Policy Analysis

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A Matter of Trust
Why Congress Should Turn Federal Lands into Fiduciary Trusts

by Randal O'Toole

Executive Summary

The Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service collectively manage well over a quarter of the land in the United States. Although everyone agrees that the lands and resources managed by these agencies are exceedingly valuable, the lands collectively cost taxpayers around $7 billion per year.

Several Cato Institute studies have called for privatization of the public lands, but this idea is strongly resisted by environmentalists, recreationists, and other users of public land. An alternative policy that will both enhance the values sought by environmentalists and improve the fiscal management of the lands is to turn them into *fiduciary trusts*. Under this proposal, the U.S. would retain title to the lands, but the rules under which they would be governed would be very different.

Fiduciary trusts are based on hundreds of years of British and American common law that ensures that trustees preserve and protect the value of the resources they manage, keep them productive, and disclose the full costs and benefits of their management. For trust law to apply, public land trusts must be based on a law written by Congress that clearly defines the *trustees*, the *beneficiaries*, and a specific *mission* or missions for the trusts.

Congress should create two types of trusts. *Market trusts* would have a mission of maximizing revenue while preserving the productive capacity of the land. To achieve this mission, Congress should allow them to charge fair market value for all resources. *Nonmarket trusts* would have a mission of maximizing the preservation and, as appropriate, restoration of natural ecosystems and cultural resources on the public lands.

Each pair of market and nonmarket trusts would jointly manage all federal lands in one of about a hundred *ecoregions*. Each ecoregion would have about 5 to 10 million acres of federal land that might include forests, parks, refuges, and other public lands. Trustees would be elected by a *friends' association* that anyone would be welcome to join.

Trusts would be funded out of the user fees they collect, with some retained by the market trust and some given to the nonmarket trust. In some cases, excess user fees would be returned to the U.S. Treasury.

The trust idea would significantly improve both fiscal and environmental management of the public lands. Congress should begin to implement this idea by testing it on selected national forests, parks, and other federal lands.

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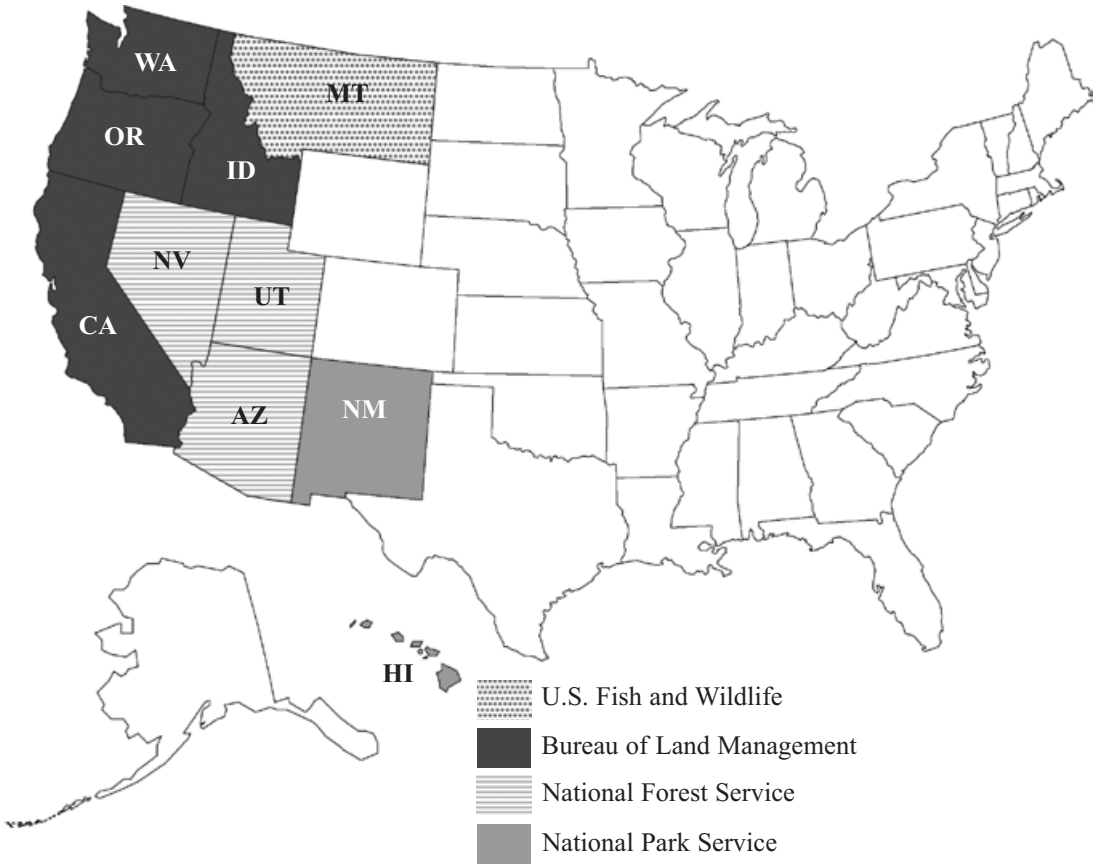
Introduction

Four federal agencies—the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service—manage more than 630 million acres of land in the United States. Representing about 28 percent of the country, this is slightly more than the combined land areas of Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington.

Most of the lands managed by these agencies have been in the federal domain since they were originally acquired by the United States in various purchases (such as the Louisiana Purchase) and treaties (such as the treaty of Guadalupe Hidalgo). But the federal government has also spent many billions of dollars adding to this original land base, primarily for parks, wildlife refuges, and recreation areas.

Many Americans are proud of the legacy offered by federal lands for present and future generations, especially the national parks and national forests that provide significant amounts of recreation. Yet this pride overlooks

Figure 1
Representation of the Extent of Federal Land Ownership



Source: *2009 Budget Justification for the Forest Service* (Washington: USDA, 2008), p. I-3; 2009 *Budget Justification for the Park Service*, p. ONPS-191; *Budget Justification and Performance Information: Fiscal Year 2009—Bureau of Land Management*, p. I-5; 2009 *Budget Justification for the Fish and Wildlife Service*, p. GS-1.

Note: The Bureau of Land Management manages an area of land nearly equal to California, Idaho, Oregon, and Washington. The Forest Service manages an area slightly smaller than Arizona, Nevada, and Utah. The Fish and Wildlife Service manages an area slightly larger than Montana. The National Park Service manages an area of federal land slightly larger than New Mexico and also manages an area of nonfederal land slightly larger than Hawaii.

several problems with public land management:

- The public lands are a huge drain on the treasury, costing taxpayers billions of dollars a year.
- Much of that tax money is spent doing things that are not necessarily good for the environment.
- A relatively small number of people receive most of the benefits from public lands while everyone else pays the costs.
- Among the biggest beneficiaries are the bureaucracies themselves, which skillfully manipulate public opinion and members of Congress to increase their budgets.

Several Cato Institute studies have called for privatization of the public lands, a solution that is strongly opposed by environmentalists, recreationists, and other public land users.

An alternative solution that will both enhance the values sought by environmentalists and public land users and correct the fiscal problems of the current system is to turn the public lands into fiduciary trusts.[1] In this proposal, the United States would retain title to the lands, but the rules under which they are managed would be very different.

In particular, fiduciary trusts would

- give public land managers a clear mission
- make managers more responsive to public land users
- insulate managers from political pressure
- allow them to tailor prescriptions to local lands rather than follow national fads
- include strong safeguards to protect nonmarket stewardship values
- have a strong sustainability mandate
- no longer cost taxpayers billions of dollars each year; and
- ensure that those who reap benefits from public lands pay their fair share of the costs

The Land Management Agencies

Table 1 compares the amounts appropriated by Congress out of general funds for public land management with the revenues collected by the four land-management agencies. A fifth agency, the Minerals Management Service, is responsible for collecting revenues for oil, gas, coal, and certain other subsurface minerals from 700 million acres of lands, including most of the lands discussed in this paper as well as most of the 55 million acres of Indian reservations and 25 million acres of military bases.

Not counting oil, gas, and coal revenues collected by the Minerals Management Service, the total revenues collected by the four land-management agencies averaged less than 14 percent of the cost of land management. Moreover, the agencies kept most of these revenues for their own operations, returning to the Treasury less than five cents for every dollar spent by the Treasury.

The $3.9 billion collected by the Minerals Management Service, 95 percent of which was from oil, gas, and coal, would seem to somewhat redeem public land management. Yet, as will be explained in detail below, almost all of this revenue came from less than 1 million acres of land. That means the remaining 99.9 percent of the land returned less than five cents for every dollar spent.

To make matters worse, Congress gives states or counties most of the funds that agencies return to the Treasury. In 2007, about 75 percent of BLM, all Fish and Wildlife Service, and 285 percent of Forest Service land-management returns to the Treasury were paid to counties. Close to half ($1.62 billion in 2007) of the onshore revenues collected by the Minerals Management Service were promised to the states, and most of the rest ($1.27 billion in 2007) were dedicated to a land-reclamation fund.

Ultimately, the Treasury retained no more than $854 million in return for the $7.8 billion it spent on public land management in 2007. Practically all of this came from the 1

The vast majority of federal land revenues come from less than 1 million of the 630 million acres managed by the four federal land agencies.

Table 1
Federal Land Acres, Budgets, and Revenues by Agency (millions of acres or dollars)

	Acres	Land Management Appropriations	Land Mgt. Revenues	Returns to Treasury
Forest Service	193	$4,129	$448	$132
National Park Service	84	2,181	346	0
Bureau of Land Management	258	996	239	201
Fish and Wildlife Service	96	398	12	9
Minerals Management Service		80	3,935	3,935
Total	631	$7,784	$4,980	$4,563

Source: *2009 Budget Justification for the Forest Service*, pp. D-2–D4, F-2; *2009 Budget Justification for the Park Service*, pp. Overview-51–52, Overview-70; *2009 Budget Justification for the BLM*, pp. I-11, II-1; *2009 Budget Justification for the Fish and Wildlife Service*, pp. RF-4, RM-11; *2009 Budget Justification for the Minerals Management Service*, p. 45; see also "Reported Royalty Revenue by Category, Fiscal Year 2007," tinyurl.com/5wwnu8.
Note: Appropriations include funds appropriated by Congress out of general funds. Revenues include only revenues from land-management user fees. Minerals Management Service data include only onshore revenues and costs.

Table 2
Disposition of Land Management Receipts by Agency (millions of dollars)

	Total Revenues	Retained by Agencies	Payments to States	Net to Treasury
Forest Service	$448	$316	$377	–$245
National Park Service	346	346	0	0
Bureau of Land Management	239	38	147	54
Fish and Wildlife Service	12	3	9	0
Minerals Management Service	3,935	1,269[a]	1,620	1,045
Total	$4,980	$4,563	2,154	854

Source: *2009 Budget Justification for the Forest Service*, pp. F-2–F-3; *2009 Budget Justification for the Park Service*, p. Overview-70; *2009 Budget Justification for the BLM*, pp. II-1, IX-14; *2009 Budget Justification for the Fish and Wildlife Service*, pp. RF-4; "Total Disbursement by Fund and Commodity, Fiscal Year 2007," Minerals Management Service, tinyurl.com/5oem7q.
[a] Reclamation fund, retained by the Department of the Interior for the Bureau of Reclamation.

The lands and resources managed by these four agencies are so valuable that it seems incredible they could be managed at such a huge loss.

percent of land that produces oil, gas, and coal; the other 99 percent of land cost taxpayers well over $7 billion and returned virtually nothing to the Treasury.

Government agencies that lose money are nothing new. Yet the lands and resources managed by these four agencies are so valuable that it seems incredible they could be managed at such a huge loss. As the agency-by-agency description below shows, the basic problem is that Congress has blocked the agencies' ability to make money and in some cases has actually given the agencies an incentive to lose money.

Forest Service

Though it manages less than a third of the federal lands, the Forest Service spends more

money managing the 193 million acres of national forests and grasslands than the other three agencies combined spend managing their 433 million acres. This is partly because its mission is more complex, but also because the agency enjoys strong support from Congress. With national forests in 39 states, the majority of senators and a large share of house members have reasons to boost Forest Service appropriations.

Prior to 1905, the Department of the Interior managed the national forests. But Gifford Pinchot, who directed the Department of Agriculture's Bureau of Forestry, persuaded Congress that his agency could do a better job of managing the federal forests. In particular, he promised that he could manage the forests at a profit instead of the annual losses incurred by the USDI. Not only did he fail to keep that promise, his renamed Forest Service probably cost taxpayers more than the Interior Department did when it managed the forests.[2]

For a few years in the 1950s, when the postwar housing boom greatly increased the demand for timber, the agency did show a profit, returning more timber receipts to the Treasury than Congress had appropriated to the agency. "The Forest Service is one of Uncle Sam's soundest and most businesslike investments," wrote *Newsweek* magazine in 1952, noting that the agency achieved this result by decentralizing its management. The agency was so popular with public-land users, the magazine added, that "most congressmen would as soon abuse their own mothers as be unkind to the Forest Service."[3]

Over the two decades after *Newsweek*'s article appeared, the Forest Service more than doubled timber sale levels and largely shifted from selection cutting (which removes only mature trees from a forest) to clearcutting (which removes all trees regardless of size or maturity). To increase sales, agency managers pushed into submarginal forests so that, after 1956, the Forest Service would make a profit in only one year—1969. Meanwhile, clearcutting proved a public-relations disaster as it angered hunters, anglers, and other recreationists.

Research in the 1980s revealed that the Forest Service was merely following its budgetary incentives. Congress funds sale preparation and administration costs out of tax dollars and allows the Forest Service to keep an unlimited share of timber receipts to spend on reforestation and other restoration activities. Forest managers therefore designed timber sales to maximize the amount of money retained by the agency and minimize returns to the Treasury. Clearcutting became popular because it minimized the presale costs funded out of tax dollars while it imposed the highest postsale costs that could be funded out of sale receipts.[4] Thanks to such practices, timber accounted for more than 40 percent of the Forest Service's budget.

Beginning in 1908, Congress dedicated 25 percent of timber receipts to the counties in which national forests were located. Since the only limit on the share of timber receipts the Forest Service could keep was the ability of managers to find ways to spend money in the timber sale areas, some national forests kept more than 75 percent of receipts, meaning the returns to the Treasury after making payments to counties were less than zero. This was obscured by the fact that a few national forests, mainly in the Pacific Northwest, had such valuable timber that they returned enough to the Treasury to make up for the negative returns from other forests. However, when sale costs paid by the Treasury are deducted, the Forest Service's timber program lost hundreds of millions of dollars per year in the 1980s.

After 1990, environmental concerns both inside and outside the agency led to an 80 percent decline in timber sale levels. This created a financial crisis for both the Forest Service and the counties that had come to rely on the 25 percent payments. Congress responded by paying the counties the amount they had received in the late 1980s, which explains why county payments exceeded returns to the Treasury in 2007.

During the 1990s, the Forest Service seemed to be an agency without a mission, as it cast about for some other activity that could budgetarily replace timber. The answer came

In 1905, Gifford Pinchot promised Congress that his agency would manage the national forests at a profit. He failed to keep that promise.

when a fire burned several hundred homes in Los Alamos, New Mexico, in 2000, leading Congress to increase the Forest Service's budget by 38 percent. Today, the Forest Service spends more on "wildland fire management" ($2.2 billion in 2007) than on all other national forest management activities, including capital improvements ($1.9 billion in 2007).[5]

Altogether, the Forest Service spends more than $4.0 billion per year managing the national forests, including the costs of the National Forest System, wildland fire management, land acquisition, and construction.[6] This averages about $21 per acre. Forest Service lands generated about $734 million in receipts in 2007, of which $286 million were mineral receipts—primarily oil and gas—collected by the Department of the Interior. Only about five million acres of national forests are leased for oil and gas, and only a tiny fraction of those acres actually produce any receipts. Of the $448 million collected by the Forest Service, the agency kept $316 million and returned only $132 million to the Treasury.[7] Total returns were therefore about ten cents for every tax dollar spent.

In 1969, the Park Service invented the infamous "Washington Monument strategy," closing the monument's elevator to tourists until Congress restored its budget.

National Park Service

When the Park Service was founded in 1916, its first director, Stephen Mather, insisted on adding only areas of truly national significance to the park system. He encouraged states to create their own park systems to manage areas of strictly state or local significance and he persuaded the president to veto legislation creating national parks that he did not consider to be true "crown jewels."[8]

Later Park Service directors took a more expansive view of the park system. For example, George Hartzog, who was director from 1964 to 1972, had a policy of "take it now, warts and all." He realized that more parks in more states meant more members of Congress would support park appropriations. By the time he left office, the Park Service administered parks in every state except Delaware.[9]

Hartzog also invented the infamous "Washington Monument strategy": when Congress approved a 1969 budget that Hartzog felt was inadequate, instead of cutting out the least-used programs, he decided to "spread the pain" by shutting down many popular programs, including the elevator in the Washington Monument. This led hundreds of tourists to visit the offices of their senators and representatives to complain. Congress quickly provided supplemental funding.[10]

Today, although it manages the smallest number of acres of the four agencies, the Park Service has the second-largest land-management budget. Including construction and federal land acquisition, the 2007 budget averaged about $25 per acre, which is more for each acre than the Forest Service.[11] The Park Service collected $346 million in various user fees and donations, nearly all of which was retained in special accounts, mostly for the Park Service itself. Only $11,000 was actually returned to the Treasury.[12]

- Although the Park Service generally enjoys a positive reputation, the popularity of the national parks disguises some serious problems: Many of the large national parks suffer from ecological decline due to invasive species and overpopulations of natural species such as elk and deer. Other than introducing wolves into Yellowstone, which have somewhat controlled elk overpopulations, the Park Service has generally been unwilling to do anything about the overpopulation problems.[13]
- Some portions of national parks are very heavily used, while many other areas receive slight or no use. The Park Service has generally been unwilling to set user fees in a way that would prevent overuse of the more popular areas.
- Congress has often used the Park Service as a source of pork—creating numerous park areas of questionable value—sometimes merely to take the high costs of operating those areas off the hands of state or local park agencies.
- The Park Service discovered that Congress prefers to fund capital improve-

ments over operations, so it generally overspends on such improvements, diverting a quarter of the cost of such improvements to "overhead."

- The Park Service has the archaic policy of housing thousands of its employees in the parks and spends far more doing so than it would cost those employees to rent or buy housing on the open market in towns near the parks.

Bureau of Land Management

Though the BLM manages more than three times as much land as the National Park Service, its land-management budget is barely half as big. This is partly because BLM lands are less intensively used, but it also reflects BLM's narrow political support. Over half of all BLM lands are in just two states—Alaska and Nevada—and more than 99 percent of the remainder are in just 10 other western states. This means most members of Congress have little reason to support BLM funding.

The BLM also manages the subsurface resources on 700 million acres of land, including most national forests, Indian tribal lands, Department of Defense, and other federal lands. To complicate things further, most of the revenues from oil, gas, coal, and other minerals on both USDI and Forest Service lands are collected not by the BLM, which manages those resources, but by the Minerals Management Service, which was created in 1982 to collect both outer continental shelf oil and gas revenues as well as onshore mineral revenues from federal lands.

The BLM spent about $1.0 billion on land management in 2007, including land acquisition and construction. This averages less than $5 per acre.[14] In return, it collected $239 million from timber, grazing, recreation, minerals, and a variety of other user fees.[15] The BLM kept at least $38 million of this, returning the rest to the Treasury.

In addition, the Minerals Management Service collected nearly $4 billion, mostly for oil, gas, and coal.[16] Unfortunately, although the Minerals Management Service reports tribal revenues separately, they do not say whether the other revenues came from BLM, Forest Service, or other federal lands. Since we know that $286 million came from national forests, no more (and probably less) than $3.6 billion came from BLM lands. The Minerals Management Service keeps nearly $150 million per year of this amount and spends about $150 million more per year in appropriated funds.

Although $3 billion or so in revenues for $1.2 billion in land-management operations sounds like a good return, the BLM says that all federal oil, gas, and coal revenues (including those from the Forest Service and other federal subsurface areas) came from less than 1 million acres of land. A total of 45 million federal acres are leased for oil and gas exploration.[17] Five million of these acres are on national forest lands.[18] Only 11.6 million acres are actually producing oil and gas, and this production only disturbs 420,000 surface acres (some of which are on national forests).[19] Meanwhile, federal coal production comes from just 467,000 acres.[20] Together, this oil, gas, and coal production accounts for more than 99 percent of mineral revenues from federal lands (not counting offshore oil and gas production).

This means that roughly 220 to 257 million acres (depending how you count) of BLM lands produced virtually no oil, gas, or coal revenues. The $200 million in other user fees collected on these lands in 2007 amount to less than $1 per acre. In short, most BLM lands earn about $1 for every $5 spent out of appropriations.

The BLM does earn other revenues, but they are not necessarily related to public land management. In 2007, it earned $164 million selling helium from the National Helium Reserve. It earned $114 million from interest on investments. One of its largest sources of revenue in recent years has been from the sale of land for urban development in the Las Vegas area. In some years, it has earned more than $1 billion from such land sales, but the slow real estate market in 2007 reduced this to $71 million.

Three-quarters of all public land revenues come from 420,000 acres of oil and gas wells and 467,000 acres of coal mines.

Because of congressional restrictions on behalf of special interest groups, only oil, gas, coal, and some timber are sold from public lands at fair market value.

Fish and Wildlife Service

Although all four agencies have duties other than land management, the Fish and Wildlife Service is the only one that spends more money on other activities than on managing its land. In 2007 the agency's total budget was $1.02 billion, of which it spent $398 million managing the nation's wildlife refuges, an average of about $4 an acre.[21] The agency collected about $12 million in refuge user fees, of which it kept $3 million to cover collection costs while the rest were paid to counties to compensate them for lost property tax revenues.[22]

Why Public Lands Aren't Working

A land-management system that costs taxpayers $7.8 billion per year and only returns $850 million or so to the Treasury obviously has serious fiscal problems. But those problems in turn lead to other problems, including environmental damage due to misallocations of resources, the overproduction of subsidized resources, inequitable distribution of benefits, and unfair competition with private landowners who market many of the same resources.

People describing the public lands often use the word *priceless* to indicate their great value. Yet most of the resources found on the public lands—recreation, wildlife, fish, water, timber, forage, and minerals—are regularly priced in the marketplace by private landowners. The reason why some public land resources are "price-less"—meaning no one has put a price on them—is that Congress has restricted the ability of public land managers to charge fair market value for those resources.

Of all public-land resources, only oil, gas, coal, and some timber are sold at fair market value. These resources are sold at auction to the highest bidders, and except for timber the bids are significantly higher than the costs to the government of providing the resources.

To an appraiser, *fair market value* is the price a willing buyer and a willing seller would agree to in a free market. Public land timber sales often fail to meet this definition even when they are sold at competitive auction because the resulting price is less than the cost to the seller. Agency managers sell the timber knowing their costs are subsidized, but a willing seller who had to pay those costs would not agree to such low prices.

Thanks largely to lobbying from interest groups, few other resources are priced even close to market value. Congress sets fees for forage for domestic livestock, hardrock minerals, and certain other resources at rates well below market value. Congress also restricts the rates that can be charged for recreation, including leases for recreation cabins on the national forests. Other resources, including water, some recreation, and most fish and wildlife, are effectively given away.

One obvious result of congressional interference in the market for public land resources is a system that costs $7.8 billion and returns only $850 million. But there are other, less obvious effects that, once understood, strengthen the case for charging fair market value for all public land resources.

First, prices are signals that let both managers and users know the relative value of the resources. As incentives, prices can prevent the overuse of scarce resources and let managers balance the allocation of lands to various conflicting uses such as motorized vs. nonmotorized recreation, timber vs. watershed, or minerals vs. wildlife.

For incentives to work best, managers must be able to keep a share of the user fees or the profits produced by those fees. But here, too, congressional policy is inconsistent. National forest managers can keep a nearly unlimited share of timber receipts. BLM managers in western Oregon can keep half of certain timber sale receipts. Forest Service and BLM managers can keep half of livestock grazing fees. Managers for all four agencies can charge for only certain kinds of recreation but can keep 80 to 100 percent of the fees they collect. But managers keep none of the fees collected for minerals, oil and gas, rights of way, or recreation cabins on national forests. Additionally,

they aren't allowed to charge fees for many other resources.

These inconsistencies lead managers to become unconsciously biased for and against certain resources. Below-cost timber sales are "good" because they enhance agency budgets. Profitable energy production is "bad" because it imposes environmental costs yet returns no money to the agencies to repair the damage. Returning money to the Treasury is a "waste" if managers failed to take the opportunity to keep and spend a larger share on pet projects.

While it is appropriate for Congress to offer managers incentives by allowing them to keep a share of user fees, it is not appropriate for Congress to give the agencies billions of tax dollars and then allow the agencies to keep most of the receipts for themselves. If public lands are really as valuable as people say, they should be able to pay their own way. This means that

- Congress should allow public land managers to charge fair market value for all resources.
- Congress should further allow public land managers to keep the same fixed share of the receipts for all resources.
- The amount of revenue returned to the Treasury should be greater than the amount of money that Congress appropriates for management, or, better yet, Congress should reduce appropriations to zero and fund the lands exclusively out of their own receipts.

Yet, user fees alone will not resolve all of the issues and conflicts that face public land managers. For one thing, some resources, such as endangered species habitat and historic and archaeological artifacts, are not easily marketed. In addition, land managers motivated by short-term revenues may be tempted to sacrifice the long-run productivity of the land. Fiduciary trusts can provide an institutional structure that will ensure protection in the long run for nonmarketable resources while improving the fiscal management of the lands.

An Alternative: Fiduciary Trusts

If privatization is politically infeasible and public management is inept, is there a third alternative? Free-market advocates often deride the idea that there is a "third way" between capitalism and socialism. But for public lands there is in fact a third choice embedded in our common law. It is called the *fiduciary trust*.

A fiduciary trust is a legal construct based on hundreds of years of British and U.S. common law. A trust consists of a *trustor* (also known as *settlor*, *grantor*, or *donor*), that is, the person or entity who creates the trust; the *trustee*, or the person or people managing the trust; the *beneficiary*, the person or people for whom the trust is managed; and the *trust instrument*, which dictates how the trustor wants the trustee to manage the trust.

A true fiduciary trust must have all of these things for common law to apply. Just because something is called a trust does not make it a fiduciary trust. Neither the Social Security Trust Fund nor the Federal Highway Trust Fund, for example, is a true trust. On the other hand, if all four of the above components are present, something can be a trust even if it is not called one. State lands in many western states are treated as trusts by the courts even though the word "trust" never appears in any legislation about the lands.

"When a trust is established it invokes an enormous range of rules, defined over centuries in British common law and more recently in American common law, and which are enforceable in the courts," say Jon Souder and Sally Fairfax in their review of state trust lands. "Most of the rules define the obligations of the trustee. Without the deep veneer of case interpretation, the trustee's obligations sound not unlike the Girl Scout Oath: to proceed with undivided loyalty to the beneficiary; to deal with the beneficiary with fairness, openness, honesty, and disclose fully to the beneficiary; to exercise prudence, skill and diligence in caring for the trust; to make the trust

Congress should allow public land managers to charge fair market value for all resources and fund the lands exclusively out of those receipts.

productive; to preserve and protect the trust property."[23]

As one example of how trust law works, Souder and Fairfax cite a case dealing with Washington state forests, most of which are managed as trusts for the benefit of common schools.[24] The Washington Department of Natural Resources sells timber from the lands in auctions and (after deducting a certain percentage for management) gives the revenues to school districts.

In the late 1970s, timber purchasers bid high prices for Washington timberlands, but lumber values fell dramatically in the recession of the early 1980s. Purchasers who were still obligated to pay the high prices they bid before the recession asked to be let out of their contracts, and the state legislature agreed. But, when a county sued on behalf of local school districts, the U.S. Supreme Court decided that the law breached the state's fiduciary responsibilities to the trust: the lands were to be managed to provide revenues to schools, not profits to timber companies.[25]

No one could file a similar lawsuit against the Forest Service or other federal land agencies with any expectation of success because federal lands are not trusts. Thus, it often appears that these lands are managed primarily for the timber industry, ranchers, miners, national park concessioners,[26] or other special interests, rather than for the American people as a whole. As one example, in 1980 the director of the Park Service was fired for making a speech that was mildly critical of park concession companies.

Although the goal of most state forest trusts is to maximize revenues for schools or other beneficiaries, trusts can have missions other than revenue maximization. The Platte River Whooping Crane Trust is "dedicated to the conservation of whooping cranes, sandhill cranes, and other migratory birds and their habitat along the Platte River in central Nebraska."[27] Many historical museums are operated as trusts with the goal of conserving historic buildings or artifacts. However, if the mission is not monetary, it must be as specific as possible or the courts will refuse to interpret it or even to treat the entity as a trust. On the other hand, a trust supported largely by tax dollars could end up as bureaucratic and inefficient as any other government agency.

Turning Public Lands into Trusts

Public land conflicts fall into two categories. First, there are conflicts between users of resources that could be marketed but are not fully marketed on public lands. These might include conflicts between timber cutting and fisheries or between recreation and mining. Charging user fees at market value will help resolve such conflicts: in general, each user will get their fair share based on their willingness to pay for the resource.

Second, there are conflicts where at least one of the uses is not fully marketable, such as an endangered species or an archaeological site. To protect such resources, Congress should create two types of trusts, one to manage the marketable resources and the other to manage the nonmarket resources of the public lands.

Congress should create two types of trusts: one to manage the marketable resources and the other to manage the nonmarket resources on the same public lands.

The mission of the market trusts will be to *maximize the revenue from public land management while preserving the productive capacity of the land*. The revenues from this type of trust would be divided three ways: the trust managers would keep a share to carry out their obligations; a share would go to the nonmarket trusts; and the remainder would go to the U.S. Treasury.

The nonmarket trusts would use the revenue they gained from the market trusts, plus any additional donations they could attract, to protect, preserve, and restore the ecosystems and cultural resources in and around the public lands. The mission of the trusts would be to *maximize the preservation and, as appropriate, restoration of natural ecosystems, historic structures, and prehistoric artifacts important to the history of America*.

Although the nonmarket trusts' funds would come from the public lands, their work could extend to natural and cultural

sites outside the public lands. Given sufficient resources, they might, for example, decide to expand a national park by buying land or protect more wildlife habitat by buying easements on other lands.

The two types of trusts would work side by side, jointly managing all the federal lands in their respective regions. But each would have different missions, and conflicts between those missions would be resolved through negotiation or monetary exchange. If, for example, a nonmarket trust decided that recreational use of a particular site was incompatible with its efforts to preserve that site, the nonmarket trust might compensate the market trust the revenues it would lose by shutting down the recreation site. Alternatively, it could make sure that other, equally lucrative sites were available to the market trust.

Geographic Scope of the Trusts

There are 155 national forests, 59 BLM districts, 390 units of the National Park System, and 548 wildlife refuges. Should each one be managed as individual trusts? Should they be grouped by region? Or should all lands from each agency be lumped together into four great trusts?

There are arguments in favor of all three alternatives, but there are distinct problems with the two extremes. At one end, many smaller units will not be able to earn enough user fees to manage the users, much less provide any funds for resource protection. At the other end, a single set of forest, park, or other trusts for the entire country is likely to suffer some of the same bureaucratic problems that afflict the agencies today.

Congress should divide the larger states into major watersheds or ecological regions and place all the public lands in each region into one pair of trusts (market and nonmarket). For example, Oregon might be divided into five regions: coastal, the Willamette Valley (including the western Cascades that drain into the Willamette), the Umpqua and Rogue River watersheds, the eastern Cascade and Blue Mountains, and the high desert of eastern Oregon. In other states, the geographic extent of each trust would depend on the local concentration of federal lands. States where federal lands are sparse, such as in the Midwest, might have only one or two trusts, but where states are small, such as in New England, trusts might cross state boundaries. Each pair of trusts would manage about 5 to 10 million acres of federal land, meaning there would be about 60 to 120 ecoregions.

Other boundaries could be drawn, making the regions somewhat larger or smaller; the point is to have cohesive groups of lands in relatively close proximity with similar ecosystems and histories. Each region should be large enough to provide adequate revenue to manage all the public lands in that region, yet small enough to allow the trustees to deal with similar problems and issues across their own trusts.

Parks, forests, wildlife refuges, and other public lands would all be managed in the same ecoregion-level trusts. This does not mean that parks would be opened to timber cutting or that forest wilderness areas would be opened to strip mining; existing restrictions on the use of each land unit would be maintained. It would mean that the same boards of trustees and governing structures would manage the public lands in each ecoregion.

Beneficiaries

Trust beneficiaries form an important part of trust governance, as they are the only ones who have legal standing to challenge trust operations. Thus, while it might be tempting to make "ecosystems" or "cultural resources" the legal beneficiaries of the market and nonmarket trusts, since natural and cultural resources cannot initiate lawsuits they would not make effective beneficiaries.

Instead, the beneficiaries should be the citizens of the United States, thus giving each citizen legal standing. While some may worry that this could lead to too much litigation,

Federal lands should be divided along watershed or ecological boundaries into about 60 to 120 ecoregional trusts.

experience with the state land trusts shows that so long as the trust missions are carefully defined, the amount of actual litigation is minimized.

Governance

For each of the 120 to 240 or so trusts—one market and one nonmarket trust for each of the 60 to 120 regions—Congress should create a "friends of the trust" association. Anyone who is particularly interested in the market or nonmarket resources in any given region would be encouraged to join the appropriate association or associations for a nominal fee of, say, $25 to $30 a year.

Each ecoregional trust would have a friends' association that anyone could join and whose members would elect the board of trustees.

The friends' associations are an important element of trust accountability. Their major function is to allow interested people to take an active role in public land activities and management. The friends' associations would be tax-exempt organizations that would seek private contributions to preserve, restore, and add to the public lands. They would also recruit members and other people to act as volunteers in restoration projects, interpretive centers, and other park activities.

The friends' associations would also play an important role in trust enforcement. They could sue to challenge the prudence of trustee decisions and their conformity with the trust mission. In addition, as described below, the friends' associations will have a special authority to petition Congress if the trusts fail to achieve their objectives.

Most importantly, the members of the friends' associations would elect the boards of trustees. Each board would consist of, perhaps, nine members elected for three-year staggered terms. A combination of the secretaries of the Interior and Agriculture departments and/or the governors of the states in which the trusts are located might appoint the initial boards. But as their terms expire, elected trustees would replace them.

This democratic process is a little different from the electoral democracy that dominates government today. Because the people who join the friends' associations will be those who care the most about the resources being managed by the trusts, they will also be the ones who are likely to be most knowledgeable about the resources. Thus, the people who elect the trustees will be better informed than the public in general.

The boards of the recreation trusts would hire public land superintendents, approve trust budgets, set user fees, and regulate uses. Since they would have both an incentive and a mandate to maximize revenues, they would tend to allow any uses that are not specifically forbidden by law. However, if they proposed to allow a use that was legal but incompatible with the nonmarket resources in a park, the nonmarket resource trusts could pay them not to allow that use.

Funding

Public land revenues from each trust should be distributed in a way that provides positive incentives for the trustees of both market and nonmarket trusts. Congress should seed each trust with a one-time-only budget roughly equal to the amount of money spent by federal land managers in that region in the year prior to the creation of the trusts.

Thereafter, each market trust would get to keep the *net income* that it earned in one year to spend on operations in the following year. This would give the trusts an incentive to maximize net income. Trusts that did not need to spend the entire seed money or net income from the previous year would be allowed to carry over the savings into future years.

Each nonmarket trust would get to keep the difference between gross and net income from managing the market trust in the previous year. Effectively, it would get as much money as the market trust spent in the previous year. For example, say a market trust has $1 million from 2009 to spend in 2010. In spending that $1 million, it earns $1.9 million. This gives it a net of $0.9 million to spend in 2011. Since the $1 million it spent came from

2009, there is $1 million of 2010 revenues left over, and they go to the nonmarket trust. As in the case of the market trusts, nonmarket trusts are allowed to carry over unspent funds from one year to the next.

To guard against bureaucratic bloat in situations where a highly lucrative resource earns large revenues at little cost, the above formula only applies to trusts whose gross revenues are no more than 200 percent of the median trust. Above 200 percent, both the market and nonmarket trusts each get just 5 percent of net revenues, with the remaining 90 percent going to the U.S. Treasury.

Trusts that find they cannot earn enough revenues to cover their costs will be allowed to merge with other trusts. On the other hand, to encourage decentralization, trusts that earn more than 200 percent of the median trust will be allowed to split into two trusts. However, the geographic split must be along natural watershed or ecological boundaries: the trusts that contain the oil and gas resources of the Custer National Forest or the coal resources of the Powder River Basin will not be able to split into a hundred little trusts in order to keep all the revenues from these resources.

If the trusts are allowed to charge user fees for a full range of resources, their revenues should, in most cases, be sufficient to cover their costs under this formula. As previously noted, the four public land agencies spend close to $8 billion per year managing federal lands but collect only about half that amount in user fees—most of which comes from a tiny fraction of the public lands. The trusts will have significant opportunities to both reduce costs and increase revenues.

One cost reduction would be the elimination of regional and national offices that will no longer be needed for trust operations. For example, in 2007 the National Park Service spent $1.76 billion on "operation of the National Park System," including resource stewardship, visitor services, facility maintenance and operations, and park support. Yet the total amount spent by parks, historic sites, and other individual units of the National Park System was only $1.08 billion, indicating that regional and national offices spent the other $0.68 billion, or 39 percent of the total.[28]

A major revenue enhancement will come from being allowed to charge fair market value for recreation. In 1989, the Forest Service estimated that if it were allowed to charge fair market value for all resources, it could collect three times more money from national forest recreationists (including hunters and anglers) as from all other users combined. Total estimated recreation user fees from national forests alone were estimated to range from $5 billion to $8 billion in 2005.[29]

Recreation revenues are low today because most recreation is free. Many national parks, for example, do not charge a fee, and those that do usually charge only an entrance fee and campground fees. As airlines, hotels, and other service providers have discovered, effective fee management requires *product differentiation*. For example, public land managers could charge a premium for people who want to reserve campground spaces or other facilities in advance; collect separate fees for hiking, boating, fishing, and other activities; and find ways to charge special fees for premium services or features. Given the incentive, many public land trusts would develop innovative ways of providing new services and generating new fees.

As with any government service that has historically been free or priced well below cost, proposals to allow public land managers to charge market-rate user fees will no doubt generate controversy. Yet all the arguments against such fees are easily answered:

- "We already paid for parks in our taxes—why should we pay twice?" If user fees replace taxes in funding the national parks, people are only paying once.
- "User fees deny access to low-income people." Many public land users have much greater than average income or wealth. There is no need to give wealthy people a free ride just to help low-income people. People who want to help low-income park visitors can create a

Turning public lands into ecoregional trusts would save hundreds of millions of dollars now spent on national and regional agency offices.

User fees give land managers incentives to be responsive to users rather than politicians.

special recreation-stamp-like fund for them.

- "Why should Americans have to pay to use land they already own?" If all Americans own federal lands, but only some use them in any given year, then those who use them should pay rent to everyone else.

If the arguments against user fees are lame, there are two very powerful arguments in favor of such fees. First, they give land managers incentives to be responsive to users rather than politicians. Second, user fees make sure that the people who benefit from the lands are the ones who pay the costs. By linking users with managers, recreation fees create incentives for both visitors and managers that don't really exist today.

Of course, fees will be augmented by contributions and grants from public land supporters. Several national parks, including Shenandoah, Great Smoky Mountain, and much of Grand Teton, were donated to the federal government by John D. Rockefeller Jr. and other wealthy patrons. Even today, the Park Service receives more than $25 million per year in private contributions.[30] Such contributions are likely to significantly increase as people realize that the public lands need public support. Trusts are likely to dedicate a large share of these contributions to capital improvements or land purchases, while they spend most fees from renewable resource use on operations and maintenance.

Trusts would not be allowed to sell land except in special cases, such as the Las Vegas area, where land is needed for urban growth and where the sale is approved by Congress. In these cases, 5 percent of the revenues from such sales should be retained by the market trust making the sale, 5 percent for the nonmarket trust, and the remaining 90 percent returned to the Treasury.

Evaluation

Congress should write standards into the enabling legislation that will allow the friends' associations, on behalf of the public, to periodically review the performance of the trusts. These standards should include but not be limited to the following issues:

- Are the trusts maintaining and improving ecosystem health and vitality?
- Are the trusts maintaining and restoring historic structures and artifacts?
- Are the trusts monitoring to ensure that natural and historic resources are protected?
- Are the trusts producing sufficient revenue to manage the lands and protect the historic and natural resources?
- Is trust management resulting in cooperation rather than polarization over on-grounds activities?
- Are users happy with the trust programs?

Congress should specify in the enabling legislation that trusts will be perpetual. Normally, once a trustor creates a perpetual trust, the decision is irreversible and the trustor has no more say in trust management. However, to allay fears that the trusts might do more harm than good, Congress should include an "escape" provision allowing the friends' associations, by a two-thirds vote, to petition Congress to revoke or alter the trusts. Only on such a two-thirds vote by one of the friends' associations may Congress revise or repeal the enabling legislation for the lands overseen by that trust.

The Heart of the Proposal

Many of the details of the above proposal, including the number and size of the trusts, the selection of the trustees, the mission statements, and the roles of the friends' associations, are rightly subject to debate and could no doubt be improved. But for trusts to truly improve public land management, the following components are essential:

- For trust law to apply, public land trusts must be based on a law written by

Congress (the trustor) that clearly defines the trustees, the beneficiaries, and a specific mission or missions for the trusts.

- To reinforce trust law with sound incentives, the trusts should be funded out of user fees and donations, not tax dollars. Congress may give the trusts seed money for the first year, but they must be quickly weaned off this seed money or they will become as bloated and inefficient as any other government agency.
- To give members of the public an opportunity to participate in the trusts, Congress must create or make provision for the friends' associations and give them the power to select at least some, if not all, of the trustees.
- Congress should define criteria against which trust management is to be judged and must create an escape mechanism to revoke the trusts if they should drastically fail to meet those criteria.

Ten Reasons Why Public Lands Should Be Trusts

1. Trusts Shift the Burden of Proof

One of the most important differences between trusts and traditional federal agencies is the burden of proof. Under what is known as the *Chevron doctrine*, the Supreme Court has ruled that federal courts must give "administrative deference" to federal agencies unless they are clearly violating the law.[31] Any citizen who wishes to challenge a decision made by a federal agency must carry the burden of proving that the agency violated the law. If the law is ambiguous or the agency's interpretation is reasonable, the courts must defer to the agency.

The *Chevron* doctrine is based on the idea that Congress created each federal agency to be the nation's experts in its field, and judges, who usually do not have the technical expertise of agency officials, should not overrule those officials unless they are clearly violating the law. However, the *Chevron* doctrine also rests on an unstated presumption that agency officials always make their decisions solely in the public interest and without regard to their own interests.

Trust law makes exactly the opposite presumption: trustees, the law assumes, will be tempted to act in their own interest, or in the interest of some third party, rather than in the exclusive interest of their beneficiaries. Thus, trust law places the burden of proof on the trustees to show they are doing a good job.

Although at first one might suspect that giving every citizen the power to sue the trusts would just tie them up in litigation, experience with state trusts reveals that this arrangement can actually reduce litigation. While some litigation may still take place, a carefully designed trust will have a clearly defined mission and the authority to carry out that mission, which will tend to minimize conflict.[32]

2. Trusts Reduce Pork-Barrel Spending

Pork-barrel spending on the public lands takes many forms. One is the preferential funding of some resources over others: economist Richard Alston documented that, in the 1950s and 1960s, Congress gave the Forest Service more than 95 percent of its requests for timber funds, but less than 80 percent of its requests for wildlife funds and less than 70 percent of its requests for recreation, watershed, and reforestation funds.[33]

A second kind of pork barrel is the addition of areas of strictly local significance to the National Park System, Wildlife Refuge System, or other public lands. When applied to the Park Service, this is commonly known as "park barrel." Some sites, including the Eugene O'Neill Historic Site in Danville, California, and Steamtown in Scranton, Pennsylvania, have been made a park or wildlife refuge because a local member of Congress wanted to take a white elephant off the hands of a local park district.[34] Other sites, including the Charles Pinckney House in South Carolina and the Coquille Point addition to the Oregon Islands Wildlife Refuge, have been added because a local no-growth group wanted to stop a housing development.[35] Others, such as the First

Giving trusts a clearly defined mission and the authority to carry out that mission will tend to minimize conflicts among users.

Ladies National Historic Site in Canton, Ohio, were added because someone wanted to give added luster to a local tourist attraction.[36]

Park barrel does not necessarily add to the immediate expense of running the public lands because Congress often does not appropriate more money when it adds new parks or refuges. Instead, the agencies are forced to divert funds from other areas in order to manage the new ones, which led former Park Service director James Ridenour to oppose park barrel as "the thinning of the blood of our national parks."[37]

A third form of pork barrel is congressional earmarking of funds for special projects. Congress has a habit of overriding agency construction priorities by mandating that construction funds be spent on particular projects. In recent years, for example, members of Congress have told the Park Service to build catfish farms in Arkansas, which forced the agency to drop funding for fireproofing Independence Hall.

The main reason members of Congress engage in pork barrel is that they approve funding for the agencies, so they figure they can tell the agencies what to do. Steamtown and other examples of park barrel, for example, come from members of the House and Senate appropriations committees. If the trusts fund themselves out of their user fees, members of Congress will have few or no opportunities to engage in pork barrel.

When the Park Service wanted to spend money fireproofing Independence Hall, Congress ordered it to build catfish farms in Arkansas instead.

3. Trusts Make Positive Use of Budget Maximization

Most government officials are good people who sincerely believe in their work. "You would not think that it would be proper for me to be in charge of this work and not be enthusiastic about it and not think that I ought to have a lot more money, would you?" a Forest Service official once asked an appropriations committee. "I have been in it for thirty years, and I believe in it."[38]

While such enthusiasm is good, it is also true that virtually every government official believes they could do a better job if only they had "a lot more money." Since the vast majority of funding for public land management must be approved by Congress, this means that agency officials are continually trying to figure out ways to persuade Congress to increase their budgets.

This does not mean that agency leaders are evil in any way—they are merely doing their jobs. It does mean that, through a process like natural selection, those officials who develop the most persuasive stories are the ones who will see their programs grow.

For example, national forest timber sales declined from 11 billion board feet in 1988 to about 2 billion board feet in 2008. Unlike recreation, water, and wildlife, which are not clearly dependent on federal funding, the sight of log trucks leaving a public forest and going to a private sawmill was a clear result of congressional appropriations. When sales declined, the Forest Service told Congress that, if only it had enough money, it could sell more timber. So Congress created the "timber pipeline fund," which allowed the Forest Service to keep timber sale receipts to spend on more sales. The fund has been around for nearly two decades and sales have never significantly increased. But each year, the Forest Service promises that next year's sales will increase if only it has enough money.

The National Park Service, meanwhile, has discovered that members of Congress get more glory cutting ribbons for capital improvements than for funding routine operations. So each year the Park Service develops a list of "deferred maintenance backlog" projects, including (in the 2009 budget) "a $2.6 billion backlog of critical Life/Health/Safety and emergency projects" and a "large backlog of deferred maintenance needs in paved roads and bridges (over $4 billion)."[39]

Much of this backlog is not really critical. For example, the Park Service maintains more than 5,000 homes for personnel. While housing might be important in an isolated park such as the Wrangell–St. Elias Preserve in Alaska, virtually all parks in the contiguous 48 states are located near cities and towns that can provide perfectly adequate housing to park personnel, usually at a far lower cost than

the Park Service spends on housing. The hidden truth behind the backlog is that the Park Service routinely skims 20 to 25 percent of the construction funds appropriated by Congress for administrative overhead.[40]

A third example of the agencies manipulating Congress to increase their budgets is wildfire. Each year, several hundred homes built near federal lands burn in wildfires. Each year, members of Congress promise to boost funding for firefighting to make sure no homes ever burn again.

The Forest Service claims that the problem is that past fire suppression efforts have left the forests loaded with fuels that are ready to explode into catastrophic fires at a moment's notice. Congress has rewarded the Forest Service for bravely accepting the blame for the problem by giving it a 450 percent increase in wildfire budgets since 1992. The budget for thinnings and other fuel treatments, in particular, has increased from less than $10 million per year in the early 1990s to more than $300 million per year in 2007.[41] The truth is that only about 15 percent of western federal forests have become more susceptible to fire due to past fire suppression.[42]

Susceptible or not, the best—if not the only—way to protect homes and other structures near public lands is not to treat the public lands but to fireproof the structures themselves by installing nonflammable roofs and ensuring that the vegetation near the structures is not particularly flammable.[43] Structures built or retrofitted to "shelter-in-place" standards are the safest places to be in a firestorm.[44]

Rather than promoting this solution, which should be paid for by structure owners and thus would cost taxpayers very little, the Forest Service promotes the "excess fuels" story so that Congress will maintain and increase its fire funding. Ironically, by promising to suppress all fires before they burn homes and other structures, the Forest Service is reducing the incentive for homeowners to fireproof their properties.

This is not to say that land managers are liars. No doubt they really believe that, with more money, they could do a better job. Unfortunately, the current system often rewards managers who find high-cost solutions to their problems. Trusts would provide funds to solve problems but would encourage managers to find low-cost solutions.

4. Trusts Will Make Public Lands More Efficient

The owners of any asset that is too extensive to be managed by the owners themselves have always faced a conundrum: how to ensure that the managers hired by the owners will maximize profits and not maximize their own income, power, or perquisites to the detriment of the owners. This proposal neatly solves this problem with a combination of the funding mechanism and trust law.

Funding the market trusts out of net revenue will give the market trusts an incentive to maximize net revenue. Profits are a symptom of social good in that they indicate that people so value a resource that they are willing to pay more for that resource than it costs to provide it. Resources that are managed to maximize net revenues produce greater good for society than resources managed to maximize gross revenues, which is what would happen if trusts were funded out of a percentage share of their gross.

The full disclosure requirements of trust law back up the funding mechanism by ensuring that the public knows the details of all sales and other transactions involving the trusts. Any trustee or trust manager caught stealing from the trust or accepting a bribe from land users could be prosecuted for theft, corruption, or violating their trust. Of course, such thefts or bribes are no less likely and no less preventable with the current system than under a trust.

5. Trusts Will Bring Democracy and Cooperation to the Public Lands

Should Yellowstone roads that are open to auto traffic in summer be open to snowmobiles in winter? Should the Arctic National Wildlife Refuge be open to energy production? Should the Sequoia National Forest deal with fire hazards by lighting fires in or thinning the

Where the current system rewards managers who find high-cost solutions to public land problems, trusts funded out of user fees will encourage them to find the low-cost solutions.

forest?

Today, these sorts of questions are handled politically. Agency officials may make a decision, but it is liable to be questioned in congressional hearings and/or overruled by political appointees in the departments of the Interior or Agriculture. Policies may shift every four to eight years as people with differing opinions successively occupy the White House.

One fundamental issue is whether the public lands are primarily for *use* or for *preservation*. But the real problem is that the political system almost guarantees that any debate over this question will become highly polarized. This is because politics promotes a winner-take-all philosophy that discourages people whose views are different from working together.

Trusts include a number of checks and balances that will promote a spirit of cooperation rather than polarization.

In contrast, the trust system includes a number of checks and balances that will promote a spirit of cooperation rather than polarization, which include the following:

- The fact that the trusts are funded mainly out of user fees will ensure that visitation and use remain important parts of public land management.
- The fact that half the revenues from user fees will go to the natural resource and historic trusts will ensure that there is a balance for preservation.
- As people pay for differentiated products, they give signals to the trusts indicating what kind of public lands they prefer. Just as people buying organic foods have given farmers incentives to use fewer chemicals, people paying for recreation in natural settings will give the trusts incentives to protect scenery and wildlife habitat.
- People who feel that the funding split between use and preservation is imbalanced in favor of use will have the opportunity to redress that imbalance by contributing funds to the nonmarket trusts.
- Since decisionmaking authority rests with the boards of trustees, people will resolve issues not by joining groups that lobby Congress but by joining friends' associations and electing and educating the members of their boards.
- Since each ecoregion will be influenced by two boards—one governing the market and one governing the nonmarket trusts—these boards will work together through negotiations and monetary exchanges to develop plans for each ecoregion.
- While it is remotely conceivable that some special interest group could take over both market and nonmarket friends' associations in one ecoregion in order to push through its agenda, the courts will provide a final safeguard to ensure that ecoregion managers do nothing contrary to their missions or harmful to the corpus of the trusts.

Together, these checks and balances will promote public land management that responds to the on-grounds needs of the land rather than to top-down political agendas.

6. Trusts Help Ensure Sustainability

The World Commission on Environment and Development defined "sustainability" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[45] This is precisely the requirement that trust law imposes on trustees of perpetual trusts.

Trusts whose duration is perpetual are required to "preserve the corpus of the trust." As interpreted by the courts, this is as strong or stronger a mandate for sustainability than any that Congress has written into the law for the Forest Service or other federal land agencies.

If the trust is monetary, preserving the corpus of a perpetual trust is simple: the trustee may distribute income from the trust to the beneficiary, but may not reduce the amount of the trust fund itself, either by giving it to the beneficiary or by spending it on other expenses.

If the trust is land or other property, the trustee must do nothing that would impair the productivity of the trust. In other words, the trustee must manage it on a sustainable basis. This does not mean that trusts cannot sell or extract nonrenewable resources. But it

does mean that the revenues from such extractions should go into a permanent fund, the interest from which can be used for, among other things, any restoration work needed after the nonrenewable resources are gone.

7. Trusts Guarantee Full Disclosure

Congress passed the Freedom of Information Act to ensure that members of the public can get access to data and other information about federal agencies. But filing freedom-of-information requests can be tedious, and agencies that are reluctant to release data can often avoid such requests, partly by not letting people know that the data even exist.

One of the obligations that trust law imposes on trustees is that they are *accountable* to trust beneficiaries. This means that they must maintain all property records and accounts of receipts and costs and fully disclose them to the beneficiaries. This is at least as powerful as any freedom of information act.

8. Trusts Will Insulate Public Lands from Budget Crises

In times of fiscal crisis, budgets for agencies like the Forest Service and Bureau of Land Management are often the first to be cut. Nor is there any guarantee that the Washington Monument strategy will help to protect those budgets. For example, Social Security is widely expected to begin running deficits within a decade. Congress will have a choice between raising taxes, going even more heavily into debt, or cutting discretionary budgets. Cuts to land management budgets are likely to be part of the solution.

By contrast, funding of public land out of user fees will leave the lands somewhat vulnerable, perhaps, to the ebb and flow of the business cycle, but less vulnerable to major changes in federal budgeting. Trusts can insulate themselves from recessions by setting aside a portion of donations or other receipts in a permanent trust fund that they can draw upon when necessary. But public lands that are dependent on congressional appropriations cannot insulate themselves from the whims of Congress or the predictable or unpredictable fluctuations in the federal budget.

9. Trusts Will Protect Natural Ecosystems

Trusts will offer several checks and balances that will improve the management and protection of natural ecosystems in parks, wilderness areas, and other federal lands. First, an end to subsidies will reduce the overexploitation of some resources such as timber and domestic forage. Second, with roughly half the revenues of most market trusts going to the nonmarket trusts, nonmarket trustees will have plenty of funds to protect those resources that are most important.

Third, recreation fees will be a substantial source of income for most of the market trusts, and so the trusts will respond by providing the natural environments, wildlife habitat, and scenic beauty that many recreationists prefer. Finally, as described above, the requirement that trustees preserve the corpus of the trust will prevent trusts from accelerating resource outputs above sustainable levels.

10. Trusts Will Improve Private Land Management

One of the hidden costs of below-market-rate user fees is their effect on private lands. When federal land agencies charge market rates for timber but below-market rates for recreation, private landowners will enter the timber market but ignore the recreation market because they cannot compete against the federal lands.

Dispersed, wilderness-like recreation is actively marketed by forest and other landowners in southern states, where federal lands make up only a small share of the land base. Such recreation includes hiking, hunting, fishing, boating, and sightseeing. But in the West, where outdoor recreation is a major way of life, private recreation is confined to highly developed resorts such as ski areas and golf courses.

Southern forestland owners have dramatically changed their forest practices in response to the fees they earn from recreation. When International Paper began charging recreation fees in its southern forests, for example, it reduced the size of its harvest units by two thirds and started leaving large no-cut buffer

Funding public lands out of user fees will reduce their vulnerability to federal budget crises.

Turning public lands into trusts will increase the value of private lands and give their owners incentives to manage those lands on a more sustainable basis.

strips along all lakes and reservoirs. The result was a significant increase in both game and nongame wildlife as recreation and wildlife became important profit centers for the company.[46] If western landowners could charge similar fees, it would greatly expand recreation opportunities and wildlife habitat.

The public land agencies unfairly compete against private landowners through other resource sales as well: grazing fees on national forests and BLM lands are well below market value. Below-cost timber sales in areas with limited competition offer windfall profits to a few local mills and depress local wood prices. Turning public lands into trusts would improve the value of private lands and give landowners greater incentive to manage their lands on a sustainable basis.

Testing the Trust Idea

With more than 1,000 forests, districts, parks, and refuges, Congress need not choose between adopting or rejecting this program as a whole. Instead, Congress can test the trust idea on selected forests and/or other administrative units. Such tests can compare methods of governance (i.e., how trustees are selected), funding mechanisms, alternative geographic sizes, and other aspects of the proposal.

Any such tests must incorporate the basic components of trust law: designation of trustees, beneficiaries, and a declaration setting out the goals of the trust or trusts. The declaration should also carefully describe the funding mechanism that presumably will rely mainly or exclusively on user fees. Ideally, the test trusts will be perpetual but have an escape clause that allows Congress to terminate the trust if some outside body finds that the trust is not working.

Conclusion

America's 631 million acres of federal lands have been a source of pride but also a source of controversy, particularly in the western states where they often make up a majority of the land. Despite the high value of the resources they produce, they cost taxpayers around $7 billion a year. Regardless of the fact that they have been held in federal ownership—so that they can be scientifically managed by experts presumed to be capable of discerning the optimal land uses—many of these lands have suffered overuse and environmental degradation.

This trust proposal offers a way to solve all of these problems. Rather than being a drain on the Treasury, federal lands can operate out of their own revenues and, in some cases, actually return money to the Treasury. Rather than suffer environmental damage, the checks and balances in the trust system will improve the productivity and natural values of these lands. Rather than being a major source of controversy, trust mechanisms like the friends' associations will offer people a way to resolve issues with minimal debate.

Congress should test the trust system on selected national forests, parks, and other federal lands. If the tests are successful, Congress should reform all four public land agencies into a series of market and nonmarket trusts. The results should satisfy those who care about natural environments and cultural resources as well as those who care about fiscal responsibility.

Notes

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