

Public Land Management in the United States



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Spring 2014

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Introduction

The federal government owns approximately 640 million acres in the United States, which is roughly twenty-eight percent of the total land in the country. There are four different federal agencies that manage almost 610 million acres, the majority of which are located in the western part of the country and the remaining acreage is owned by the Department of Defense for military purposes. The four agencies are: United States Forest Service (USFS), the Bureau of Land Management (BLM), the National Park Service, and the Fish and Wildlife Service. The USFS is a subsidiary of the US Department of Agriculture, while the BLM, National Park Service, and the Fish and Wildlife Service are all three controlled by the Department of the Interior(2).

The state with the largest percentage of federally managed land is Alaska with over 2/3 of the state managed by one federal entity or another. The National Park Service is solely responsible for the fifty-six parks and eighty-four million acres that have been deemed national treasures. The only revenue allowed to be taken from these areas is in the form of tourism. The Fish and Wildlife Service is responsible for managing the National Wildlife Refuge System. No industrial profit is allowed to be made from these areas as well (1).

For the purposes of this paper, we will be focusing mainly on the Bureau of Land Management because this government entity is most heavily associated in the commercial development of public lands for economic profit. The purpose of this agency is to balance the conservation of the land with the economic development. Since the lands are technically owned by the American people, the lands must be managed according to a countless number of political and environmental interests. Because of

this extreme spectrum of interests, management issues are frequently met with fierce opposition. The issues involving public land management that will be discussed in this paper will involve; commercial use, resource extraction, public use, and overall environmental health.

Environmental

Radical conservation non-profit groups such as the Sierra Club and the Wilderness Society are serious political forces to be reckoned with because of their financially dedicated member bases. On the other side of the argument are the energy and cattle industries that are also major lobbying influences in Washington D.C. These industries rely on access to public land so that they can provide the country with the lubricant that drives the American economy. This is a real issue that is currently being discussed at our country's highest legislative levels. But, how much is simply bureaucratic nonsense and how much is actually keeping land management at the forefront of decision making?

There are two main documents that are considered the living manifestos for land management policies of public lands, The National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA). These are the two main legal documents that govern the Bureau of Land Management's daily operations, and every BLM employee has reviewed these documents more times than they care to remember. The US Forest Service is governed by many more federal statutes including but not limited to: The Forest Service Organic Administration Act, The Multiple Use – Sustained Yield Act of 1960, The National Forest Management Act of 1976,

Cooperative Forestry Assistance Act of 1978, and the Food, Conservation, and Energy Act of 2008.

National Environmental Policy Act

The National Environmental Policy Act was placed into law in 1969. It was a landmark law being the first one that established a guideline for how to protect the nation's environment. It has since been copied by many other legislatures around the world. The Act came about due to necessity. Prior to the passing of NEPA, there was nothing regulating the impact on the environment from commercial development. The Act required by law that all federal entities adhere to requirements set forth in the document, and prepare an environmental assessment and environmental impact statement before and after each decision in regards to the environment. The introduction of the Act states that the intention of the Act is "to declare national policy which encourages productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man" (3). The Act contains three different sub sections which are: the declaration of national environmental policies and goals, the establishment of action-forcing provisions for federal agencies to enforce those policies and goals, and the establishment of a Council on Environmental Quality (CEQ) which is a division of the Executive Office. Once a piece of public land is selected for a development there are three levels of analysis that must be taken into consideration before any action is taken. These analysis levels are: a preparation of a categorical exclusion, preparation of an Environmental Assessment

(EA) that finds no significant impact on the land (FNSIOL), and preparation and drafting of an environmental impact statement (3). This law as a whole is called into question by many people who are conservation oriented, who call the law inconsistent and generally used for congressional dollar passing (7). The problem lies in that the people at the Bureau of Land Management are responsible for managing the land with the best of intentions, and when new methods are found to be inconsistent with their original intention, the agency is held responsible through litigation. So, even with the best of intentions from the staff of the Bureau of Land Management, it is impossible to satisfy every public agenda. Therefore the Bureau of Land Management must strictly practice the doctrine of NEPA to avoid massive legal expenses that the agency cannot afford. The practice of following NEPA put the BLM in unenviable situation of matching changing public perceptions to management techniques pertaining to public land use.

Federal Lands Policy and Management Act

The next document that ensures that public lands are managed under the clear direction of the law is the Federal Lands Policy and Management Act of 1976. In the Declaration of Policy Section, number five declares that “in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision making” (4). This is taken to reflect that the decisions regarding the management of public lands should be based on the general public’s views of what they

believe is the best option. Because there is currently a negative stigma involved with any activity that uses land as part of its business model, this can become a serious issue very quickly.

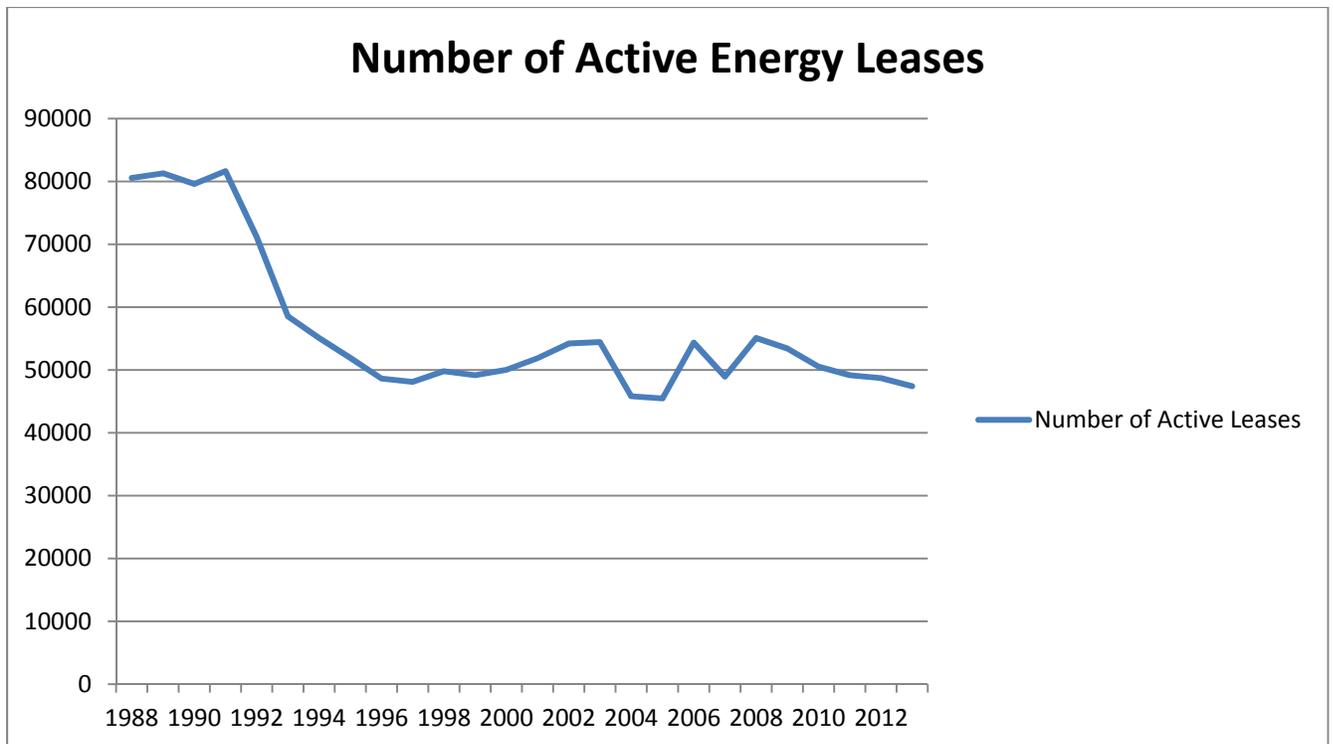
The document goes on to say that the Secretary shall, with public involvement, develop, maintain and revise land use plans which provide use of the public lands. The public involvement associated with this bill has not been as active as the direct text indicates, and there are currently activist groups that are involved in lawsuits alleging that the Bureau of Land Management does not accurately reflect what is set forth in the law. The FLPMA does state that the BLM is responsible for any necessary cleanup, and decontamination of the lands used including that they may require minimizing adverse impacts on the natural, environmental, scientific, cultural, and other resources and values of the lands involved (4). This document is the cause of most law suits filed against federal agencies. This Act ensures that land must be managed according to a balance between conservation and economic development.

Energy on Public Lands

The public lands have historically been available for private sector use including; recreation, livestock grazing, energy and mineral extraction, and timber harvesting. Many companies and producers rely heavily on the public lands for their economic survival. The Bureau of Land Management is focused on making sure that they are staying economically viable through their land and mineral rights, in accordance with laws that they must operate under. They make a point that they do not want irreversible damage done to the land, which could result in the creation of unfunded taxpayer

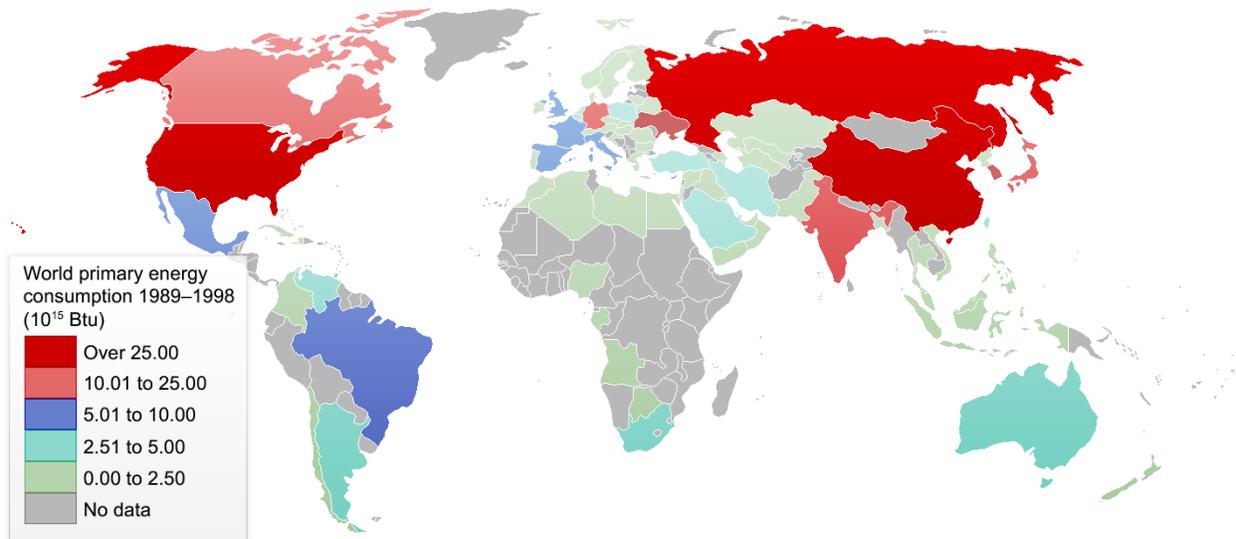
liabilities. The BLM alone manages almost two-hundred and fifty million surface acres, which is about 1/8 of the land in the United States (6).

It is a common misconception that resource extraction is currently at its peak on public lands. As you can see from the chart below, we are at the lowest number of active energy leases in the past twenty five years. The twenty five year average of active energy leases is 58,602 and as of the end of the 2012 fiscal year there were only 47,427 active leases(5). The reasons for the declining number of resource extraction leases are both economic and scientific. Because the mining and drilling technology has improved over time, they can now do more extraction activity with less impact on the environment. Also, economically it has not been logical to try and reach the least accessible resources such as oil shale and oil sands because the prices would not be able to recover the extraction costs.



There is a public argument over whether or not mineral and energy extraction are worth the environmental costs. Hydraulic fracturing (fracking) has been the source of debate in communities around energy extraction areas. One example is Boulder County, Colorado who in 2014 successfully passed legislation to ban fracking with a sunset clause. The measure passed with overwhelming support. Since the people own the land and the law states that the Department of the Interior must develop land use plans that reflect the public's opinion, there might be a shift in the way we manage public lands.

Is it necessary to allow commercial use and development of public lands? The short answer is yes, the asset of public land is crucial to the vitality of the American Economy. The idealist belief that there can be a population of our size and not have a negative impact on the environment is simply unrealistic. We exceeded the world's carrying capacity when we started irrigating and manipulating agricultural practices. And now that the population has increased significantly and is expected to continually growing year after year, we have created a precarious management situation that will have dire consequences if we do not make the correct decisions in the near future. For us to be able to cease our dependence on fossil fuels, we would have to have major scientific breakthroughs with renewable energy sources.



(U.S. Energy Information Administration)

The United States, Russia, and China are considered the main global economic and political superpowers; there is a direct correlation between the main consumers of energy and the political and economic force in the world. So there are two simple answers to this issue. Either we can continue extracting non-renewable natural resources and buy our time until we are forced to switch to another energy method, or we drastically change our lifestyles. One of these two will happen, and it is only a matter of time until the undesirable one happens; but, to say that we should simply stop production of our main energy sources is not only impractical, it is illogical.

Agricultural Use of Public Lands

Two things founded the west, Christianity and the livestock industry and it is hard to differentiate which one was more impactful with both tracing their roots back before the 1700's (7). The western United States presents unique grazing issues that are not present in many other areas in the world. First, for the most part, the land is dry and

arid. Second, the climate fluctuates so much that it is hard to establish cut and dried land management practices (7).

In the early 1900's Teddy Roosevelt commissioned the Public Land Commission to prepare a report and present it to congress which stated "The general lack of control in the use of public grazing lands has resulted, naturally and inevitably, in overgrazing and the ruin of millions of acres of otherwise valuable grazing territory. Lands useful for grazing are losing their only capacity for productiveness, as of course, they must when no legal control is exercised" (7). This report was essentially disregarded by the United States Congress in 1903 due to differing political agendas. It took almost thirty years after this initial push to get a grazing bill passed in the United States because it was not deemed a necessity by the higher legislative bodies. It took the dust bowl to get the Taylor Grazing Act signed into law during 1934, which was when the country had its back against the wall due to repercussions of mismanagement of land (7).

In 1946, the Department of the Interior created the Bureau of Land Management, whose main priority was to manage grazing on public lands. In terms of grazing leases on public lands, many people believe that the land gets severely degraded from the grazing of cattle and there is an open outcry against the cattle industry. The damage done by the unsustainable grazing practices in the west during the country's beginning are still associated with the negative connotation of animal producers (7). The belief is that cattle are a major contributor of 'greenhouse gasses' and that they should not be allowed to deteriorate the public lands. This also is not completely accurate. Of course, there is opportunity for the animals to be able to degrade the land but this is why management needs to be more intensive and watchful.

Any interaction of people using land for economic development can cause the environmental integrity to be called into question. However, the report titled “Livestock’s Long Shadow,” released by the Food and Agriculture Organizations of the United Nations in 2006, delivered a particularly detrimental blow to the cattle industry. This report stated that flatulence from cattle produces more carbon emissions than every car in the world. While it is true that cattle produce carbon emissions, the report went into such depth as to include the carbon emissions that were produced as a byproduct of creating and transporting the toilet paper on ranches. Negative reports came from people skimming the article and developing an incorrect assumption as to its complete contents. Even though this report has been refuted by the livestock industry, the damage in the public’s opinion has been irreparable.

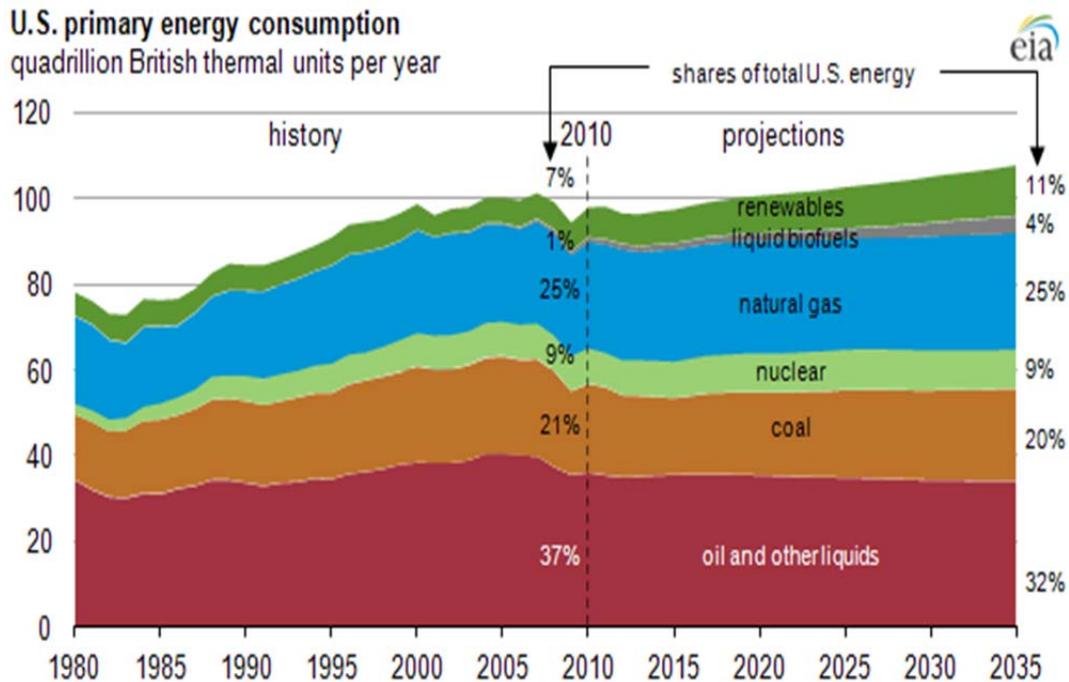
With proper management of livestock there have been successful attempts that indicate that the animals can actually be beneficial to the environment, helping plants compete with one another. The new idea of mob grazing is a theory that cattle should be managed to emulate the bison that roamed the land before people drove them to near extinction. The bison would intensively graze an area for a short amount of time and not return to the area until the next year, following their natural migratory routes. The belief is that the native plants have evolved to be grazed in this manner and initial reports of this grazing practice have had overwhelmingly positive backing from producers nationwide.

In the present day west, where most of the public lands are located, local ranchers depend on public land grazing permits to be able to feed their livestock. With the west being a semi-arid to desert landscape, most producers are not able to keep

their animals on their land for the entire year. Being able to graze on public lands ensures that these producers have alternatives so that they do not overgraze their own land. This is essential to local economies, some of which would not be able to survive without the local animal producers.

Future Public Land Use

The overall dissention resulting from taking advantage of our country's resources on our public land can be directly related to the general public's distancing in the production process of their daily commodities. As well as land management agencies abilities both legally and financially to be able to properly manage the land. The Federal Land Policy and Management Act of 1976 states that the lands must be managed with the general public's prevailing opinions in mind, although what the American public says they want, and how we live our lives are very inconsistent. The U.S. Energy Information Administration released these statistics regarding public energy consumption through 2035 and where the representative percentages will be originating from.



(U.S. Energy Information Administration)

Some of this increase can be associated with general population growth and, as you can see, we are actually projected to be more efficient with energy growth in the future as opposed to the last thirty years (9). The demand is there, and it is only predicted to increase in the future. With over ninety percent of the nation's demand being met through non-renewable forms, it does not make sense that we should stop extracting energy sources from the country's public lands. The people who oppose this train of thought simply aren't realistic in meeting the country's energy demands. While some of the impacts of mineral extraction can be severe in cases, it is through the public's consumption of energy that it can be inferred that it is the popular view to deem resource extraction a necessity for the preservation of societal values and lifestyles.

The ideal fix for the federal agencies to be able to manage the public assets to the best of their ability is for them to have an impossibly high discretionary spending limit, so that all of their research and projects can be adequately funded without relying

on their current budgetary restrictions. Everyone in congress will agree that public lands are a national asset that deserve to be protected, at least until they are being forced to cut budgets. The proposed way for agencies to be able to manage public lands with more efficiency is essentially a restructuring of the system. Currently, the system is managed just as any other bureaucracy, with a pyramid like structure where people who pass laws are completely removed from the pressing issues.

Management Reform

The proposed theory is presented by Randal O'Toole who has focused much of his professional career on public land use regulations. The article published by Mr. O'Toole is called "Reforming Public Land Management with New Incentives." In this publication, the author cites that many problems exist from the 'top down' management strategies in a field where issues are very area specific. He proposes the contrary, where the agencies are managed from the bottom up. He clarifies what he means by this by saying "top-down management means that congress or a centralized bureaucracy determines what is right and imposes that solution down to the ground. Bottom-up management means that Congress creates a set of structures and rules and then lets on the ground managers make the day-to-day decisions" (8).

Groups that actively lobby their positions are usually bias driven. They want their core values to be reflected in the country's legal codes. While this is usually driven from admirable origins, what they are doing is trying to impose their opinions over the country as a whole, creating a 'top down' system where individual areas cannot be managed in a proper and timely manner. This has an adverse effect on their original intention. This

type of governing practice results in a variety of laws that are addressing specific issues that may only be applicable to one area. Often they are found to be conflicting with other laws and have been accused of adhering to special interests.

O'Toole argues that another side effect of this top down management technique is that one side eventually achieves a "total victory" and this is where polarization of issues is created. This polarization is what leads to anti-fracking and anti-cattle advertisements. The top down system has promoted hostility which leads people to lose track of the matter at hand. The bottom up structure promotes that one side cannot achieve 'total victory' on a national scale. This is argued to be more constructive because areas will be better managed for their area specific issues, since they will not have to await approval from Congress regarding time sensitive management decisions. The bottom up is also stated by the author to promote cooperation and have the ability to satisfy all of the predominant interests.

The top down structure is set up to reward incorrect management practices according to O'Toole. He states that "below cost timber sales in fragile watersheds; conflicts between wildlife and livestock; elk overgrazing in national parks, overcrowding in other national parks; and many other public land problems can all be traced directly to top down management and, in particular, to the resulting budgets" (8). This is exemplified by what the agencies are allowed to keep regarding their revenue producing services. For example, the Bureau of Land Management is mainly funded for the management of range land, so the respective field offices only get to recognize half of the grazing permit revenue while they can retain all their energy related lease revenues. This causes certain field offices to focus their efforts on one area rather than keeping

the whole picture in mind. When there is a conflict with the law and a conflict with a budget, the budget will always take precedence at the end of the day.

Bottom up management can resolve competition over resources and funding but, for it to achieve this goal it must adhere to five criteria. First, the agencies budgets must come from their own business practices, not from the American taxpayer. This practice will hold individual field offices accountable for their decisions; it will also keep private interests and politicians interests out of the budgeting decisions. Allowing for each field office to assess their needs and not making them adhere to national lease quotas will help promote better management practices.

Since the first criterion is that these land management agencies become self sufficient, the second criterion is that they be able to charge for all public land usage. At first glance, this sounds contradictory. However, by increasing the sources of revenue generation, the managing agencies are less likely to be persuaded into leasing to the customer with the larger bank account.

The third criterion is that the structure that is set by Congress includes a set of taxes that each land management agency must pay back to the tax pool. The reasoning for this that is given by O'Toole is that the agencies would otherwise be susceptible to overdeveloping the land in order to "use any profits they earn to cross-subsidize money-losing and probably environmentally destructive activities" (8). The principle of this argument is sound, but not rationale. By having the agencies pay back to the taxation pool, it will more likely act as incentive for Congress to let the reform on the Department of the Interior progress.

The fourth criterion is that the use your lease or lose your lease mentality needs to be abandoned. This creates more of a free market in the public land leasing market; it also helps managers be able to rest areas that have been heavily grazed in the past. Mr. O'Toole's intention for this is so that people or companies can essentially set up land easements preventing development and grazing in areas. I do not agree with this from that stand point, but rather as an environmental management tool. There should be safeguards set in place so that an area can only be under a given lease for a certain amount of time before it can be bid for again. This will not only allow land managers to be able to have more resources to help them manage the land, but it will also deter from one company having unexplainably long leases.

The fifth and final criterion is that provisions be made to protect biodiversity and other resources that aren't protected by fees collected by users of the lands. Protecting biodiversity from tools such as the endangered species act allows for the more popular animals to be protected, while neglecting the animals that don't have large support groups petitioning for their protection. There needs to be laws that protect all forms of biodiversity so that the different environments can be impacted the least amount possible (8).

There are some people who argue for the complete disbandment of the federal land management system, and for it to be completely privatized. This is a popular belief for some of the more radical private interest groups. However, the likeliness of this happening is not realistic. According to O'Toole, the main argument against privatization is based on the agricultural system in the United States. He notes that the subsidies given to the private agricultural producers for 420 million acres of crop land in the United

States receive nearly four times the budget than the Department of the Interior allocated to the federal land management budget (8). This rationale seems comparable to comparing fruits to vegetables, but the bottom line is still intact, in privatization there are no safeguards against subsidies.

If privatization is not the answer what about allocating the federal lands to the states and completely dissolving the federal land management system? It seems like a good plan initially, but it will eventually lead to certain states gaining power over others because of their resources. State run agencies are not run more efficiently than federal entities because they are subject to the same errors of bureaucratic structure. Allowing for federal oversight will ensure that the management is more consistent, preventing more lawsuits that would inevitably occur with each state passing its own legislature on managing the land.

Conclusion

With the recent public outcry against private sector use of America's public lands, now is the time to begin seriously addressing the current issues that are destructive and time consuming which leads overall unsound management practices. The reason O'Toole's theory is so interesting is that it advocates reason and logic over opinion and politics by making the individual field offices more autonomous, while still having a more limited form of federal oversight. This decentralization of authority would lead to improved management practices across the country. This seems to be the best way to address the plethora of issues that exist with the country's public land management. While Mr. O'Toole is considered by most people to be an extremist, some of his ideas are worth some serious thought. Allowing the decentralized areas to be able to manage

issues in a timely manner is of the utmost importance for the condition of the lands, while charging people for the use of their own land will simply not be tolerated by the American People. The public and the managers must realize that the country needs to be able to fuel and feed itself, and this must be achieved in the most timely and environmentally friendly manner possible for each specific field office. Since the current budget issues that are inevitable with a government entity are plaguing the Bureau of Land Management there needs to either be an increase in the allowable budget for the BLM, or they need to reduce their coverage and sell off lands that could be put to better use. The only answer to this question can come from a public vote from all states that have federal public lands. It has become clear that the need for reform of the management of public lands is inevitable, now is the time to consider our options and begin to plan for the future. Allowing decisions to be made at the local level as suggested by O'Toole is an ideal origin for reform topics of public land management.

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