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For the Federal Land Action Group

Examining the Federal Estate: Options for More Local Control

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Thank you for the opportunity to be here. Like many friends and associates throughout the West, I very much appreciate the creation of the Federal Land Action Group. I am grateful for the work of Congressman Stewart, Chairman Bishop, and the other Members seeking a better approach to the management of public lands in the Western United States.

The federal ownership itself has been a sore subject to Western leaders for generations, but there has never been a time when a better approach was more obviously needed. In recent years, the federal management of those lands has proven to be disastrous for the environment, devastating for many local and regional economies, divisive for constituencies that should be working together, and a death sentence for millions of acres of national forests.

I know from years of meetings with a wide range of interests how different the view of public lands is between East and West, and the level of misunderstanding is a metaphorical Grand Canyon. Westerners tend to think management decisions should be left to people who live in the region, but these lands belong to all the people. Westerners often have a different view of land management decisions, but they are a small minority of the national population. Westerners know more about public lands, but that assertion actually offends many advocates of the federal approach. When we try to explain the importance of current economic activities on public lands, activities upon which businesses and communities depend for their very survival, others counter with a glowing description of the “last great places” in America. Westerners often ask the inevitable question, “Have you ever been there?” Many people involved in public lands issues have never visited the places they manage, regulate, or propose policy changes for. But as one congressional staffer once told me, “We don’t have to visit the place to care about it. For many of us,” he said, “it’s enough just to know it’s there.”

For millions of people who live in the American West, it is *not* enough just to know these beautiful places are there. It is a requirement of life that we use the water, minerals, forage, and other resources of these lands, because throughout most of the West, the federal government owns the resources upon which life depends. The fact that our back yards are also some of the world's most beautiful places is a happy coincidence to us. It is at once a great blessing, and our everlasting curse. We are blessed to live in an area so spectacular and special that the rest of the nation cares, sometimes passionately, about how we take care of it.

As Members of this working group know, there is often a false assumption about the manner of federal acquisition of these lands in the first place. The United States government paid just over \$55 million for the entire Western United States. That's less than the annual budget of Dubuque, Iowa. In five separate treaties, the U.S. acquired the whole country from the Mississippi River to the Pacific Ocean, including Alaska. In order to encourage settlement of the West, the government then gave away or sold this land to homesteaders, railroads and new states. That was always the intent – the federal government never acquired such lands for the purpose of owning and perpetually managing public lands.

How the West Was Won (Purchased)

The Treaty of Paris extended the original boundaries of the U.S. to the Mississippi River in 1783, and Spain ceded Florida to the U.S. in 1819. With the Louisiana Purchase in 1803, President Jefferson bought essentially all the land between the Mississippi River and the Continental Divide. The U.S. paid the French government \$23.2 million for the 828,000 square miles, or roughly 2.9 cents per acre. An 1818 fishing rights treaty with England clarified the U.S. northern boundary, thus acquiring for the U.S. the northern plains of Minnesota and North Dakota.

In 1846 President Polk managed to resolve a 30-year dispute with England over the joint occupation of the "Oregon Country." The resulting "Buchanan-Pakenham Treaty" gave the U.S. complete ownership of what is now Washington, Oregon, Idaho and Western Montana, an area of 285,580 square miles. The U.S. did not pay a cent for it, but simply asserted U.S. ownership and Great Britain backed down. Texas was annexed in 1845, touching off the Mexican War. It was ended by the Treaty of Guadalupe Hidalgo in 1848, in which the U.S. acquired from Mexico the land that is now Arizona, New Mexico, California, Nevada, Utah and Western Colorado. We paid Mexico \$15 million for the 525,000 square miles, the equivalent of 4.5 cents per acre.

Five years after the Mexican War, plans for a railroad to California required the land south of the Gila River. We purchased it from Mexico for \$10 million. The 29,670 square miles of land totaled about 53 cents per acre (the most expensive western land purchase, but still less than half the price the U.S. paid for the Virgin Islands 65 years later). Finally, the West was complete when Secretary of State William Seward bought Alaska from Russia for \$7.2 million. That is 1.9 cents per acre for Alaska's 586,412 square miles.

Thus, any modern thought that the United States has a major investment in these lands is simply a bad reading of history. The acquisition of these lands fulfilled what was called America's

“manifest destiny” to occupy North America all the way to the Pacific Ocean. Still, occupying so much of the continent was always a different matter than owning it, so putting all this land to use and persuading people to move west was essential public policy from the start.

Free Land

The government’s primary purpose for public lands throughout the 19th Century was to convince Americans to settle this land, own and occupy it, and turn it into productive and prosperous new States. It was viewed as crucial to the future prosperity of America, hence the famed Horace Greeley admonition, “Go West, young man.”

In that era, governments might claim territory, but they really could not control – and hope to keep – the land except by occupation. And free people could not necessarily be counted upon to join armies and go to war to defend land they did not care about. Thus for the United States, adding the entire continent to its borders would be of no value unless it could persuade its people to occupy the land, make it their home, and think of it as part of the country they were willing to fight and die to protect. Perhaps even more important, the new land in the West was already known to contain vast stores of natural resources that were unavailable in the existing states. But getting the land occupied was no small task at a time when the total U.S. population (1860) was less than a tenth what it is today. So both government and business did what was logical, and offered very strong incentives for Americans to move and settle the West.

The government privatized vast tracts of this new land for farming and settlement. The effort began with the Pre-emption Act of 1841, which offered up to 160 acres of land to homesteaders for \$1.25 an acre. A large portion of the lands acquired in the Louisiana Purchase were settled under this arrangement. In 1850 Congress passed a different law for the new “Oregon Country,” offering the 160 acre tracts free of charge to people already there, and for \$1.25 an acre to anyone else who could get there within 4 years. Finally in 1862 President Lincoln signed the Homestead Act, offering 160 acres of land free to settlers who would move west, stake their claims, occupy the new lands, build a home, plow the land, plant a crop and file for title.

These land privatization laws proved to be powerful incentives. Settlers in the Midwest and West could buy larger tracts of land than were available in the already populated East, and Western lands would appreciate faster. Considering that in 1850 the average value of land in the Northeast was \$17.00 per acre, no wonder thousands of people moved west for free or cheap land. In 1850, nearly half of all settlers in the Midwest owned real estate, but by 1860 that number was nearly 75 percent.

As new States were added to the Union, their statehood acts included what was then considered a non-controversial commitment to finish the privatization of these federal lands, by turning their ownership over to the States. In nearly all States east of the Mississippi that was done, and in nearly every western State it was not. There are many historical reasons for that, the subject of this working group’s effort today.

Oops, We Changed Our Minds

By the 1970s Americans' environmental consciousness had changed and the idea of giving away federal lands became unpopular. In 1976, Congress finally repealed the privatization laws, ended homesteading, and "reserved" all remaining lands into permanent federal ownership. An exception was made only for Alaska, where homesteading remained legal until 1986.

By the end of the homestead era, some of the land had been privatized and settled, but much of it never was. People settled land that was viewed at the time as more potentially productive, easier to farm, easier to access, nearer to lakes and rivers, covered with timber or underlain with valuable minerals. They left unsettled the lands with steep slopes, difficult terrain, no access, no water, no gold or silver – all the places deemed less desirable. They settled the valleys and left the mountains; they built towns along the rivers and left the deserts alone. Those high mountains and vast deserts are today considered some of the most beautiful places on Earth, the crown jewels of America. But during an era when families had to raise their own food to survive, these vast open spaces seemed daunting, inaccessible and worthless. This land remained in federal ownership for one and only one reason – no one else wanted it. Congress wanted to give it away and no one would take it.

That is the primary reason the provision promising transfer to the states had to be included in the acts of admission – because permanent federal ownership was never considered an option. Privatization would simply take longer than expected, so the new states could continue the effort, however long it took, without having to wait for statehood.

In the 1970s when the conservation movement began to subjugate the economic value of these lands to their aesthetic value, the government began to "reserve" them for public use, taking them off the homestead and mining claims market forever. Those "reserved" lands became national forests, parks and wildlife refuges. All the rest was given to the BLM for leasing to ranchers, miners, oil and gas companies, or anyone who might be able to use it, and to continue privatizing whenever possible. The remaining BLM land was finally "reserved" by Congress in the Federal Land Policy Management Act (FLPMA) in 1976, intending for the first time that all remaining public lands would remain in federal hands forever. That represented a broken promise to nearly every western state, and most western congressional leaders at the time agreed to it only in exchange for a commitment to the payment-in-lieu-of-taxes (PILT) program.

PILT represents yet another in the string of broken federal promises related to public lands. Far from compensating western states for the otherwise taxable value of lands, PILT remains subject to budget pressure, and to the whims of congressional appropriators every year. In fact, last year PILT payments totaled \$400 million, or 13-cents on the dollar of actual taxable value of federal lands.

This history of western lands results in two vitally important realities today, and public lands issues can only be understood in light of these two central facts. First, the vast majority of public lands are in the West, creating issues unique to the region, issues which do not exist in the East. Second, government policies left in their wake a convoluted and complex checkerboard of land

ownership that dominates the West, surrounding nearly every community with federal lands and the U.S. government as the largest landowner. It eliminates most of the tax base of western states, makes federal land managers very influential players in local communities, and fuels disputes about how to manage those lands (and who gets to decide).

A Tale of Two Cities

In my home State of Colorado there is a town called Lake City. It is the county seat of Hinsdale County; in fact it is the only town in Hinsdale County because the government owns all the rest. Hinsdale County is almost as big as the state of Rhode Island, but aside from a tourism economy, that is about the only similarity between the two.

At almost 9,000 feet above sea level and inhabited by 843 hardy and hearty souls, Lake City is the poster child for this unique Western land management problem. Hinsdale County is 95.3% federal land, and fully half of that federal land – more than 500 square miles – is in designated wilderness areas. Put simply, in Lake City you do business on public lands, or you are out of business. Thus, its economy was built on mining, logging and grazing on these public lands. In the modern era, with the political incorrectness of mining, logging and grazing, Lake City has survived because of the absolutely unparalleled beauty of the place, thanks to hunting, fishing, hiking, camping, guest ranches and other recreational uses of the same public lands. But make no mistake; every single decision made about the management of those public lands is a make-or-break decision for the people of Lake City. Simple access and management decisions affect the very survival of communities like Lake City.

Because state and local governments cannot tax the federal government, Hinsdale County has virtually no tax base; it receives a total of \$1 million from property taxes and takes in less than \$250,000 from sales taxes. By contrast, Rhode Island – almost the same size – has over 1 million people living in 39 towns and 5 counties, and enjoys an annual budget of \$8 billion. Rhode Island's population is 1,400 times larger than Hinsdale County's, but its budget is 1,700 times larger.

Hinsdale County will never enjoy the robust economy of Rhode Island for a number of reasons. It can never hold over a million people because we don't allow houses in the national forests so there isn't room. It can never have any more towns, or much more of anything else for that matter, because the federal government owns all the land. It would be difficult for people in Rhode Island ever to fully understand the constant dilemma this represents for the people of Hinsdale County. Although small and limited in its own resources, Rhode Island is virtually all private land and precisely because it is limited, that land is worth billions, and is always for sale if the price is high enough. The federal government is an insignificant landlord and most residents don't even know the names of the federal land managers in their state, nor can many recall the names of the four national wildlife refuges or the name of the agency that manages them. Changes in the management of those very small wildlife refuges do not significantly affect the lives of the people or the economy of the state. The people in Hinsdale County not only know the names of the national forests, but also the ranger districts within them, the BLM districts, all

the managers of each parcel and their families, and what all of them are doing every week. They know all about every decision of those federal agencies and the process leading to those decisions. They must follow these decisions closely, even participate in all the meetings, because their livelihood depends upon it.

Nothing about this difference is unique to Hinsdale County, or to Rhode Island. I use them as examples because of their similar size, but it is a comparison found in every western state.

Control Issues

It has become ingrained in the culture of federal land management that the economy should not be a major factor in environmental decisions, despite several laws requiring it. To be clear, many westerners subscribe to a conservation ethic that requires us to consider what is right for the environment as the *first* priority. But the pervasive view of most federal land managers is that the environment should be the *only* consideration.

In the long run, that unrealistic and impractical view is harmful to the environment itself, but it is dominant in public lands counties all over the West. It fuels the divide between east and west in national politics. Since the West is generally arid and the East is generally not, a huge majority of the American population has never lived where lack of water is a constant problem. In addition to the climate, the difference in federal land ownership worsens a feeling that West and East are treated differently. Nearly every federal environmental policy decision is inherently “unfair” to one region or another, and it is a sad fact that many policies are not enforced the same throughout the country. How can they be? Eastern locations with few federal lands will never attract the most zealous federal land managers hoping to enhance their careers by managing the nation’s crown jewels. Why would one want to manage a 10-acre wildlife refuge if one could run a wilderness area bigger than most counties? The east-west distinction is inherently unequal – and unfair. Decisions to limit the use of public lands simply cannot affect New York or Rhode Island the same way they affect Utah or Nevada.

Limiting the use of public lands is precisely what the environmental industry and the federal government have been doing for more than a generation now. It is no coincidence that virtually every action taken in the last 30 years by either the Administration or Congress that changed the management of public lands has further restricted public use. No federal lands in the past generation have been opened for multiple uses that were previously wilderness areas. No motorized access is now allowed where it was once legally denied. No areas are now available for energy or timber production that used to be off-limits. Instead, millions of acres of public land are now wilderness areas that once hosted significant public activity; thousands of square miles of rich energy deposits have been placed off limits to Americans; thousands of miles of roads once used by generations of hunters and anglers no longer exist. And the push to further restrict public access to public lands continues unabated.

Perhaps worst of all, the federal government simply does not trust state and local governments not to destroy public resources, as if people have a self-interest in destroying their own back

yards. The federal and state governments both represent the public, and they both have legal ability to preserve the environment. Both have legal protections for endangered species, clean air and water, and other environmental values. Both have strong enforcement abilities, and both care deeply about protecting such special places. Yet the federal government consistently refuses to acknowledge and value state and local cooperative efforts, most notably with the listing of the Gunnison sage grouse, despite 30 years of successful efforts by multiple states to preserve the species and its habitat. That ironic and costly scenario is played out almost every day all across the country because the federal government no longer treats state and local governments as partners, but as potential abusers that must be regulated and controlled.

That growing mistrust has changed the nature of environmental politics in Congress and in state legislatures. Thus, a 2010 Utah Wilderness bill was introduced by 19 senators from California, Connecticut, Indiana, Iowa, Maryland, Massachusetts, Michigan, New York, Ohio, Rhode Island, Vermont, Washington and Wisconsin – not by either senator from Utah. Environmental leaders and the media characterized the objection of Utah’s own senators as partisan, parochial, small-minded and self-serving. But the issue is not partisan; it is about understanding. Senators from these other states cannot fully understand the defining wilderness characteristics of specific portions of the Book Cliffs or Dead Horse Cliffs in Utah. They (and their staffs) did not participate in several years of public meetings on the issues, and they certainly were not involved in 20 years of studies of wilderness in the Rocky Mountain West or the next 20 years of similar studies of BLM lands. Many people in Utah stayed involved throughout that entire process, and both senators had been involved in the issue for most of their professional lives.

That doesn’t mean the local officials are always right, nor does it mean the rest of the nation is not entitled to its opinions. It merely means that due deference to the expertise of local and state officials and their congressional delegation is common sense. Yet is not the reality in federal land management today.

This issue is not about states’ rights as understood in the 1950s, when deference to state governments was used to hinder the civil rights struggles. Rather, making public land management decisions without understanding the specific local circumstances defies logic, so to be credible the process must include the knowledge of – and concern about – the people who live there. So in the debate about public land ownership today, the issue is not just about fairness from a historical perspective (why did the government honor the promise to mid-west states but not to western states). More importantly, it is about the inescapable fact that federal land management is poor management.

Good decisions must begin with an understanding of the facts. The federal government has a huge staff and can get those facts by sending its own employees to live in the area in question. Federal workers can stay in the local motel, eat in the local cafe, or even move to the area, buy a house and open an office. But they cannot replace the in-depth knowledge and institutional memory of people who have lived there for generations. The federal system brings a national perspective and an understanding of national goals. When combined with sound local knowledge of the facts on the ground, that can lead to informed decisions that the public will accept as based on sound reasoning. That is why the input of locals cannot just be superficial lip service; it must

play an accepted role in the decision itself. Thus, state and local governments should be relied upon to supply the facts, and there should be a built-in presumption of the accuracy of such facts, so the resulting management decisions can be intelligent, believable and accepted by the public.

Increasingly, local people do not trust that such decisions are based on facts, especially when they see examples such as roadless designations in areas they know perfectly well are not roadless. They understand that many of these designations are not really about protecting roadless areas, but driven by managers with another agenda.

Results Matter

One overpowering argument should be at the heart of this discussion: government has trouble responsibly managing the 650 million acres it owns. National forests have been allowed through complete mismanagement to die, fall down, and burn up across the country. Efforts to balance energy exploration and production with environmental protection on public lands have been met with an inability to make decisions, an “analysis paralysis” that contributes to America’s energy dependence and to global instability. In the Rocky Mountain region, the most glaring example of federal management that harms the environment is the devastation of our national forests.

The overgrowth of the pine forests (which historically grew in stands of 20 to 55 trees per acre, but today grow in densities of 300 to 900 trees per acre) is deadly for both the forest and the wildlife that inhabits it. Worse yet, since these stands of trees often grew in the place of earlier fires or logging projects, they are almost all trees of the same age and species, one of the most unnatural and unhealthy conditions imaginable in nature. That is why the U.S. Forest Service now classifies more than 60% of all the trees in our national forests as unhealthy, at risk, diseased, dead or dying. In many national forests that number approaches 90 percent. The same agency whose mission is to manage these resources for the public says more than 60% of its domain faces abnormal fire danger, including almost 90 million acres rated at “high risk” for catastrophic wildfires.

Agriculture Secretary Tom Vilsack has said as many as 100,000 dead trees fall down every day, and will do so for the next decade. Yet his Forest Service Chief, Tom Tidwell, told an audience of Conservation Districts in July, 2011 that he is more worried about the future of private forest land than national forests, because private lands are more vulnerable to “development,” and because private lands converted to commercial uses become more “fire prone.” Ninety million acres of *national forests* are at risk of catastrophic wildfires, and the Chief is more worried about how *private* owners are managing *their* land.

As a result, national forests are dying and burning at a rate unparalleled in recorded history. Over the past ten years alone, wildfires have ravaged 68 million acres of our prized forests. These fires burn unnaturally due to the overgrown state of the forest, burn far more acres than natural fires historically have, and are far more destructive. These massive forest fires are not natural. They are a direct result of manmade conditions – the absence over the past generation of any systematic thinning program (Logging in the national forests plummeted 84 percent, from 12

billion board feet per year in the 1980s to about half that amount in the 1990s, to about 2 billion board feet since 2007), and the completely unnatural and entirely avoidable epidemic of beetles.

The government once managed national forests for perpetual sustainability and made money doing so. Today the Forest Service is more costly for taxpayers than ever before, and yet cannot overcome its own systemic legal and political obstacles to managing the forests professionally. The result is a swath of dead trees from New Mexico to British Columbia, and a squandering of the greatest legacy of the conservation movement. It is no longer credible to argue that states would do a worse job of managing these precious resources.

The generations of westerners who grew up and live in these special places not only know them best, they love them most. If we care about raising generations of Americans who will continue the tradition of stewardship of these national treasures, then it is a grave mistake to continue excluding them from the management of public lands. Perhaps it is understandable, even predictable, that most Americans seem unaware of the extremely unhealthy condition of our national forests, because most people have never seen them. That is precisely why the access and involvement of local people is important; it creates a “constituency,” a dedicated core of advocates that is mostly missing from today’s top-down process. Absent that, even local people who inhabit nearby towns have become largely oblivious to the miles and miles of dead and dying trees all around their communities, and the fire danger that poses to their own communities.

We have heard the tired arguments: that states cannot manage public lands because they cannot afford the high cost, and that states would abuse the public lands if given the chance. Both arguments make assumptions that are demonstrably false. First, the current outrageously-high cost of federal land management is neither inevitable nor necessary. In fact, states would not only spend less on management (as demonstrated daily in the lower cost of state-provided services across the country), but would in fact make money from these lands. Consider the Institute for Energy Research’s estimate that there is \$150 trillion worth of minerals locked up in federal lands, not to mention the potential value of timber and grazing resources, all of which can be used responsibly and in ways that are sustainable forever. Second, the view that states would turn over public lands to abusive uses and destroy the resources is not only insulting to people who care passionately about their communities and environments, but also ignores the reality of federal land management today. It is the latter that is proving to be a slow death sentence for the nation’s forests and other great resources.

Ownership or Management

During my tenure at the Colorado Department of Natural Resources, our State began a series of discussions with the U.S. Forest Service about a novel approach to forest management. The conversations began during the worst fire season in Colorado history (2002), during which more than 600,000 acres of forest fires devastated entire landscapes that will not recover in our lifetimes. It was clear to all the forestry experts that federal land management (or lack of

management) had played a significant role in causing those fires – so much so that even the forest supervisors were seeking better ideas for future management.

Hampered by insurmountable budget and legal issues, the Forest Service was considering numerous options, so we began conversations about state management of national forests. Our concept at the time was to identify a national forest and turn over its management to the State Forest Service for a long-term period (50 years), at the end of which it could be amply demonstrated that the forest was healthier, and that the cost had been lower. The plan was never implemented so its details are less important today. What is important is that the seed of an idea was planted, and a frustrated federal agency did not reject it out of hand. Clearly such an arrangement would require congressional approval, and the small scope of that pilot project may now seem even too small with 20-20 hindsight.

Today leaders in several states are considering much broader proposals to turn over much larger tracts of federal land to state management, and there can be little doubt that state management would be both cheaper and more efficient. Far beyond that, many state leaders see failed federal management as an opportunity to revisit the “reservations” of those public lands in the first place, and even to re-open the issue of state ownership promised by the original statehood acts.

Some groups seek to pursue the issue through the courts, though I have trouble imagining any federal court in 2015 forcing transfer of the ownership of vast tracts of federal lands (whether or not the legal arguments are sound). However, it seems to me that the timing is good for a political discussion of the issue, based simply on the fact that federal land management is expensive at a time of perilous national debt, and that federal inefficiency is proving to be devastating to the environment on a landscape scale. Those two irrefutable facts indicate that there is an opportunity for Congress to structure legislation which would, at a minimum, change the structure of public lands management in favor of state and local deference – not merely input, but actual decision-making authority.

Finally, it is worth noting that there is ample precedent under federal law for the delegation of national authority to state governments, including in the area of environment management (such as the now-routine enforcement of clean air and clean water laws by states). In the case of public land management, that would not only help reduce the federal budget, it would be better for the environment.