

LANDS AND WILDLIFE

The federal estate—lands controlled by the Bureau of Land Management, the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the National Park Service, as well as smaller holdings of other agencies—is far larger than most Americans realize and only a fraction of it is composed of National Parks. Federal agencies are unable to adequately manage these lands and the natural resources on them. Nevertheless, the federal government continues to expand its land holdings, and to increasingly restrict public access to them. At the same time, wildlife and related laws such as the Endangered Species Act and wetlands regulations under the Clean Water Act increasingly erode property rights, result in partial takings—the loss of property value from government restrictions on its use—and often do so without significant conservation benefit or, worse, with adverse unintended consequences.

MAJOR POINTS

- The federal government’s land holdings are greater than the areas of France, Spain, Germany, Poland, Italy, the United Kingdom, Austria, Switzerland, the Netherlands, and Belgium combined, approaching a third of the U.S. land mass, including Alaska and Hawaii.⁸
- Environmental laws should not be allowed to erode the sanctity of private property, and the costs of government conservation programs should not be borne solely by private property owners.
- Federal land management agencies spend billions of taxpayer dollars each year on programs to improve the condition of federal lands, but many of these dollars never reach the ground or deliver tangible benefits, as they are consumed by environmental studies, compliance with handbooks, regulations and guidance, and lawsuits.

- Federal land holdings include 50 percent of all land west of Nebraska. In individual Western states, federal holdings range from 29 percent to over 80 percent—and as much as 98 percent of individual Western counties.⁹
- Federal lands are detached from state property taxes and increasingly restricted from being used for economic purposes, such as development of oil, natural gas, and coal resources, forgoing billions of dollars in tax revenues and huge losses in economic activity as well as hundreds of thousands of jobs.¹⁰
- Western states manage their lands at much lower cost and with healthier and more sustainable conservation practices than federal lands managers.¹¹ The states also generate more revenue than the federal government from public lands.

APPROPRIATIONS

Congress should prohibit agencies from expending any funds for:

- Land acquisitions that result in a net gain in the size of the federal estate.
- Land purchases through the Land and Water Conservation Fund (LWCF). The LWCF expires on September 30, 2015, and no further appropriations should be made to it.
- Any study, proposal, or designation of new National Monuments, National Heritage Areas and Corridors, or Wild and Scenic Rivers. No additional funding should be appropriated for a Heritage Area or Corridor for which the authorization has expired.¹² (Advocates promoted Heritage Areas as only requiring start-up money from the federal government, and claimed they would become self-sustaining through activity fees.)
- The 22 Landscape Conservation Co-operatives and eight Climate Science Centers.
- Listing any species under the Endangered Species Act (ESA) without the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service first posting online (as appropriate for each regulatory action):
 - A list of the information supporting the petition, within one month of receipt.
 - A list of the information used to support a positive 90-day finding, two or more weeks before publication in the *Federal Register*.

- A list of the data used to document the existence of each of the five factors used to justify the listing of the species.
- ESA listings based on any information that does not meet the standards of the Information Quality Act. Any studies used to substantiate the existence of a threat or decline in population must be substantially reproducible, and failure to provide access to the data underlying a study is prima facie evidence that the study does not represent the best available data.
- ESA listing of the sage grouse unless and until all the data and assumptions used to develop projected population declines and habitat loss, as well as documentation of threats, are made available to the public (including Internet posting).
- Listings under Section 4 of the Endangered Species Act until the U.S. Fish and Wildlife Service and National Marine Fisheries Service adopt a regulatory definition of “data.”
- Promulgation or implementation of any regulation that creates a blanket prohibition against a “take” (pursuing, trapping, wounding, or killing) for any newly listed threatened species. (This restores the distinction that Congress intended between “take” of endangered and “take” of threatened species for any future listed species that was eliminated by a USFWS rule.)
- Settlements related to public lands under the ESA, the National Environmental Policy Act (NEPA), and the Federal Land Policy and Management Act, unless settlement terms and all related documents are made available to the public through a standard notice and comment period.
- Designations of critical habitat unless proposed designations consider the economic impact of both a listing and a critical habitat designation in the notice and comment period.

LEGISLATION

To achieve the necessary statutory reforms in order to improve federal policies on public lands and wildlife, Congress must:

- Allow the Land and Water Conservation Fund to expire.
- Require any land designations under the Antiquities Act to be no more than two square miles in area.¹³ Subject such designations to congressional

approval and the approval of the relevant state(s). Monuments not approved by the Congress or the relevant state legislature(s) become null and void one year after a designation. Additionally, require any area affirmed by Congress to be re-designated every five years.

- Provide a means of compensating private property owners for regulatory takings that result from the Endangered Species Act, the Clean Water Act, and other environmental laws.¹⁴
- Make fundamental improvements to the Endangered Species Act, including shifting reliance for species conservation to the states; a more limited redefinition of a species “taking”; prioritizing species listings; fixing the consultation process; and prohibiting the presumption that federal agencies possess greater regulatory expertise than states (per the Chevron Doctrine).¹⁵
- Require all listing petitions to be posted in a publicly accessible location on the websites of the USFWS and the National Marine Fisheries Service within seven business days of receipt.
- Repeal provisions of the Federal Land Policy and Management Act that allow Wilderness Study Areas to be so designated in perpetuity absent congressional action. Provide hard-release language (that is, the lifting of land-management requirements) for lands that Congress declines to designate as wilderness.
- Create a statutory mechanism for states to assume control of lands under the control of the Bureau of Land Management or U.S. Forest Service. Establish criteria for such devolution, including specific and reasonable criteria under which plans will be deemed acceptable and implemented if met. Such plans should provide protection for valid existing rights and traditional uses, such as grazing.
- Create a legislative mechanism for states and counties to take independent actions on federal lands when federal mismanagement has created a danger to property or public safety, such as dangerous fire conditions, insect infestation, weeds, or damage to watersheds and water rights.
- Clarify “standing” requirements (such as proof of a connection to and harm from the challenged action) and require bonds by plaintiffs seeking to block federal lands management decisions, with proceeds to offset harm to private parties and to taxpayers.

OVERSIGHT SUBJECTS

Congress should examine the following:

- Devolution of public lands and Utah's Transfer of Federal Lands Act.
- The legal basis claimed by state and federal authorities for their exercise of police powers on federal lands.
- Restrictions on the disposal of excess federal lands, including provisions of the Federal Land Policy and Management Act and other federal statutes.
- The scope and scale of law enforcement resources and activities of federal environmental and natural resources regulatory agencies.
- Overcriminalization in the application of federal environmental and public land management laws.
- The proper, limited use of federal agency powers over federal lands, water and grazing and, in particular, the lessons to draw from the appalling multi-decade litigation between Nevada rancher Wayne Hage (and his estate) and the U.S. government over actions taken or withheld by federal agencies.