Public Lands, Not Private Lands

by Kyle Reed

America's public lands are some of the most pristine in the world. From the snow-capped peaks of Mount Denali to the granite cliffs of Yosemite, they offer a rare glimpse into a world untouched by human expansion. Since the late 1800s, the federal government has been claiming large tracts of wilderness for the purposes of conservation and preservation. These efforts have been massively successful. An analysis conducted by the Congressional Research Service in 2016 determined that roughly 640 million acres of land are currently managed by various federal agencies (Vincent 1). This was not done without opposition, however. Activists for private and state control, from ranchers to governors, have voiced their disapproval of such land hoarding practices. They call for an immediate transfer of all federally held land. Although these groups believe it is a violation of constitutional rights, the federal government should maintain control of public lands to prevent the privatization and degradation of natural resources, to support the financial responsibility required for proper management, and to preserve the rights every American has to that land.

In today's world, conservation and environmental sustainability are at the forefront of land management decisions. This was not always the case, however. In his book *In Defense of Public Lands: The Case Against Privatization and Transfer*, Steven Davis mentions that at the turn of the nineteenth century, unregulated logging and grazing practices threatened to decimate large expanses of land in the Midwest (5). Spurned by the carnage, the federal government began to develop a more effective and analytic approach to land management. The cornerstone of the federal government's modern philosophy lies within the Multiple Use and Sustained Yield Act of 1960 and the Federal Land Policy and Management Act of 1976.

These two acts work together to ensure that public land is managed in accordance with an idea known as “multiple use”. The Federal Land Policy and Management Act defines multiple use as such:

> The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; [. . .] a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources (United States, Department of the Interior, Bureau of Land Management 2).

By establishing equal importance of every aspect of land management, these laws ensure that no one area is jeopardized by another. Critics of federal oversight point out the downfall of such a massive undertaking: with hundreds of millions of acres to attend to, remote and insignificant areas are vulnerable to negligence. Senator Jennifer Fielder has observed just thatin her home state of Montana. She argues, “The federal government is so far removed from these lands there is no accountability for the way its decisions affect the people who live nearby” (qtd. in Frazzini). Land management decisions, she continues, should be made by local

residents who have a better understanding and a closer relationship with the land in question (in Frazzini). While it is a valid point, state governments have a poor history of managing state land in public interest. In his article "Keeping Public Lands Public," environmentalist Paul Tolmé rebuts, "Colorado [. . .] had 4.5 million acres of [public] lands when it gained statehood in 1876, but today has just 2.8 million acres; and allows hunting, fishing and wildlife watching on only 500,000 of them." Likewise, the state of Nevada has retained only 3,000 of its initial 2.7 million acres of public land (Tolmé). It is likely that this trend would continue if states were to inherit large tracts of federal land.

State selloffs of public land bring to question the financial burden of proper land management. Associated costs include trail and road maintenance, erosion control, and wildfire prevention. In an article published in June 2020, the National Park Service announced a deferred maintenance backlog of $11.92 billion ("What Is Deferred Maintenance"). Despite the high cost of upkeep, undeveloped land offers little reimbursement. Even the aforementioned multiple use laws acknowledged that proper land management would "not necessarily [. . .] give the greatest economic return or the greatest unit output" (United States, Department of the Interior, Bureau of Land Management 2). With substantially smaller budgets than the federal government, states would be hard pressed to afford the cost without privatizing land.

For comparison, the four major federal land management agencies operate with a combined annual budget of roughly $14 billion. The state of California operates with the largest budget of any state in the country. Out of a gross $214.7 billion budget for fiscal year 2020, only $6.9 billion was allocated towards natural resources (State of California). In less populous states, the financial situation is even worse. Of Wyoming's $8.9 billion budget for fiscal year 2020, a paltry

$92.9 million was set aside for natural resources (State of Wyoming 1). State government officials who oppose federal control of public land argue that these large areas of untaxable federal land are suppressing potential state revenue. However, the federal government has already addressed this issue. Foreseeing the problems that could arise from negating state taxes, Congress passed Public Law 94-565 in 1976. This law began the Payments in Lieu of Taxes program, which offered "payments to local governments that help offset losses in property taxes due to the existence of nontaxable Federal lands within their boundaries" (United States, Department of the Interior). In 2020, this program paid local governments a combined $514.7 million, with over eighty percent going to Western states (United States, Department of the Interior). If public lands were to be transferred to the states, these payments would cease. Without them, and with the high cost of land management, privatization of public lands would likely be the only solution.

As property of the federal government, public land is effectively owned by every American citizen. It is a right that the general public utilizes often. According to a 2017 report by Anne A. Riddle, an analyst for the Bureau of Economic Analysis, an approximate 596 million people visited various national parks and forests that year (16). This extraordinary influx of visitors reiterates one of the most important aspects of federal land: it is owned by every American citizen. Most private landowners do not encourage or appreciate unregulated human traffic on their properties. Some may occasionally lease their lands to hunters and anglers, but that is the extent of their generosity. With a flurry of barbed wire and "No Trespassing" signs, they are quick to hinder public access. By doing so, they threaten one of the most lucrative industries in the country: outdoor recreation. This industry generates $427 billion (Riddle 4) and

supports 5.1 million jobs annually (Riddle 5). A large majority of these activities, especially hunting and fishing, rely heavily on unrestricted access to public lands. Further reducing that access would have a direct and lasting negative impact. The Colorado College conducts an annual research project that focuses on various environmental and social aspects of human land use. In a 2020 poll of residents in eight Western states, 70% of responders agreed that private companies should not be allowed to profit from public land use if doing so would limit public access ("Public Lands in the West"). The results of this survey echo the sentiments of thenation: public lands should remain an inalienable American right.

Many proponents of state control have argued that it is the constitutional responsibilityof the federal government to release all public lands to the states. One of the strongest supporters is former Utah State Representative Ken Ivory. In 2012, he sponsored the Utah Transfer of Public Lands Act, which called for "the United States to extinguish title to public lands and transfer title to those public lands to the state on or before December 31, 2014" (State of Utah 1). Upon review of the proposed bill, the Utah Office of Legislative Research castdoubt on the legality of his demand: "Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No state legislation can interfere with this right or embarrass its exercise" (State of Utah 7). This congressional power is derived from the creation of Utah's Enabling Act of 1894, which granted statehood. As a requirement for admission into the Union, the newly founded state had to "declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof [. . .] until the title thereto shall have been extinguished by the United States" (*Enabling Act*). Despite this

glaring evidence, state lawmakers have continued in their bid to seize public lands. A 2015 legal analysis conducted by Howard et al., on behalf of the Utah Commission for the Stewardship of Public Lands, concluded that there is a "Constitutional requirement that the States in our federal system be equal in sovereignty" (2). Furthermore, they argue that the federal government's abrupt decision to begin retaining land "treats [Western states] as unequal in sovereignty as compared to the States with dominion over the land within their borders" (Howard et al. 2). These states cannot fully exercise their right to self-governance when the majority of their land is controlled by the federal government. Therefore, they do not have equal footing with other states as prescribed by the Constitution.

It may be true that each newly admitted state must join the Union on equal footing with the original thirteen colonies in order to maintain sovereignty. However, activists of state control of public land have contorted the role of land in establishing a state's sovereign rights. The misconception arises from the Supreme Court ruling of *Pollard v. Hagen* in 1845, which granted control of coastal river access to the state of Alabama even though the land was owned by the United States (Pollard's Lessee v. Hagen et al. 214). Since this case, proponents of state control have attempted to apply the decision to all public land. Arguing against this, Paul Conable, in his 1996 article "Equal Footing, County Supremacy, and the Western Public Lands," notes that the ruling only applies to coastal land and the "Supreme Court [. . .] has never ruled on a case where the specific issue raised was the applicability of equal footing to public dry lands within a state." Clearly, the Supreme Court does not consider land-locked public lands as essential to a state's sovereign rights. Arguments that continue to cite this case are merely baseless claims.

The strong desire for state ownership of public land is questionable, as the federal government has several statutes in place to delegate management to states. Carol Hardy Vincent, in a Congressional Research Service report on state management of federal lands, notes that these statutes include allocation of water rights, fish and wildlife management, and the sale of hunting and fishing licenses (5). Total federal control is generally reserved for activities that pose high risk of environmental damage. A primary example of this is the development and oversight of oil and gas extraction, which must adhere to strict federal laws (Vincent 4). Many of these laws could be circumvented if the industry were only bound by statelegislation. It is no secret that large corporations tend to view environmental laws as hurdles rather than necessary considerations. Steven Davis states, "Because they are mostly economists, they conflate concepts of efficiency and productivity with environmental health" (54). He continues, "This [. . .] creates a circular logic whereby environmental health on a parcelof land gets measured by the volume of the very activities that cause the most environmental harm" (Davis 54). The value of something is not purely monetary. Wildlife and wilderness, like those found on public lands, hold an immense amount of value that cannot be quantified with aprice tag. To a private corporation, however, profit supersedes preservation.

Public land ownership has been an ongoing debate for several decades. Environmental groups and outdoor enthusiasts clash with private corporations and conservatives who believe in shrinking federal power. Behind this heated, and occasionally violent, argument lies a fragile ecosystem that is unaware of its presence at the center of conflict. As human expansion and industrialization continue, conservation and preservation become more important than ever. Left unchecked, future generations may lose the experience of wilderness in an untainted form.

At present, the federal government is in the best position to maintain these lands through political and financial means. By exacting its power for the good of the land, it is upholding the rights and the interests of the American people.

Works Cited

Conable, Paul. "Equal Footing, County Supremacy, and the Western Public Lands." *Environmental Law,* vol. 26, no. 4, Winter 1996, *Gale Academic OneFile,* https://go.gale.com/ps/i.do?p=AONE&u=tel_a_rscc&id=GALE%7CA19109154&v=2.1&it=r. Accessed 28 Oct. 2020.

Davis, Steven. *In Defense of Public Lands: The Case Against Privatization and Transfer*. TempleUP, 21 May 2018. *ProQuest*, https://ebookcentral.proquest.com/lib/rscc-ebooks/reader.action?docID=5378451. Accessed 5 Oct. 2020.

Enabling Act. Division of Archives and Records Service, State of Utah, 1894. https://archives.utah.gov/research/exhibits/Statehood/1894text.htm. Accessed 9 Oct. 2020.

Frazzini, Kevin. "US Public Lands: Whose Land Is It?" *National Conference of State Legislatures*, 4Nov. 2015, www.ncsl.org/research/environment-and-natural-resources/this-land-is-whose-land.aspx. Accessed 5 Oct. 2020.

Howard, John W. et al. "Legal Analysis: Public Lands." *American Lands Council*, 9 Dec. 2015, https://d3n8a8pro7vhmx.cloudfront.net/americanlandscouncil/pages/857/attachments/original/1479784690/Legal_Analysis_-_UT_Commission_for_Stewarship_of_Public_Lands_Dec_9_2015.pdf?1479784690. Accessed 20 Oct. 2020.

Pollard's Lessee v. Hagan et al., 44 U.S. (3 How.) 212 (1845). Supreme Court of the United States, https://tile.loc.gov/storage-services/service/ll/usrep/usrep044/usrep044212/usrep044212.pdf. Accessed 28 Oct.2020.

"Public Lands in the West." *Colorado College*, Jan. 2020, https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2020/2020-conservation-in-the-west-poll-data/2020%20State%20of%20the%20Rockies%20Topic%20Report%20on%20Public%20 Lands%20(20003%20-%20d1d).pdf. Accessed 9 Oct. 2020.

Riddle, Anne A. "The Outdoor Recreation Economy." *Congress.gov*, United States, Congress,Congressional Research Service, 22 Oct. 2019, https://crsreports.congress.gov/product/pdf/R/R45978. Accessed 5 Oct. 2020.

State of California, Department of Finance. *Enacted Budget Detail: 2019-2020.* 27 Jun. 2019, http://www.ebudget.ca.gov/budget/publication/#/e/2019-20/BudgetDetail. Accessed10 Nov. 2020.

State of Utah, House. *Transfer of Public Lands Act*. Legislative General Counsel, 2012. 59th UtahState Legislature, House Bill 148, https://le.utah.gov/~2012/bills/hbillenr/HB0148.pdf. Accessed 9 Oct. 2020.

State of Wyoming, State Budget Department. *Wyoming State Budget: 2019-2020 Supplemental.* 1 Dec. 2018, https://drive.google.com/file/d/1rrR4UTu-VFHIzK3oD1o7CDiCMGBGacCj/view. Accessed 10 Nov. 2020.

Tolmé, Paul. "Keeping Public Lands Public." *National Wildlife Federation*, 29 Jan. 2016, www.nwf.org/Magazines/National-Wildlife/2016/FebMarch/Conservation/Keeping-Public-Lands-Public. Accessed 5 Oct. 2020.

United States, Department of the Interior, Bureau of Land Management. *Federal Land Policy and Management Act of 1976.* https://www.blm.gov/sites/blm.gov/files/AboutUs_LawsandRegs_FLPMA.pdf. Accessed 10 Nov. 2020.

United States, Department of the Interior. *Payments in Lieu of Taxes.* https://www.doi.gov/pilt. Accessed 13 Nov. 2020.

Vincent, Carol Hardy. "State Management of Federal Lands: Frequently Asked Questions." *Congress.gov*, United States, Congress, Congressional Research Service, 16 Dec. 2016,https://crsreports.congress.gov/product/pdf/R/R44267. Accessed 10 Oct. 2020.

"What is Deferred Maintenance?" *National Park Service*, United States, Department of the Interior, https://www.nps.gov/subjects/infrastructure/deferred-maintenance.htm. Accessed 10 Oct. 2020.