new bureau-

[7] USDA Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory, *Historical Fire Regimes by Current Condition Classes* (Missoula, Montana: USDA Forest Service, 15 February 2000).
[8] National Interagency Fire Center, Year to Date Statistics, http://www.nifc.gov/fireinfo/nfnmap.html.
[9] National Interagency Fire Center, http://www.nifc.gov/fireinfo/nfn10-17Summ.html.
[10] R. Neil Sampson et al., *Assessing Forest Ecosystem Health in the Inland West*, report of a workshop at Sun Valley, Idaho, November 14-19, 1993 (Washington, DC: Forest Policy Center, American Forests, 1995), 7.

cracies and commitments of federal funds are not. The commercial potential of small-diameter trees means there is no need to create a new large drain on federal revenue sources and taxpayers to improve the health of our forests.[11] A study in the *Journal of Forestry* found that in southwest Colorado "forest restoration projects can achieve ecological objectives and pay for themselves even with low value material."[12]

The Forest Products Laboratory in Madison, Wisconsin, is working with the Watershed Research and Training Center in Hayfork, California, to test the commercial potential of small-diameter trees.[13] Experience to date has shown that removal of these trees costs $208 per thousand board feet for sale as green raw logs, and that these logs can earn $200 in revenue per thousand board feet — thus involving a small loss but much lower net costs than simply paying for removal of the logs without commercial sale. Use of the trees for processing and sale as flooring increases the costs to $800 per thousand board feet, but the revenues also rise to $1,200 per thousand board feet, yielding a substantial profit.

New legislation is required to achieve the full potential for utilization of small-diameter trees. The legislation will need to authorize both planning for forest thinning over a longer time frame and government commitments to make sufficient wood volumes available to justify new local mills designed for processing small-diameter trees. The supply commitment might have to cover a five- to ten-year period in order to allow for a sufficient period to pay off an investment in a mill and other facilities, but similar considerations have dictated long-term contracts of up to ten years with concessionaires in the National Park System. Unless Congress acts decisively to adopt some new form of approach, the cities and property owners of the West are likely to continue to face large and unacceptable forest-fire risks.

— David Riggs and Allison Freeman

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[11] Robert H. Nelson, "Western Wildfires: Seeing the Forest Through Dense, Dead, and Diseased Trees," *CEI On Point* (Washington, D.C.: Competitive Enterprise Institute, 14 September 2000), http://cei.org/OnPointReader.asp?ID=1213.

[12] Dennis L. Lynch, William H. Romme, and M. Lisa Floyd, "Forest Restoration in Southwestern Ponderosa Pine," *Journal of Forestry* 98, no. 8, (August 2000): 17-24.

[13] See USDA, U.S. Forest Service, Forest Products Laboratory, *Forest Products Laboratory Research Program on Small-Diameter Material* (Madison, Wisconsin: USDA Forest Service: October 1998); also Henry Spelter, Rong Wang, and Peter Ince, *Economic Feasibility of Products from Inland West Small-Diameter Timber* (Madison, Wisconsin: Forest Products Laboratory, U.S. Forest Service, May 1996).

GRAZING

The current approach to grazing on federal lands is bad for ranchers, bad for taxpayers, and bad for the environment. The lack of secure property rights disadvantages western ranchers and provides poor incentives for effective land management. Property-based reform of grazing on federal lands is a necessity to end wasteful government spending and provide better resource management of federal rangelands.

Background

The Bureau of Land Management (BLM), under the Department of the Interior, and the U.S. Forest Service, under the Department of Agriculture, manage grazing on approximately 260 million acres of land, which is almost half of the total federal estate and almost equal in size to California and Texas combined. Federal laws that control grazing subject federal grazing lands to "scientific management" where bureaucrats centrally determine the management of all federal lands. Many laws regulate grazing on federal lands, including the Taylor Grazing Act, the National Environmental Protection Act, and the Public Rangelands Improvement Act.

On BLM lands, the Taylor Grazing Act (and similar regulations on national forests) requires a government permit for the right to graze livestock on a designated portion of federal land called an "allotment." The grazing allotments have certain requirements:

- The permit holder must be a livestock operator.
- The permit holder must have "base property near the allotment," though sometimes this base property is just water rights.
- The permit holder must graze livestock for the permit to be retained.[1] This use-it-or-lose-it rule prevents recreationists, environmentalists, and others who wish to use the land for other purposes from buying grazing permits as a way of preventing grazing in those areas.
- Ranchers pay grazing fees to graze livestock on federal lands according to animal unit months (AUMs). An animal unit month is the amount of forage needed per month to sustain one cow and one calf, or one horse, or five sheep or goats.

These one-size-fits-all guidelines create problems as they are applied on disparate land types. Moreover, ranchers and environmentalists are increasingly at odds over how these federal lands are used.[2] Ranchers claim that rangelands are currently in the best condition in this century, while environmentalists claim that damage from grazing threatens the ecological functions of the rangelands. Both groups are technically correct; they are each measuring and valuing the resources differently.

Periodically, a member of Congress will offer legislation that attempts to increase grazing fees. Environmentalists say that ranchers are subsidized because private lands charge higher prices for grazing. But this argument is questionable because ranchers do not receive the same quality of property on federal lands as they do when they pay to graze on private lands. On federal lands, they

[1] Robert H. Nelson, "How to Reform Grazing Policy: Creating Forage Rights on Federal Rangelands," *Fordham Environmental Law Journal* 8, no. 3 (Symposium 1997): 645-90.

[2] Andrew Kerr, "Removing Hoofed Locusts from the Public Trough," *Willowa County Chieftain*, 15 August 1996. Kerr was one of the environmental leaders in the fight over the spotted owl in the Northwest.

have to develop their own water supply, fencing, and other grazing accoutrements. These factors make a critical difference in the price a rancher is willing to pay on public versus private lands.

Grazing and Conservation on Privately Owned Land

Whether for timber sales, hunting, or cattle grazing, tremendous conservation can come as a result of business. Testimonies supporting this were given in a Sept. 2000 "Oversight Hearing on Private Conservation Efforts: Lessons for National Forests" held by The House Resources Committee, subcommittee on Forests and Forest Health.

Billie Jean Redemeyer-Roney told the committee, "Habitat is the result of private ownership and trying to make a living." Roney is a co-owner of Roney Land and Cattle Company in Chico, California.

The Roney land is not just home to herds of cattle, but teems with vernal pools. The unusual vernal pool ecosystem includes a multitude of wildflowers, grasses, and invertebrates. Redemeyer-Roney showed the committee photographs of their ranchland, rich in diverse growth, and photos of surrounding Forest Service and Nature Conservancy land, neither in as good condition.

The ranch has been in the Roney family for over 150 years. Over that time they have developed careful grazing methods and a selective breeding program that work to balance their cattle and the land.

"When habitat is good for cattle, it's good for wildlife," Redemeyer-Roney told the committee. The cattle graze near the pools and eat the tall grasses, which would otherwise shade out rare plants. In fact, an endangered clover plant only grows where the cattle eat other grasses.

Redemeyer-Roney explained, "The land that is grazed comes back with greater species diversity. It didn't get to be that way from filling out a lot of papers and going to a lot of meetings, but by someone caring about the land."

Source: Robert J. Smith, Roney Land and Cattle Company Inc. *Center for Private Conservation, Feb. 1998, http://www.privateconservation.org.*

Forage Access Rights

The best alternative to the conflict-ridden system is to create a property-based policy for grazing on federal land. A property-based policy would transform current grazing permits to a legally enforceable right — forage access rights. The holders of forage access rights would make the land management decisions. All groups that seek federal rangeland resources would have the opportunity to purchase and trade these rights to achieve the outcomes they desire.

With forage access rights, conflicting groups have incentives to work together to achieve the benefits that each wants. If, for example, an environmental group held the rights, it could allow a rancher to graze cattle on certain portions of the land and use the money collected from grazing fees to improve conditions on another part of the land.

Grazing rights would create a sense of ownership and lead to more responsibility and healthier land and lead to less abuse such as overgrazing. They would allow a market to develop for keeping

lands in good ecological condition, reflecting people's values for ecological quality. Grazing rights create an incentive for long-term management. Because the holders of forage access rights have more security — that is, the rights are subject to less political whim than permits — federal land would be managed for long-term value, rather than maximizing its short-term potential. With less certainty, ranchers are more likely to manage for the short term because they do not know if they will be using the land in the long term.

Finally, such rights would reduce perverse incentives. The Forest Service and BLM, for ex ample, create perverse incentives for the health of rangeland when they require reductions in the number of animals a rancher can graze. Under this requirement, ranchers replace smaller cattle with larger ones. Larger cattle have higher protein requirements and spend more time in riparian area than smaller cattle, often resulting in more damage to the riparian areas. Ranchers with secure grazing rights have a long-term stake in the productivity of the land and would be more sensitive to activities that cause ecological damage.[3]

Recommendations

To move from the current permit system to a property-based system, policymakers should take the following steps:

- Create "forage access" permits that are tradable private property rights and exist as a right in perpetuity. The existing permit holder would own these new property rights. This would provide security of tenure to ranchers and increase the incentives for sustainable stewardship of the land. Since these forage access rights have indefinite tenure, the government would compensate the permit owner if the government decided to terminate the permit or restrict the use of the permit.

- Eliminate regulations that allow only ranchers to hold "forage access" permits, including base (adjacent) property requirements, restrictions on subleasing of permits, and "use-it-or-lose-it" rules. All Americans should have an equal opportunity to purchase, hold, and use these permits.

- Eliminate current laws that prohibit subleasing of federal grazing permits. Subleasing would enable mutually beneficial exchanges to occur that would promote better resource management and stewardship of the land. Different groups could sublease the permits to protect sensitive areas, or to provide forage for game during drought years, for example.

- Allow holders of "forage access" permits to manage their forage resources according to local conditions. The government should enforce nuisance rules (i.e., preventing one rancher from harming the land, forage, or resources of other users) and facilitate voluntary transactions. The government should not try to micromanage land-use decisions from Washington, D.C.

— David Riggs and Allison Freeman

[3] Robert H. Nelson, "How to Reform Grazing Policy," 648, citing Robert Ellickson, "Panel I: Liberty and Environmental Ethics," *Ecology Law Quarterly* 21 (1994): 402.

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ROADLESS AREAS

In January 2001, the Clinton administration released a final regulation that banned all road construction and timber harvesting on 58 million acres of national forests.[1] Hailed as a plan to protect America's forests, the wilderness designation covers 38 states and, when combined with the 35 million acres already in the official wilderness system, the full area in wilderness status now approaches the size of California. But simply designating tens of millions of acres as wilderness does not equal better national forests. The great irony is that the outcomes in many areas will be just the opposite, a worsening of the current crisis of forest health.

Roadless Rule

By prohibiting road building, logging, and economic activity generally, the roadless rule makes human management of the national forests more difficult. In public-interest comments submitted on the final rule, Randal O'Toole, senior economist at the Thoreau Institute, found:[2]

- The Forest Service has not shown that a universal ban on road construction is either necessary or appropriate for protecting important values — such as water quality, wildlife, and recreation — in these diverse roadless areas.

- In some cases, the economic and environmental benefits of prohibiting road construction are likely to be less than the economic and environmental costs of not being able to build a road.

- Forest Service data suggest that many roadless areas are in need of ecosystem restoration activities that will require road construction.

- The Forest Service did not consider alternatives to a complete ban on road construction, such as allowing low-impact temporary roads, as needed, for forest health or ecosystem restoration. Such alternatives could achieve environmental goals more effectively, while simultaneously minimizing economic and environmental costs.

- Unless managers can build temporary roads to access and treat the buildup of flammable materials, such as insect-killed trees, the cost of preventing forest fires in roadless areas often may be prohibitive, and future forest fires are more likely to become uncontrollable.

Many special-interest groups have exhibited a virtual religious zealotry when it comes to cleansing the environment of human — "unnatural" — influences. In reality, just the opposite, assertive human management, is necessary. In practice, it's impossible to manage the national forests in a "natural" state. For example, prior to European settlement in America's West, American Indians shaped western forests for thousands of years by deliberately setting fires. If "natural" is to be defined as preceding any human involvement, then no one can really say what the forest conditions ought to be.[3]

[1] *Federal Register* 66, no. 9 (12 January 2001): 3244-73.

[2] Randal O'Toole, *Public Interest Comment on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement* (Arlington, Va.: Mercatus Center, 17 July 2000), http://www.mercatus.org/research/rsp200014.html.

[3] See Robert H. Nelson, "The Forest Fires Next Time," *Weekly Standard,* 19 February, 2001, 19-22.

Recommendations

The roadless rule is an executive act; yet prohibiting access to a quarter of our national forests is a major departure from traditional uses of executive authority.[4] It is a political decision and an arbitrary plan that takes management decisions away from local people and circumvents the usual decision-making process for forest management. The decision in the rule to allow areas with fewer than 5,000 acres to be managed locally is a good one, but this logic should be followed all the way through. Local forest planning processes would be better at evaluating road and forest needs, but, instead, they are left to "twist in the wind while their superiors ignore the reality of conflicting values and objectives shared by the citizens who own the national forests."[5] Since it is not a law, the courts or the Bush administration could overturn the roadless rule.

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O'Toole, Randal. *Public Interest Comment on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement.* Arlington, Va.: Mercatus Center, 17 July 2000, http://www.mercatus.org/research/rsp200014.html.

[4] Shannon Fitzsimmons, "End of the Road?" *PERC Reports*, June 2000, 12-14, http://www.perc.org/june00.pdf.
[5] Zane Smith, "Politics Sapping Forest Service Principals," *Register-Guard* (Eugene, Oreg.) 23 November, 1999.