



Cato Handbook for Policymakers

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23. Interior Department and Public Lands

Congress should

- privatize the lands held by the Forest Service and the U.S. Department of the Interior; or, failing that,
- reform the public land agencies by turning individual forests, parks, refuges, and Bureau of Land Management districts, or combinations of those units, into fiduciary trusts;
- allow those trusts to charge a broad range of user fees at market rates;
- fund the trusts exclusively out of a share of those user fees;
- dedicate some or all of the remaining user fees to special stewardship trusts whose goal is to maximize the nonmarket, stewardship values of the land; and
- reform the Endangered Species Act to provide compensation for private landowners for protecting wildlife habitat and to allow privatization of some wildlife to promote recovery efforts.

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

Many Americans are proud of the legacy offered by federal lands for present and future generations, especially the national parks, forests, and other lands that provide significant amounts of recreation. Yet this pride overlooks several problems with public land management:

- Federal land management currently costs taxpayers \$7 billion a year.
- Much of that money is spent on things that are not necessarily good for the environment.

- A relatively small number of people get most of the benefits 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 studies from the Cato Institute have endorsed privatization of the public lands, a solution that is strongly opposed by environmentalists, recreationists, and other public land users. A second-best 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*. In this proposal, the United States would retain title to the lands, but the rules under which they are managed would be very different.

Fiduciary trusts funded out of their own revenues would make federal land managers more responsive to public land users, especially recreationists who would probably be the source of the vast majority of revenues. Besides saving taxpayers billions of dollars per year, trust management would be sustainable and sensitive to a wide range of environmental concerns.

Fiscal Issues

Not counting oil, gas, and coal revenues collected by the Minerals Management Service, Table 23.1 shows that the total revenues collected by the four land-management agencies averaged less than 14 percent of the cost of land management. Moreover, Table 23.2 indicates that the agencies kept most of these revenues for their own operations, returning to the treasury less than 5 cents for every dollar it spent.

The \$3.9 billion collected by the Minerals Management Service, 95 percent of which was from oil, gas, and coal, would seem to partly redeem public land management. Yet almost all this revenue came from less than 1 million acres of land. This means the remaining 629 million acres returned less than 5 cents for every tax dollar spent.

To make matters worse, Table 23.2 also shows that Congress gives states or counties most of the funds that agencies return to the treasury. About three-quarters of BLM, all Fish and Wildlife Service, and 285 percent of Forest Service land-management returns to the treasury were paid to counties in 2007. Close to half (\$1.62 billion in 2007) the onshore revenues collected by the Minerals Management Service are promised to

Table 23.1
Federal Land Acres, Budgets, and Revenues by Agency, 2007
(millions of acres or dollars)

Agency	Acres	Land	Land	Returns to Treasury
		Management Appropriations	Management Revenues	
Forest Service	193	\$4,129	\$448	\$132
National Park Service	84	2,181	346	0
Bureau of Land Management	258	996	239	201
Fish & Wildlife Service	96	398	12	9
Minerals Management Service	—	80	3,935	3,935
Total	631	\$7,784	\$4,980	\$4,277

SOURCES: 2009 Budget Justification for the Forest Service, pp. D-2 to D-4, F-2; 2009 Budget Justification for the Park Service, pp. Overview-51 to 52, Overview-70; 2009 Budget Justification for the BLM, pp. I-11, II-1; 2009 Budget Justification for the Fish & Wildlife Service, pp. RF-4, RM-11; 2009 Budget Justification for the Minerals Management Service, p. 45; also see “Reported Royalty Revenue by Category, Fiscal Year 2007,” tinyurl.com/5wvnu8.

NOTE: — = not available. “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 23.2
Disposition of Land Management Receipts by Agency, 2007
(millions of dollars)

Agency	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 & Wildlife Service	12	3	9	0
Minerals Management Service	3,935	1,269*	1,620	1,045
Total	\$4,980	\$1,952	\$2,154	\$854

SOURCES: 2009 Budget Justification for the Forest Service, pp. F-2 to 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 & Wildlife Service, pp. RF-4; “Total Disbursement by Fund and Commodity, Fiscal Year 2007,” Minerals Management Service, tinyurl.com/5oem7q.

* Reclamation fund, retained by the Department of the Interior for the Bureau of Reclamation.

the states, and most of the rest (\$1.27 billion in 2007) are 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 percent of land that produces oil, gas, and coal; the other 99 percent cost taxpayers more than \$7 billion and returned virtually nothing to the treasury.

Most government agencies lose money. Yet the lands and resources managed by these agencies are so valuable that it seems incredible they could be managed at such a huge loss. 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. This in turn leads to other problems, including environmental damage due to misallocations of resources, overproduction of subsidized resources, inequitable distribution of benefits, and unfair competition with private landowners who market many of the same resources.

In 1989, the Forest Service projected that, if the agency was allowed to charge the "market-clearing price" for all resources, it could collect a minimum of \$6.7 billion per year in 2005. Nearly three-fourths of this revenue would be from recreation, including hunting and fishing. The agency further estimated that emphasizing recreation over commodity production (which is more or less what has happened since 1989) would boost total revenue to more than \$10 billion per year. Similar fees could no doubt be collected on other federal lands.

In other words, federal land user fees would be more than sufficient to pay the costs of managing the national forests if only Congress would allow managers to charge market rates for all forest uses. In addition to saving money, funding forests out of user fees would give managers incentives to protect and produce the resources that users value the most. Moreover, freed from unfair competition from public lands, owners of private land would have an incentive to charge fees for recreation and to alter their management to favor the scenery, wildlife habitat, and other features that recreationists value.

If public lands are as valuable as people say, they should pay their own way. This means:

- Congress should allow public land managers to charge fair market value for all resources,
- Congress should allow managers to keep a fixed share of the receipts for all resources, and
- Congress should reduce appropriations to zero and fund the lands exclusively out of their own receipts.

Wildland Fire

Wildfire is probably the biggest federal land issue today. Paradoxically, though Congress has significantly increased wildfire budgets, more acres are burning than ever before, and wildland fires destroy hundreds of homes and other structures each year.

After the Cerro Grande fire destroyed hundreds of Los Alamos, New Mexico, homes in 2000, Congress asked the Forest Service and the Interior Department to prepare a National Fire Plan. Under this plan, wildfire budgets have more than quadrupled from levels of the early 1990s.

There is little evidence that this huge increase in spending is accomplishing much good.

- Since 2000, an average of twice as many protected acres have burned each year as the average for any decade in recorded history (not counting fires in areas with no forest fire protection).
- Three times as many homes and other structures burned in 2007 as in the average of the 10 previous years.
- Though a postfire analysis of the 2007 Angora fire, near Lake Tahoe, found that recent thinnings had helped minimize damage to the forests, they did not prevent the burning of more than 250 homes.

The Forest Service's explanation for the increased number of acres burned is that excess fuels resulting from decades of fire suppression have left the forests especially vulnerable to fire. This is disputed by numerous studies by fire ecologists. A 2006 article in *Science* magazine, for example, found that recent large fires were mainly a result of drought, not of land-use histories.

A 2002 Forest Service report, *Development of Coarse-Scale Spatial Data for Wildland Fire and Fuel Management*, found that only about 15 percent of federal lands in the West had actually been made more vulnerable to fire as a result of past management. Yet the Forest Service and BLM have taken a one-size-fits-all approach and are applying thinnings and other fuel treatments everywhere.

Even in the 15 percent of forests that suffer from excess fuels, it is unclear that expensive thinnings or other treatments are optimal. Research by Forest Service scientist Jack Cohen concludes, "Wildland fuel reduction for reducing home losses may be inefficient and ineffective." All that is needed to protect homes and other structures from fire, Cohen has found, is to treat the areas within 150 or so feet around the homes. Any treatments outside that perimeter are inefficient because they are unnecessary and

ineffective because firebrands or ground fires from fires farther away can easily lead to the destruction of untreated homes.

In short, the Forest Service's own research shows that homes will be protected from fire if and only if the homes and immediately surrounding grounds are treated. Yet Forest Service policy persists in lavishing the most attention on national forest lands that are often many miles away from homes. This strategy, which was adopted in the National Fire Plan without considering any alternatives, has conveniently resulted in huge budget increases for the Forest Service. It also effectively protects current forest managers from the blame for any large fires or houses burned by those fires, because such fires can be blamed instead on past management.

Merger with Interior

The Forest Service is the largest agency in the Department of Agriculture, but its activities more closely resemble agencies in the Department of the Interior. As a result, there is renewed interest in merging the Forest Service into Interior.

Such a merger is neither necessary nor sufficient to correct the serious problems facing the Forest Service. It is unnecessary because the Forest Service already works closely with Interior agencies. As a cost-saving measure, for example, some national forest lands are actually managed by BLM offices and some BLM lands are managed by Forest Service offices. It is unlikely that a merger would result in any greater cost savings. It is insufficient because a merger would not fix the basic structural problems that cause federal land agencies to lose billions of dollars per year. More serious reforms are needed, such as funding federal land managers out of user fees and turning federal lands into fiduciary trusts.

Endangered Species

In addition to managing national wildlife refuges, the Fish and Wildlife Service is responsible for endangered plants, wildlife, and freshwater fish. Congress passed the Endangered Species Act with the noblest of intentions. But the law's methods of carrying out those intentions unfairly places the burden of recovering endangered species populations on any landowner whose land happens to be home to an endangered species.

Landowners naturally resist this burden, so it is no surprise that few species have actually been recovered by the Endangered Species Act.

Even public land managers have been known to resist recovery efforts when those efforts interfere with what the managers perceive to be their primary missions. Efforts by both the Clinton and the Bush administrations to streamline the Endangered Species Act have focused on reducing costs to private landowners, but they have failed to create incentives that would motivate landowners to actually protect species.

To truly reform the act, Congress needs to create a trust fund or funds that can be used to pay landowners to protect wildlife habitat. Second, Congress needs to give the Fish and Wildlife Service the option to privatize some species of wildlife. Private owners are likely to develop innovative ways of protecting and restoring depleted wildlife populations. Anyone who has been to a dog show knows of the huge efforts people are willing to make on behalf of a breed for very little reward. Private ownership of wildlife could harness this energy on behalf of entire species. Such private ownership is common in Britain, but the closest we have come has been the successful efforts by private bird lovers to recover the peregrine falcon.

Fiduciary Trusts

User fees alone will not resolve all the issues and conflicts that face public land managers. For one thing, some resources, such as endangered species habitat and historic and archeological 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 are an institutional structure that can ensure long-run protection for nonmarketable resources while improving the fiscal management of the lands.

A fiduciary trust is a legal construct based on hundreds of years of British and U.S. common law. A trust consists of four components:

- A *trustor*, the person or entity who creates the trust;
- The *trustee*, the person or people managing the trust;
- The *beneficiary*, the person or people for whom the trust is managed; and
- The *trust instrument*, the legal document that dictates how the trustor wants the trustee to manage the trust.

Trusts are significantly different from the bureaucracies that now manage federal lands. Trust law imposes strong obligations on trustees to preserve the productive capacity of trust resources, produce benefits for the trust beneficiaries, and fully disclose the costs and benefits of their actions. To

create a trust, the trustor—Congress—is also obligated to give the trust a clear mission—something that many people would say today’s federal land agencies lack.

Conversion of Public Lands into Trusts

Congress should create two types of trusts: one to manage the market resources and the other to manage the nonmarket resources of the 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 mission of the nonmarket trusts would be to *maximize the preservation and, as appropriate, restoration of natural ecosystems and cultural resources*. The nonmarket trusts would be a primary method of protecting endangered species, as they could use their funds to give private landowners and public land managers incentives to protect fish and wildlife habitat.

To implement the trusts, Congress could merge or divide the 155 national forests, 59 BLM districts, 390 units of the National Park System, and 548 wildlife refuges into about 60 to 100 different ecoregions and create a pair of market and nonmarket trusts for each ecoregion. Revenues collected by the market trusts would be divided among the market and nonmarket trusts. In areas such as the Powder River Basin, where public lands produce excess revenues, a share would go to the U.S. treasury.

To govern and monitor the trusts, Congress could create a “friends of the trust” association for each ecoregion and allow anyone to join any friends association for a nominal fee of, say, \$25 to \$30 a year. Members of the friends associations would elect the boards of trustees that oversee the trusts. The trustees, in turn, would hire trust superintendents, approve budgets and user fees, and regulate uses. The friends associations would also monitor the trusts and could vote to recommend to Congress that a particular trust be disbanded and the lands returned to a bureaucracy like one of today’s Interior agencies.

With more than 1,000 forests, parks, refuges, and BLM districts, Congress need not choose between adopting or rejecting this program as a whole. Instead, Congress can test the trust idea on selected administrative units. Tests can compare methods of governance, funding mechanisms, alternative geographic sizes, and other aspects of the trust concept.

Conclusion

The 630 million acres managed by the Forest Service and Department of the Interior cost taxpayers \$7 billion per year and continually produce major controversies and conflicts among users. Fiduciary trusts offer a way to solve these problems. Congress should test the trust system on selected national parks and other federal lands. If the tests are successful, Congress should reform all federal 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.

Suggested Readings

- O'Toole, Randal. *Reforming the Forest Service*. Covelo, CA: Island Press, 1988.
- _____. "The Endangered Endangered Species Act." *Different Drummer*, Winter, 1996. <http://ti.org/ESATofC.html>.
- _____. "Should Congress Transfer Federal Lands to the States?" Cato Institute Policy Analysis no. 276, July 3, 1997.
- _____. "The Perfect Firestorm: Bringing Forest Service Wildfire Costs under Control." Cato Institute Policy Analysis no. 591, April 30, 2007.
- _____. "A Matter of Trust: Why Congress Should Turn Federal Lands into Fiduciary Trusts." Cato Institute Policy Analysis, forthcoming.

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