Cooperative Federalism, Serving the Public Interest: A Policy Analysis of How the States Can Engage Local Stakeholders and Federal Land Managers to Improve the Management of the National Forests

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Mark Twain has been credited with saying, “There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and ... give them a turn and they make new and curious combinations” (Twain 1924). The transfer of management authority for federal lands certainly fits this axiom. The idea that there must be a better way to manage federal lands seems to coexist in history alongside federal lands themselves, and the limitations and failures of federal management regimes have only perpetuated this concept. In 1929, more than two decades after Mark Twain’s death, President Hoover said,

“Our Western states have long since passed from their swaddling clothes and are today more competent to manage much of these affairs than is the Federal Government. Moreover, we must seek every opportunity to retard the expansion of Federal bureaucracy and to place our communities in control of their own destinies.... The Federal Government is incapable of the adequate administration of matters which require so large a matter of local understanding.” — Letter from President Herbert Hoover to the Western Governors, August 27, 1929, Salt Lake City, UT (Kemmis 2001).

In this chapter, we discuss the origins of devolution of federal decision making and its roots in conflict. We explore various models for managing the national forests, from divestiture to dominant use. Building on lessons learned and drawing from recent successes, we examine the role of collaborative partnerships and legislated devolution, as well as how the fiduciary state trust land model could be applied to national-forest management. These existing regulatory and management frameworks, and their underlying authority, present a compelling opportunity for improving management of the national forests, already embedded in the notion of cooperative federalism, or the sharing of management authority and responsibility for action.

The first part of this chapter summarizes the beginnings of an ongoing tension between federal and state management of public lands by examining the problem from the vantage point of the Forest Service—from its establishment and oversight by various federal entities, to conflicts related to subsequent authority and management of the Forest Service itself, and the forest reserves it manages.

Next, in an effort to make a new and curious combination, and with a "glass half-full” perspective, we examine several different frameworks for examples of how the national forests could be managed. In the middle portion of this chapter, we describe the shift of support for public ownership of land over time and examine two alternative ownership and management options. First, the concept of divestiture. Management of the majority of public land located in the West has been seen by some as establishing a somewhat paternalistic relationship between the federal government in Washington, DC, and Western states (Kemmis 2001). Today, due to longstanding frustration and anger over control and management of Western federal lands that date back to the Sagebrush Rebellion and even the establishment of the forest reserves in 1891, some states have made efforts to transfer ownership of the federal lands to the states (Cawley 1993, pp. 122–123). Although these efforts have so far been defeated or defused over time, the embers continue to burn. Second, in contrast to divestiture, the authors assess the trust lands model as another management framework that may prove useful for illustrative purposes in establishing improved management of federal lands in the future.

Outside of transferring federal lands, there exist alternate land management models that provide effective frameworks for national-forest management. For example, within the 2009 Omnibus Public Land Management Act, Congress authorized specific roles for collaborative interests to influence decisions on national-forest management. Building on this approach to national-forest management, in the final part of this chapter, the authors propose adoption of a new model of cooperative federalism that recognizes a legitimate role for the states to assist in the management of the national forests. Thus, we examine the ways in which “giving old ideas a turn” can create something new, and by historical measures, something better for our forests. This new idea—rooted firmly in long-held values that seem to achieve the balance central to the American ideal, such as independence and self-sufficiency matched with cooperative nationalism—may be the “new” idea our forests and public lands will require to thrive in America’s new century.

Origins of Forest Service: Oversight and Conflict – Overview

Under the federalist system of government in this country, there is a shared responsibility for governing the people and resources. The Constitution outlines specific roles for the federal government. Specifically, the Property Clause of the US Constitution, Article 4, Section 3, Clause 2 states:

The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Furthermore, Article 10 of the US Constitution reserves those powers and authority not otherwise enumerated to the states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

With authorization from Congress, the federal government can delegate an array of management responsibilities to the states. States can apply for primacy to implement various federal statutes under state-run management regimes. Examples of this include implementation of the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, and the National Estuary Program.

In addition to promulgating, enforcing, and delegating regulations affecting the people and land of the United States, Congress also has the distinct authority to convey federal lands to the states or others as they deem fit. Historically, Congress has exercised this authority to carry out disposition of large portions of the public domain to states, railroads, homesteaders, and American Indian nations.

Establishment of the Forest Service through Acquisition, Disposition, and Reservation: Historical Underpinnings of Agency Conflict

In 1803, with the Louisiana Purchase, President Thomas Jefferson expanded the public domain by 530 million acres at a cost of about three cents per acre. Subsequent additions of land through the Oregon Treaty of 1846 (present-day states of Washington, Oregon, and portions of Montana and Wyoming), the Mexican Cession (1848), and the Gadsden Purchase (1854) expanded the United States westward in an effort to pursue a Jeffersonian policy of Manifest Destiny. With a large land base and a small population, Congress enacted legislation to facilitate the development of this vast territory. The General Land Ordinance of 1785, which established the public land survey system, facilitated the disposition of the federal domain to settlers, while also dedicating portions (Section 16 of each township) of the surveyed estate for the purposes of public education by the states. This act was the precursor to the 1862 Homestead Act that granted 160 acres to a homesteader who would occupy and farm a plot of land for five years. The Timber Culture Act of 1873 granted up to 160 acres of land to a homesteader who would plant at least 40 acres of trees on a tract of land. Additionally, there were subsequent land grants to the railroads (94 million acres) and the states (328 million acres) to support westward expansion and the establishment of a stable source of funding for public education and other endowed institutions (Clawson 1983, p. 22). The Carey Act of 1894 allowed for the development of private water projects on federal lands, which were subsequently granted to the states and deeded into private ownership. The states of Idaho and Wyoming were granted approximately three million acres to develop under the act.

In a departure from the general policy of divestiture and settling of the public domain, the government pursued a policy of retaining federal forestlands. This policy was driven largely out of public concern around wasting the nation’s natural resources (Dana and Fairfax 1982). Concerns over a pending timber famine, watershed degradation, and the extinction of the American bison were at the forefront of many conservationists’ minds. In 1886, with vast forest resources at its disposal, Congress established the Division of Forestry within the US Department of Agriculture to manage forestlands located within the Department of the Interior. This new division was headed by Bernhard Fernow, a German-trained forester. Fernow stressed active forest management policies guided by principles of scientific management, economics, and pragmatism (Dana and Fairfax 1982). Fernow continues to influence forest management debates to this day. He and Edward Bowers, an attorney, helped draft the Hale Bill, which became the precursor to the Forest Reserve Act of 1891.

Section 24 of this act provided that:

the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public lands wholly or in part covered with timber or undergrowth, whether commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and limits therof.

The first proclamation under this act was made by President Henry Harrison with the designation of the Yellowstone Park Forest Reservation in 1891, which expanded the boundary of Yellowstone National Park (founded in 1872). During his administration, Harrison designated 14 additional reservations for a total of 13 million acres. In 1893, President Grover Cleveland followed in Harrison’s footsteps and designated another 4.5 million acres (Dana and Fairfax 1982). Not to be outdone by President Harrison, and adopting recommendations from the Forest Commission, President Cleveland issued a proclamation in 1897, during the closing days of his administration, which dedicated an additional 13 forest reserves with a gross area of 21.3 million acres. Cleveland’s last-minute land reservation was met with a swift rebuke from Congress. The reserves were created hastily with little to no input from the states and local municipalities. The Senate amended the appropriations bill that year to restore the reservation to the federal domain and added a provision to allow future presidents to revoke or modify prior presidential forest designations. The rider eventually passed both the House and Senate. Cleveland, opposed to the language in the rider, pocket-vetoed the appropriations bill, leaving the government without a budget, thus creating a need for a special session for incoming President William McKinley to fund government operations (Dana and Fairfax 1982).

This special session provided the impetus for passing the Forest Service Organic Act. The act was a compromise bill between westerners who wanted to prioritize commodity use within the forests, as opposed to preservationists and those who advocated for watershed protection. The act, which was signed by President McKinley, became law on June 4, 1897. It defined the purposes of the forest reserves and granted authority to the Department of the Interior to establish rules for the management of the forests. Specifically, the purposes of the forest reserves were:

1. to preserve and protect the forest within the reservation;
2. for the purpose of securing favorable conditions of water flows; and
3. to furnish a continuous supply of timber for the use and necessities of the people of the United States (Dana and Fairfax 1982). (A separate section of the act allowed for the secretary of the interior to sell timber.)

In 1898, Gifford Pinchot succeeded Fernow as chief of the Division of Forestry. Pinchot, like Fernow, was a German-trained forester. He was born in Connecticut to James Pinchot and Mary Eno. The Pinchot family had amassed a large portion of their family fortune from timber management and land speculation. He attended and graduated from the Yale School of Forestry in 1889 and received additional forestry training in Germany and at the Biltmore Estate in North Carolina. Pinchot was known for his conservation ethic and utilitarian views on land management. Influenced by the philosopher Jeremy Bentham, he argued that the purpose of conservation was to achieve “the greatest good to the greatest number of people for the longest time” (Pinchot 1998).

Pinchot, dissatisfied with the Department of the Interior’s control of the forest reserves, worked tirelessly with his friend and supporter, President Theodore Roosevelt, to seek the transfer of the forest reserves to the Department of Agriculture. In 1903, Pinchot convinced Roosevelt to establish a Committee on the Organization of Government Scientific Work. His hope was that this committee would recommend aligning the government forests and foresters under the same organization. The report did indeed recommend that the transfer from Interior to Agriculture be made, but was rebuffed by Congress for fear of putting too much power and influence in one person—Pinchot. Pinchot, however, was persistent and, armed with a second report from the Public Lands Commission, eventually succeeded in his efforts with the passage of the Transfer Act of 1905. This resulted in the culmination of his plan to see the forest reserves transferred from the Department of the Interior to the Department of Agriculture and his ascendancy to the role of first chief of the United States Forest Service. Pinchot instilled a culture of scientific management, efficiency, and delegation of decision making to local managers, whom he felt were best equipped to address management and conservation of the nation’s forest resources.

Under Pinchot’s guidance and with Roosevelt’s support, between 1903 and 1909, the area within the forest reserves expanded from 62.3 million acres to 194.5 million acres. According to Pinchot (1998, p. 252), there was public resistance to the reserves.

In those early days, moreover, forest reserves were not popular, and there was much opposition. Settlers held indignation meetings, and the timberland grabbers neglected none of the tricks of their trade. In some localities, as in the Salmon River Valley in Idaho, California, and elsewhere, the settlers were in favor of forest reserves. But, as usual in public matters, those who were for made far less noise than those who were against.

Western Congressmen, growing weary of Roosevelt’s and Pinchot’s perceived assault on the West, eliminated the president’s authority to dedicate forest reserves in six Western states (Washington, Oregon, Idaho, Montana, Wyoming, and Colorado) in the 1907 Agricultural Appropriations Act. Not to be bested by Congress, Roosevelt and Pinchot formulated a plan to designate additional reserves, known as the “Midnight Reserves,” after the passage of the act. Kemmis (2001) pointed out that if Roosevelt did not sign the appropriations bill, then there would be no funding available to operate the Forest Service. The president had 10 days in which to sign the appropriations bill. During those 10 days, Pinchot and his staff prepared proclamations for the designation of new forest reserves before the deadline to sign the bill. Roosevelt (Kemmis 2001, p. 38) described the events in his own words:

I signed the last proclamation a couple of days before by my signature, the bill became law; and when the friends of the special interests in the Senate got their amendment through and woke up, they discovered that sixteen million acres of timberland had been saved for the people by putting them in the National Forests before the land grabbers could get at them.

William H. Taft, the handpicked successor to President Roosevelt, retained Pinchot as chief of the Forest Service; however, not long into Taft’s presidency, Pinchot questioned Taft’s commitment to Roosevelt’s conservation policies, and Taft ultimately fired Pinchot for insubordination. Nevertheless, under Pinchot’s guidance and leadership, the National Forests System was established. Included in its operation was a clear mission and an organizational framework that guides the management of these lands today (Pinchot 1998). Similarly, conflicts over public ownership and control of the public domain that began with the establishment of the forest reserves continue to this day. The sources of the land management conflicts can be observed through various lenses, including the 1) decision making process; 2) competing missions; and 3) organizational culture.

Historical National Forest Management Characterized by Conflict and Inadequate Decision making Processes: Decisionmaking Theories

Three theories of decision making have greatly influenced the Forest Service planning process and have been instrumental in guiding public policy since the formation of the United States: 1) group theory; 2) rationalism (Dye 1972); and 3) incrementalism (Lindblom 1959).All three theories of decision making have been influential in the formation of public policy; however, the rational and incremental models have been the primary drivers of the Forest Service’s decision making process through the years.

Rationalism is identified by its scientific approach to analyzing and solving problems. Alexander (1992, p. 39) stated, “The rational decision-making model requires people using it to consider what they ought to do in the light of what it is they want to accomplish.” According to Dye (1972, p. 27), “A rational policy is one which is correctly designed to maximize ‘net value achievement.’” Net value achievement assumes that all values of society are known and measurable and that sacrificing any one value will be compensated for by the attainment of other values. Rational analysis provides a systematic framework for making decisions according to standards of logic and consistency (Alexander 1992). Dye (1972, p. 29) listed numerous obstacles to rational policymaking, some of which are: 1) there are no universally agreed-upon societal values, only conflicting interests; 2) the many conflicting values cannot be compared or weighted; 3) it is impossible to accurately weigh many societal values, especially those values which have no active or powerful proponents; 4) policymakers have little incentive to maximize societal goals, and instead seek to maximize their own rewards; and 5) policymakers are not motivated to maximize net goal achievement, but merely to satisfy demands for progress.

Incrementalism, first introduced by economist Charles Lindblom in 1959, views public policy and planning as a continuation of past government policies with only incremental modifications (Dye 1972). Today, many people refer to this as “adaptive management” (Bormann et al. 1994). According to Lindblom (1959), decisionmakers do not review the full range of options for achieving societal goals on an annual basis, as the rational model would demand. Instead, time, budgets, and data constrain decisionmakers in identifying alternatives to addressing societal goals. Dye (1972) wrote, “The incremental model recognizes the impractical nature of ‘rational-comprehensive’ policy making, and describes a more conservative process of decision making.” The author then (1972, p. 31) listed four main reasons for the prominence of incrementalism in public policy: 1) agencies lack the time, intelligence, or money to investigate all alternatives to existing policy; 2) policymakers accept the legitimacy of previous policies; 3) there may be large investments in current policies (sunk costs) that prevent any substantial change; and 4) it is politically expedient—agreement comes easier in decision making when discussion revolves around modifications to existing programs and not radical changes.

The inadequacies of rationalism and incrementalism have contributed to the gridlock that exemplifies much of the current federal land-management policies and procedures. On the other hand, group theory, embodied in the concept of collaboration, may be the key to moving beyond the current stagnated policies. According to Yaffee (1994, p. 374), “Inserting more effective collaborative problem-solving and dispute resolution processes into administrative decision making can yield better and more enduring decisions.”

James Madison (1961) first introduced group theory in *Federalist Paper* No. 10. He warned of factions and espoused the necessity of a vast frontier in which competing interests could balance themselves out through a system of checks and balances. According to Dye (1972, p. 23), “Group theory begins with the proposition that interaction among groups is the central fact of politics. Individuals with common interests band together formally or informally to press their demands upon government.” Thus, public policy is the equilibrium achieved by the influence of competing interest groups, and changes in the influences of interest groups will result in shifts in public policy (Dye 1972).

Shortcomings of Decision making Theories and Processes

Over the history of the Forest Service, the pendulum of planning has moved away from local to more centralized control but is swinging back in the form of collaborative efforts. These efforts are in part the result of frustrations from poorly informed centralized decisions that heavily impact local citizens. Local control can take better advantage of time and place information. Though Hayek was speaking in terms of individual interactions cooperating in the market, he did have a bias toward more local control over centralized planning (Hayek 1945, p. 17):

If we can agree that the economic problem of society is mainly one of rapid adaptation to changes in the particular circumstances of time and place, it would seem to follow that the ultimate decisions must be left to the people who are familiar with these circumstances, who know directly of the relevant changes and of the resources immediately available to meet them.

Several authors (Wondolleck 1985, 1988; GAO 1996, 1997a; Blahna and Yonts-Shepard 1989; Moote and McClaran 1997; Kessler et al. 1992; and USFS 2002) have documented the inadequacies and shortcomings of the public-involvement and decision making framework historically utilized by the Forest Service and other governmental agencies. According to Wondolleck (1988), the decision making process is extremely politicized and is inadequate in addressing the concerns of the conflicting interest groups. Kessler et al. (1992, p. 223) wrote, “Current conflicts in national forest and grassland management show that the prevailing version of multiple-use management does not adequately involve people in the decisions that affect them.”

Blahna and Yonts-Shepard (1989), Wondolleck (1985), Moote et al. (1997), and Moote and McClaran (1997) criticized the current planning process required under the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). The authors argued that the planning process constrains public involvement and restricts the devolution of decision making authority from the agencies to the informed public. After agencies solicit input during the initial scoping period, as required by NEPA, there is seldom the opportunity for affected groups and individuals to directly participate, clarify issues, or question inadequate responses to questions or issues that they raised. The government Accountability Office (GAO) (1997a, p. 45) states, “The public has expressed its desire to become more involved in the Forest Service’s decision-making and has demonstrated its preference for presenting its concerns, positions, and supporting documentation during, rather than after the agency’s development of proposed forest plans and projects.”

Moote and McClaran (1997) and Moote et al. (1997) wrote that the current public involvement and decision making process fall short with regard to efficacy, representation and access, information exchange and learning, continuity of participation, and decision making authority. Wondolleck (1988, p. 107) stated, “[N]o mechanism is available to resolve disputes; no process exists to accommodate the interests at stake.” Many authors have been critical of the agencies’ tendency to follow the rational, or technocratic, model of planning that focuses on economic efficiency and the output of goods and services. In contrast, Wondolleck (1985, p. 342) argued:

The first question that any decision makers should ask themselves when confronting a complex situation is not what is the proper allocation of resources in this situation or what should we decide? but instead, how should we make such a complex, difficult and controversial decision.

The historical lack of meaningful public involvement in the public planning process has contributed to appeals and litigation, which has caused gridlock with regard to the Forest Service and other agencies being able to meet their management objectives (Wondolleck 1988; GAO 1997a; USFS 2002; and Miner et al. 2010). As stated in a GAO (1997a, p. 59) report, “The Forest Service is increasingly unable to avoid, resolve, or mitigate conflicts among competing uses on national forests by separating them among areas and over time.” GAO (1997a) has attributed the gridlock in the decision making process to increased legislation that emphasizes sustaining wildlife and fish, juxtaposed against legislative incentives established in agency budgets emphasizing timber harvest. Wondolleck (1988, pp. 70–71) found three main reasons why the decision making process failed to address concerns of competing interests: 1) the process is not sufficiently informative or convincing—information and data analyses rarely indicate one correct choice; 2) the process is divisive—it encourages adversarial behavior by different groups; and 3) the process is not decisive—the decision made by the Forest Service rarely ends the controversy.

While Wondolleck (1985, 1988), Blahna and Yonts-Shepard (1989), and GAO (1997a) found problems with the decision making framework, they offered different solutions. GAO (1997a) advised that through consultation between Congress and the Forest Service, long-term strategic goals could be agreed upon. These long-term goals would give the Forest Service a congressional mandate that emphasized specific uses within the broad multiple-use framework. GAO (1997a, p. 102) stated, “Without agreement on the Forest Service’s mission priorities, we see distrust and gridlock prevailing in any effort to streamline the agency’s statutory framework.” GAO believed that this new mandate would enable the Forest Service to better defuse competing interests.

Wondolleck (1985, 1996) didn’t look to Congress for direction, but instead argued that collaboration among competing interests may be a feasible solution to the problem. She (1985, p. 342) wrote, “A process focus encourages consensus-building and collaborative problem-solving among affected interests when the decisions to be made are complex and value laden and when there are limits to technical expertise in reaching solutions.” Yaffee (1994, p. 327) agreed and argued, “New approaches to dispute resolution, public involvement, and planning create the possibility that collaborative settlements can be crafted that are well-informed and politically stable.”

Blahna and Yonts-Shepard (1989, p. 209) believed that to meet public involvement goals and improve the decision making process, “Agencies should clearly identify and address controversial public issues; conduct substantive, interactive public involvement during the development of planning alternatives; and coordinate public involvement and social impact assessment functions so that the interests of all parties are represented during the planning process.”

Moote and McClaran (1997) argued that to improve the current public involvement and decision making process, agencies should adopt a participatory democracy approach, advocated by Rousseau. Participatory democracy’s central premise is that active participation by all citizens is required to foster the public participation required for democracy. Such an approach would improve efficacy, representation, and access to the planning process; information exchange and learning; continuity of participation; and access to decision making authority.

Another reason for agencies to consider collaboration or participatory democracy is to discourage litigation or at least position the agencies to achieve more favorable outcomes in the courts. Collaboration allows competing stakeholders to work together at finding creative solutions to problems that previously may have been unsolvable. Use of effective collaborative processes has the ability to minimize or eliminate charged disputes caused by changing legal, economic, or ecological boundaries (The Keystone Center 1996). The belief is that stakeholders have more time and interest vested in solutions that they create; therefore, they are less likely to appeal the outcome of a collaborative-based decision (Wondolleck 1996, Daniels et al. 1994). However, collaboration offers little solace to those groups that choose not to participate or those that may be selectively absent from collaborative processes. Appeals from such groups have the ability to greatly set back or completely destroy collaborative agreements that may have taken months or years to generate.

Competing Missions

Critiques of the Forest Service’s management of the national forests have come from multiple sides. Hirt (1994), Yaffee (1994), and Hays (2009) identified conflicting missions to both preserve and extract resources from the national forests. Yaffee (1994) argued that a number of federal policies provide subsidies that encourage overuse of the natural resources and that until the incentives are changed to promote greater levels of conservation, behaviors of the Forest Service and industry won’t change. Hirt (1994, p. 251) highlighted actions taken by the Forest Service to increase production from the forests, including the “terracing fiasco in Montana” detailed in the Bolle Report (1970). He likened the Forest Service’s zeal to achieve defined outputs, while neglecting its stewardship responsibilities, as a “conspiracy of optimism.” The Forest Service employees, indoctrinated into a strong culture (Kaufman 1960), believed that they could implement concepts of intensive forest management while protecting the resources and serving the public. He noted the defensive attitudes of foresters, management’s attempts to discredit critics, and the internal awareness of failed silvicultural practices as evidence to place blame on the agency for its actions over time. However, in his conclusion, Hirt (1994, p. 295) also levied blame on political appointees and elected officials, and wrote, “To a large degree, the agency is a pawn in a chess game presided over by organized special interest groups and their political allies.” This is a recognition of the changing decision making framework from rationalism to pluralism.

Hays (2009) critiqued the 100th anniversary of the Forest Service and historians who have focused mostly on documenting the legal history of the first 100 years of the national forests, while glossing over the more nuanced and controversial elements of events that influenced and explained decision making within the agency. Hays detailed the incremental and oftentimes obstinate attitudes pervasive within the agency when confronted with challenges from recreation, wildlife, and water advocates to its historical management focus mostly aligned with wood production and multiple use.

The GAO (1996, p. 8) identified several issues that hampered the Forest Service’s decision making process. Near the top of the list were the various environmental laws that the Forest Service needed to operate within:

Many Forest Service officials believe that laws relating to the agency’s mission provide little guidance on how to balance competing uses or ensure their sustainability. Until recently, the Forest Service met its legislative mandates by separating competing uses. For example, timber harvesting was forbidden in wilderness areas, was secondary to other uses, such as recreation or wildlife, in other areas, and was the dominant use in still other areas. However, growing demands for forest resources, as well as activities occurring outside forest boundaries, have made conflicts among competing uses increasingly difficult to resolve or mitigate. In particular, sustaining wildlife as required under NFMA, especially protecting endangered and threatened species as required under the Endangered Species Act, has increasingly collided with other uses.

Sedjo (2000) edited a book titled, *A Vision for the US Forest Service,* aimed at delineating the current shortcomings of the Forest Service, while attempting to create a vision of success for how the agency could be reformed to better achieve its mission. Jack Ward Thomas, former chief of the Forest Service, elaborated on the need to clarify the mission of the Forest Service and then diminish the amount of micromanagement that plagues the agency from political operatives. He also advocated for fees to be charged for noncommunity uses of the national forests.

Robert Nelson (2000), University of Maryland professor of public affairs, attributed the failures of national forest management to the use of scientific management as a political theory. He recognized that “science” is appropriate to inform society about “what is,” but ill-equipped to tell society “what ought to be.” Science can inform policymakers, but unto itself is not a decision. Decision making is a socio-political process informed by many different inputs, with science being one of those inputs. The professor (2000, p.72) went on to state,

We must think more boldly in the new century. New ideas to replace scientific management will be required. And these ideas will inevitably have major institutional consequences, involving brand-new alternatives to the familiar arrangements of the existing National Forest System. The Forest Service as we know it today will likely be radically altered by these developments.

Hirt (2000), when asked about his view on reform, built on his theory of tempering optimism within the Forest Service. He argued:

The first and most important institutional reform, and probably the most difficult, should be to increase the implementability of the forest plans: make the forest plans more realistic, then provide the institutional support to implement them.

Fairfax (2000) identified three forces that may have an effect on national-forest management in the future: the courts, decline in efficacy of the agencies, and the fragmentation of institutions and interest groups. She argued that since the 1960s, the courts have been exiting the arena of natural-resource policymaking. Regarding the decline of the Forest Service as an institution, she (2000, p. 108) stated:

The Forest Service is suffering from the loss of buoyancy in both compartments of its Mae West [a World-War II-era life jacket]: Science and the federal government are eroding as sources of authority, and with them goes much of the infrastructure of federal legitimacy.

Thirdly, she commented that with the fragmentation of the Forest Service as an institution, openings have been created that allow for the states and local municipalities to enter the arena as legitimate entities that can vie for power and control. She also noted that the national environmental organizations that had significant influence for the first 60 years in developing conservation policy are now largely irrelevant. Preservation and recreational interests (increasingly motorized) that were once aligned have splintered. As a remedy for the forces of change, Fairfax (2000, p. 117) recommended looking to the state trust land-management framework to help provide some clarity for how federal lands could be managed in the future. She wrote:

The trust is always an appealing organizational option, but in the context I have described, it has particular relevance. It is responsive to the market, and many of its fundamental elements presume (but do not require) that benefits are going to be described in monetary terms.

In his analysis of the problems with the Forest Service, Sedjo (2000), restated some of the conflicting legal mandates (implementing the Multiple-Use Act and the Endangered Species Act) pointed out by Thomas. However, he also noted the recommendations from the Committee of Scientists from 1999 that asserted the moral obligations that land managers had in providing for species viability and ecological integrity. Sedjo pointed out that these moral judgments are not reflected in statutory obligations as defined by Congress, lending further credence to Nelson’s (2000) concerns of using science as a political theory about “what ought to be.” Drawing on work from Kaufman (1960), Sedjo boldly proclaimed that the Forest Service was no longer an elite agency. He even questioned if there was a need for the Forest Service and suggested Congress consider consolidating the Forest Service with the Bureau of Land Management into a new agency, presumably within the Department of the Interior. Sedjo laid the deterioration of the agency at the heels of conflicts from interest groups demanding different outputs from the forest with recreation, wildlife, timber, and water. Coupled with the conflicts was the overlay of new environmental laws that in some cases created confusion over the priority of management actions within the forests. Sedjo (2000, pp. 183; 188–189) wrote:

Whatever its past “sins,” the Forest Service has truly been given a “mission impossible” in recent decades.... Today, the agency finds itself with legislation that gives it a multiple-use statutory mandate while being covered by the single-purpose ESA statute. The problem is exacerbated by the lack of a public consensus. Until this deadlock is broken, the Forest Service will be in the limbo that Thomas described (1997).

The author (2000) identified three different options for reforming the Forest Service:

1. Congress could pass legislation defining the national forests as biological preserves, consistent with recommendations from the Committee of Scientists from 1999;
2. Congress could pass legislation identifying recreation as the dominant use of the national forests. Even with this, Sedjo pointed out potential conflicts that could still arise with ESA; or
3. Congress could pass legislation authorizing greater local control of the national forests through collaboration.

The cultural attitudes of the 1960s and 1970s were the impetus for the federal environment and land management statutes passed by Congress in the 1970s (Clawson 1983). Many of these statutes expanded the original mission of the Forest Service beyond the three goals identified in the Organic Act (GAO 1997b). The Forest Service, as an agency, created a culture reflected in its personnel, policies, and decision making practices to achieve the mission as laid out in the Organic Act. The evolution and broadening of the Forest Service mission posed challenges within the strong culture of the agency, which led to further conflict and gridlock in the administration of new laws designed to protect endangered species and their associated habitat.

Role of Conflict in Organizational Culture

Organizational culture has been described as strong, weak, corporate, influential, and a force for action. Pettigrew (1979, p. 574) described culture as a “source of a family of concepts.” The manifestations of culture he includes are symbol, language, ideology, belief, ritual, and myth. He (1979, p. 574) viewed symbol as the most inclusive category of culture and defined symbols as “objects, acts, relationships, or linguistic formations that stand ambiguously for a multiplicity of meanings, evoke emotions, and impel men to action.” Baker (1980, p. 8) defined organizational culture as an “interrelated set of beliefs, shared by *most* of their members, about how people should behave at work and what tasks and goals are important.”

Acknowledging the role that ideology plays in organizations, Trice and Beyer (1984, p. 654) noted, “The culture of any social system arises from a network of shared ideologies.” Ideologies are defined as “shared, relatively coherently interrelated sets of emotionally charged beliefs, values, and norms that bind some people together and help them make sense of their worlds” (Trice and Beyer 1993, p. 33). Accordingly, culture has two basic components: 1) substance—networks of meanings that embody values, norms, and ideologies; and 2) forms—expressions of those values wherein they are communicated to other members (Trice and Beyer 1984). The authors (1993) also made a point to define what culture is not. Accordingly, culture is not climate, group think, social structure, or metaphor, nor is it necessarily the key to success.

Schein (1991, p. 247) defined culture as the following:

a pattern of shared basic assumptions, invented, discovered, or developed by a given group, as it learns to cope with its problems of external adaptation and internal integration, that has worked well enough to be considered valid, and, therefore, is to be taught to new members of the group as the correct way to perceive, think, and feel in relation to those problems.

For Schein (1992), the notion that culture was shared or held in common was crucial. He identified 10 phenomena associated with culture: 1) observed behavioral regularities when people interact (language); 2) group norms; 3) espoused values; 4) formal philosophy; 5) rules of the game; 6) climate; 7) embedded skills; 8) habits of thinking, mental models, and/or linguistic paradigms; 9) shared meanings; and 10) root metaphors or integrating symbols. He (1992, p. 17) also proposed a model for uncovering three levels of culture: 1) *artifacts*—visible organizational structures (buildings, logos, dress, material objects, physical layout), behaviors (ceremonies, rites, rituals, traditions/customs, rewards, punishment, processes), and language (anecdotes, jokes, stories, myths, metaphors, jargon, explanations, rhetoric); 2) *espoused values*—strategies, goals, and philosophies; and 3) *basic assumptions*—unconscious beliefs, thoughts, perceptions, and feelings that influence values.

Building on Schein’s (1992) model, Sackmann (1991) and Hatch (1993) proposed alternate models of organizational culture. Sackmann (1991) raised concerns about the lack of research that had been conducted to assess cultural cognitions or beliefs that are not readily observable. To enable readers to better conceptualize cognitions, she proposed an “iceberg” model of culture with a phenomenological orientation. With this model, she distinguished between 1) *manifestations* of culture that are observable as artifacts and behaviors at or above the surface levels, and 2) *basic beliefs* about priorities, processes, causes, and improvements that are commonly held, used, and emotionally anchored below the surface.

Organizational culture can best be summarized as a collection of understandings shared by *most* members, which are influenced by assumptions, ideologies, values, and beliefs, and are expressed as artifacts (symbols, identity, and behavior).

Organizational Culture Influences Behavior and Decision making

According to Harmon (1989), much of the literature (March and Simon 1958; Cyert and March 1963; and Simon 1997) has focused on decision making as the locus of study in organizational theory. Harmon (1989) instead advocated shifting the emphasis of organizational theory to studying social “action” or behavior, which can venture into the interpretive world. Golden (1992, p. 5) has elaborated on the definition of action:

Action is concrete behavior that is based on either individual motivational patterns (e.g., personality) or on principles that the group or institution places on its members (e.g., social structure). In contrast, culture is the meaning of action; that is, the historically-developed and socially-maintained (although not necessarily shared) system of symbols which individuals use to structure and to make sense of actions.… [C]ulture is not the cause of action, but rather is the context which predisposes humans to take or not to take certain action.

Weick (1987) identified four outcomes of action: 1) actions evoke justification—reasons for actions are more important after decisions have been made; 2) actions displace thinking—action as a substitute for cognition; 3) actions create environments—culture; and 4) actions require interaction—action is a social process. Others have raised the issue of the importance of studying behavior and action as opposed to cognitions (Geertz 1973). According to Eisenberg and Riley (2001, p. 307):

It is clear to us that organizations are first and foremost action systems and that little is gained in trying to separate enactment from interpretation. For this reason, the organizational cognition approach, to the extent that it is characterized by a mostly private view of language and an individualistic bias, will fall short. This is not to say that cognitions are unimportant, only that their importance depends entirely on their relationship to action and behavior and to ongoing conduct with a public conversation.

Whereas the importance of studying organizational behavior or action as a component of organizational theory has been emphasized, others (Sackmann 1991; Schein 1992) have shown that *artifacts*, of which behavior is a component, are only one level of cultural analysis. *Assumptions* and basic beliefs fall within the cognitive realm of inquiry and organizational culture researchers have tended to neglect at this level of analysis. According to Hatch (1997, p. 216), behavioral expressions of *artifacts* include, but are not limited to, ceremonies/rituals, communication patterns, traditions/customs, and rewards/punishments. She includes dress/appearance as a physical manifestation of artifacts and distinguishes verbal cues (stories, jokes, metaphors) from behavior; however, both could easily be included as behavioral expressions of culture (Sackmann 1991).

Numerous studies exist that attempt to document the influence that culture has had on organizational behavior. Baker (1980) provided suggestions for how to shape culture. He identified eight techniques for fostering a desired culture: 1) role modeling—leader exhibits behavior consistent with norms and values; 2) positive reinforcement—reinforce desired behaviors; 3) communication—articulate desired norms; 4) recruitment of employees; 5) promotion and transferring of decisions; 6) training; 7) organization design—formal structure, performance appraisal; and 8) physical design of the building. All of the techniques discussed previously could be used to engineer or create a culture and, subsequently, maintain that culture by influencing behavior.

Weick (1985) articulated that corporate “strategy” was a synonym for corporate “culture.” As such, both can influence behavior, because they guide expression and interpretation; they provide continuity and identity; they are embodied in actions, such as judging, creating, justifying, affirming, and sanctioning; and they are social and summarize what is acceptable behavior. The author (1985, p. 385) concluded:

Strong cultures may be slower to respond to external change, but because of their coherence, they may also be forceful actors and better able to create the environments they want. Strong cultures may exhibit action rationality and be able to bypass the laborious deliberations that are necessary to achieve decision rationality. Strong cultures may be slow, but they may also be powerful. Because they are successful at proaction, they could suffer less from their inherent tendency to be slow to react.

Simon (1997), Cheney (1983a, 1983b), and Tompkins and Cheney (1983) have offered theoretical perspectives on how organizational identity influences agency decision making. Kaufman’s (1960) seminal work, *The Forest Ranger*, and subsequent research (Hall et al. 1970; Hall and Schneider 1972; Cheney 1983a, 1983b; Bullis and Tompkins 1989; Tipple and Wellman 1991; Mohai and Jakes 1996; and Kaufman 1994) provide excellent natural-resource case studies to support previous theoretical ideas. Kaufman (1960) set out to study how the forest rangers at the local level carried out the management of the national forests. He (1960, p. vi) stated:

In the management of natural resources, it is the man on the ground who actually carries out the program. This is equally true for private and public organizations. It is what he does, not what the department secretary, bureau chief, or company president says, that actually makes the program.

In his study, Kaufman (1960) identified multiple mechanisms aimed at promoting and building organizational identification: 1) discouraging deviation through inspections; 2) recruitment and selection—90 percent of professional positions within the agency were foresters at the time of Kaufman’s study (Tipple and Wellman 1991); 3) use of training and manuals; 4) promotion and transfer; 5) use of symbols; and 6) communications between the field and headquarters. He concluded that the Forest Service had a high degree of unity, or a strong culture. Kaufman (1960, p. 197), as cited in Cheney (1983b, p. 345), described this strong culture as follows:

Much that happens to a professional forester in the Forest Service thus tends to tighten the links binding him to the organization. His experiences and his environment gradually infuse into him a view of the world and a hierarchy of preferences coinciding with those of his colleagues. They tie him to his fellows, to the agency. They engender a “militant and corporate spirit,” and organized “self-consciousness,” dedication to the organization and its objectives, and a fierce pride in the Service. They practically merge the individual’s identity with the identity of the organization; the organization is as much a part of the members as they are of it.

Kaufman (1960) described the Forest Service as a decentralized agency that enabled rangers to feel as if they had a high degree of discretion at the local level. According to Tipple and Wellman (1991, p. 422), “In doing so, the rangers felt as though they were exercising large amounts of discretion, yet their actions were generally pleasing to the organization. Hence a mythology of decentralization prevailed.” Kaufman (1960, p. 222) explained this myth of discretion as voluntary conformity:

…the techniques of integration earlier identified as developing the will and the capacity to conform are positive as well as negative in effect. They do more than elicit reluctant obedience. They do more than persuade each Ranger to assign higher priorities to the wishes of the organization than to his own. They actually infuse into the forest officers the desired patterns of action in the management of their districts, so that the Rangers handle most situations precisely as their superiors would direct them to if their superiors stood looking over their shoulders, supervising every detail. To overstate the case, their decisions are predetermined. From the Rangers’ point of view, they are not obeying orders or responding to cues when they take action on their districts; they are exercising their own initiative.

This notion of voluntary conformity ensured that decisions made at the local level were consistent with views within higher levels of the organization.

Jack Ward Thomas (2000, p. 10), chief of the Forest Service from 1992 till 1996, echoed the findings of strong organizational identification in Kaufman’s study:

I admittedly begin and end with a strong bias. I believe that the Forest Service—warts and all—is the best conservation organization in the world. The people of the past and present Forest Service have made it so. I came to the agency thirty-three years ago after ten years with a state wildlife agency because I simply wanted to be part of the Forest Service—part of something bigger than myself and an agency that set standards for the world.

Several studies (Bullis and Tompkins 1989; Tipple and Wellman 1991; Mohai and Jakes 1996; Kaufman 1994; and Hays 2009) have revisited Kaufman’s (1960) original study. These authors have shown that the strong culture that pervaded the Forest Service in the first half of the century has slowly diminished. Bullis and Tompkins (1989, p. 297) argued, “The overwhelming trend has been a decline in these unobtrusive control practices which encourage the strong identification of members with the organization.” This, in large part, has been attributed to changes in societal values that have been reflected in legislation aimed at protecting natural resources and well as legislation aimed at promoting diversity in the workplace. Tipple and Wellman (1991, p. 424) stated, “Thus a departure from homogeneity of staffing, an internal phenomenon that Kaufman described, was brought on by changes in the external environment.” The homogeneity that once pervaded the Forest Service no longer exists. The emphasis on diversity mentioned previously has increased the percentage of women, minorities, and specialists (i.e., biologists) in the agency so much that foresters are now in the minority (Tipple and Wellman 1991). This diversity has facilitated the promotion of specialists (Thomas and Dombeck) to the chief’s position in 1992 and 1997, which in turn has impacted the culture of the organization and subsequent decision making.

Bullis and Tompkins (1989) noted that many veteran employees long for the strong organizational culture of the past, with one individual going so far to equate working for the Forest Service as a “calling.” However, the researchers were not persuaded by this longing for strong identification and welcome the diminishment of the culture of years past:

…concertive control, or strong culture should be approached with caution. While we are sympathetic to the nostalgia expressed by employees for the identities and identification of the past, the homogeneity of that “strong” culture made the organization less flexible and adaptive to the changes in the environment.… The heterogeneity of the current “weak” culture is no doubt more flexible, more adaptive in relation to its environment—including the political climate and its inevitable fluctuations. Strong culture, then, may create inflexibility as members think in concert (Bullis and Tompkins 1989, p. 304).

Kaufman (1994) also reflected on the downside of a strong culture in an organization. The internal mechanisms that brought conformity of decision making, outcomes, and ultimately, success, were difficult to change with the times. He (1994, p. 4) summarized the impact that a cohesive culture had on the Forest Service:

Further supporting evidence [regarding the eventual unraveling of the agency] comes from the present turmoil besetting the Service. My fear that the firmness of attitudes and behaviors in the minds of its officers could present difficulties when the winds of change begin to blow seems to have been justified.... The political, economic, and social environments that shaped the Forest Service are being transformed. Decade by decade, perhaps year by year, new public-policy goals are added to the list from previous generations, and things once taken for granted and even applauded now clash with these newer values.... The tensions I thought changing times might engender have apparently come to pass. The organization as a collectivity and many of its members individually are clearly feeling the strain.

Whereas Bullis and Tompkins lauded the retreating strong culture of the Forest Service as an opportunity for flexibility, caution should be exercised, because it is an active ingredient for the gridlock that permeates the agency (Lowi 1969; Wondolleck 1988; and US GAO 1997a). The weakened organizational culture of the Forest Service appears to rely on pluralistic decision making processes driven by interest groups competing for scarce resources (environmental values, goods, services, and justice) and power. This unto itself would not be problematic, were it not for the rational decision making framework mandated in statute and utilized by federal agencies. The foundation of environmental laws (National Environmental Policy Act [NEPA], Endangered Species Act), and the judicial system set to interpret them, are both predicated upon facts and expert witnesses and fail to adequately weigh the values and preferences of the competing interest groups. NEPA is patterned after the rational model of decision making steeped in traditional economic theory and requires agencies to develop a range of acceptable alternatives to meet preordained goals and objectives. There is a presumption that a scientifically defensible alternative should be selected that maximizes one objective against resource constraints. The mantra of scientific management and decision making originated in the Progressive Era and was espoused by Gifford Pinchot, the first chief of the Forest Service.

As a response to external forces and changing societal norms, the Forest Service architected a new organizational culture, internally diversifying its stated values, as reflected in agency-approved regulations (Sedjo 2000); hiring practices; and procedures. This new culture ultimately has contributed to the ongoing conflict among the diverse set of national forest stakeholders. Some, like Bullis and Tompkins (1989), praised the cultural changes, whereas others have been critical of the changes in direction, behavior, and focus of the Forest Service today (Committee on Resources, House of Representatives 1996; Committee on Natural Resources, US House of Representatives 2013).

Devolution in the Management of the National Forests: Frameworks to Guide the Management of the National Forests

Having described the manner in which the current management environment has developed and persisted, the following section revisits what, if any, reforms could be adopted by Congress or the Forest Service to better clarify the purposes for which the national forests are to be managed and the decision making processes that could better support these purposes. Recognizing that many proposed and existing management frameworks could be addressed, we focus on divestiture and the trust land model; these serve as context for the concluding section, in which we highlight cooperative federalism as the preferred and modernized management theory.

The critique of national-forest management and subsequent reform measures were debated in the lead-up to the 100th anniversary of the Forest Service in 2005. The Forest Service has shifted from an active forest management agency to, as Tom Vilsack, former secretary of the US Department of Agriculture called it, the “Fire Service” (Vilsack 2016). Timber harvest is down by more than 80 percent from the late 1980s and fire expenditures are depleting other Forest Service accounts. In the mid-1990s, about 16 percent of the agency budget was spent on fire management. Fire costs now make up more than half of the budget (Vilsack 2016) and exceeded $2 billion in firefighting expenditures by the Forest Service alone in 2017 (National Interagency Fire Center, NIFC).

Regardless of the political theory aspired to, national-forest management has defaulted to a hands-off approach. The move toward a process of public input, opposition, and judicial appeals has a cost. But hands-off management means reduced commodity revenues and changing forest structure. Change is a natural part of the forest process, but the significant change in forest management from intense harvest and fire suppression to minimal harvest has allowed large forest landscapes to shift to a structure altered from any historical norm. In the Boise Basin, for example, a forest that supported six to 60 trees per acre in the 1800s had densities of as many as 900 trees per acre in the late 1900s (Sloan 1998). More trees per acre means trees compete for moisture and sunlight and are more susceptible to insect infestation and conflagration.

While the federal multiple-use lands manage a plethora of valuable resources, the agencies cost taxpayers billions of dollars each year. According to a study by the Property and Environment Research Center (PERC), between 2009 and 2013, the Forest Service and Bureau of Land Management (BLM) spent on average nearly $2 billion more annually than they generated (Fretwell and Regan 2015, p. 9). Frustration over poor stewardship outcomes and the high costs of federal land management has instigated multiple proposals to improve these areas.

Terry Anderson, among others, suggests devolving management from federal agencies to a more local level (Anderson 1994). Devolution of management can help give local citizens most greatly impacted by land management decisions a greater say and make federal land managers more accountable to them.

One form of devolution is a transfer of the federal multiple-use lands to the states. There are many state agencies that could take over the existing federal lands, but a shift to the state trust agencies is a common policy consideration. That is largely because the state trust lands are respected for financial prudence and good stewardship. While BLM, Forest Service, and state trust agencies are public land agencies that manage for multiple uses, the goals of the federal and state agencies differ, resulting in different outcomes. The federal land agencies are obligated by law to protect wildlife and habitat, among other things. State trust land agencies do not have the same expectation, nor appropriated funding for conservation. Jon Souder and Sally Fairfax have written perhaps the most comprehensive analysis of state trust lands. They note:

State trust lands are publicly owned and managed, but they are not public lands in the sense that we have grown accustomed to thinking about natural parks and forests. They are … managed as trusts for clearly specified beneficiaries, principally the common schools (1996, p. 285).

The state trust agencies provide for multiple uses but must prioritize for revenue generation. As such, resource allocation decisions stem from financial responsibility. The state agencies are also required to care for the lands to ensure revenue-generating potential in perpetuity. Long-run conservation plays an important role. Conservation, habitat protection, and recreation access are not precluded, but they are managed as revenue generators.

It is not the level of governance and ownership that drives the outcome. Incentives change behavior. The structure of an agency, including its rules and regulations, drive the incentives. Good results require the incentives to be aligned with the desired outcomes.

Designating dominant-use areas is another potential way to reduce the tension over resource allocation. Well over one-third of the federal lands are managed for dominant conservation uses. Wildlife refuges, for example, are managed to protect wildlife and habitat. The national parks are set aside to conserve cultural and natural amenities, while making them available for public use and enjoyment. With few exceptions, grazing, logging, and minerals development are prohibited from units of the National Park Service. National forest and BLM lands also have expanding areas of conservation designations, such as wilderness areas, wilderness study areas, national conservation areas, areas of critical environmental concern, critical habitat areas, and national monuments (Fretwell 2009, p. 71). Designated conservation areas typically restrict or prohibit commodity production such as logging, grazing, and minerals development.

As more federal land is set aside for various conservation uses, highly productive lands could also be set aside for production. Jay O’Laughlin, former director of the Policy Analysis Group at the University of Idaho, suggests analyzing multiple-use areas to determine which are most suitable for timber production. Similar to conservation areas, regions with good timber growth could become dominant-use zones for sustainable timber harvest. Congress could issue guidelines allowing categorical exclusions and expedited ESA consultation and environmental analysis to encourage production in these areas (O’Laughlin 2017).

Proposals to devolve the management of federal lands are not new. In fact, it is an idea that continues to raise its head as stakeholder frustration rises in response to high costs and poor outcomes. As policies change and are seen to enhance outcomes, the frustration is defused and the unrest fades, at least for a time.

Divestiture Model

Since 2012, the call for transferring federal lands to the states has been discussed and hotly debated by Western state legislatures. State representative Ken Ivory of Utah has been a leading proponent and champion of this effort. In 2013, Representative Ivory made presentations to various state legislatures to gain support for his effort in Utah to acquire ownership of federal lands (excluding national parks, wilderness areas, etc.). In Idaho, an Interim Federal Lands Committee was established in 2014 that reviewed this issue for the better part of a year. House Speaker and chair of the committee, Rep. Lawrence Denney (R) requested an analysis from the Idaho Department of Lands and the University of Idaho Policy Analysis Group detailing the costs and benefits that would accrue if federal lands (excluding parks, wilderness areas, and roadless areas) were transferred to the state. Schultz (2014) and O’Laughlin (2014) both identified similar revenues that could be generated annually from management of the national forests in the state of Idaho, ranging from $96 million to $170 million, based on a range of timber prices and volumes. Schultz identified additional annual costs of fire suppression (on the 48 percent of the federal lands proposed for hypothetical analysis), averaging about $45 million extrapolated on the expenses typically incurred by the state when paying the costs of wildfire on lands that it protects. O’Laughlin (2014) also identified costs of $67 million per year for the state to manage BLM lands (excluding any revenues from minerals or grazing). He identified average costs of wildfire suppression for *all* USFS and BLM lands in Idaho averaging about $111 million per year. The Idaho legislature ultimately just studied the issue and appropriated no funding to pursue an actual transfer in the courts. Instead, in 2015, the Federal Lands Interim Committee encouraged the Idaho Department of Lands to pursue other cooperative strategies with the Forest Service under the newly established Good Neighbor Authorities (SCR 126). This was not the first time an interest in transfers of federal lands in Idaho and other Western states was explored, , and likely it will not be the last time either.

Transfer to the States (Past Efforts)

Woolf (1995), in an article published in *High Country News*, summarized some of the key historical events that depict the ongoing conflicts associated with federal land ownership. Woolf described four periods of time 1) 1929–1930; 2) 1945–1947; 3) 1979–1980; and 4) 1994–1995 characterized by efforts by the states or federal officials to divest of the public domain.Although exquisite detail of the events leading to each time period is recounted by Woolf, a complete recitation is beyond the scope of this chapter. The timing and events are roughly summarized as follows:

**1929–1930.** In October 1929, President Herbert Hoover had outlined his concerns with the deterioration of the public domain due to overuse and poor grazing-management practices to the Western governors. His concerns were shared by conservationists of the time, including Secretary of the Interior Harold Ickes. Ickes worked with Rep. Edward Taylor of Colorado to pass the Taylor Grazing Act in 1934. The act placed the responsibility for the management of grazing districts and leasing into the Department of the Interior. By 1936, the establishment of grazing districts reserved 142 million acres of the public domain and, ultimately, led to the formation of the Grazing Service. In 1946, the service eventually merged with the General Land Office (GLO), and the resulting organization became known as the Bureau of Land Management (BLM). The act had the effect of creating a professional corps of range managers and ended the Homestead Era with the closure of the public domain (Clawson 1983).

**1940s.** In the early 1940s, the Grazing Service decided to review the fee charged for grazing on federal lands. As a result of the review, the agency decided to triple the grazing rate. Sen. Pat McCarran (D-NV) and Sen. Edward Robertson (R-WY) were outraged by the proposal and ultimately drafted legislation to return most of the federal lands to the state. Woolf (1995) noted that the transfer legislation failed, but that the budget of the Grazing Service was slashed.

**1979–1980.** The late 1970s saw new efforts to divest of the public domain. This period of time is referred to as the Sagebrush Rebellion. In 1976, Congress passed the Federal Land Policy and Management Act (FLPMA), wherein the federal government reaffirmed its commitment to maintaining ownership of the public domain, officially ending the Homestead Era, except in limited circumstances when disposal might be considered as a result of a planning process (Clawson 1983). The passage of FLPMA was a catalyst to the firestorm of Western anger and frustration that was to ensue. The state of Nevada, led by state senator Richard Blakemore, passed AB 413, which asserted Nevada’s moral and legal claim to the federal (BLM) lands within Nevada. Legislatures in Wyoming, Utah, and New Mexico followed suit (Strack 2013). By 1979, the Western states’ efforts to gain control of the public domain coalesced into the Western Lands Act (S. 1680) sponsored by Utah senator Orrin Hatch. The act would have authorized the transfer of all BLM and US Forest Service lands and minerals to the states if they agreed to manage them for multiple use. National parks and monuments, Indian reservations, and national wildlife sanctuaries were exempt. Whereas the bill never made headway, the Sagebrush Rebellion movement grew. Presidential candidate Ronald Reagan, while campaigning in Utah in 1980, declared, “Count me in as a [sagebrush] rebel” (Cawley 1993, p. 119). In 1981, with Reagan’s election and the appointment of James Watt from Wyoming as secretary of the interior, the rebellion was defused. Public-land antagonists were confident federal lands would once again be managed for multiple uses compatible with their vision. The *Washington Post* (Prochnau 1981) headline read, “Sagebrush Rebellion is Over, Interior Secretary Says.” The article continued, “Interior Secretary James G. Watt today said the West’s vaunted Sagebrush Rebellion against the federal government has been won, telling western governors that he has done his work so well as interior secretary that he is a rebel without a cause.” Watt was referring to his Good Neighbor policy of listening to and working with Western states.

**1994–1995.** In 1994, approximately 12 years after Watt’s proclamation that he ended the Sagebrush Rebellion, the embers once more began to burn. BLM, under the direction of Secretary Bruce Babbitt, proposed raising grazing fees. Similar to what occurred in the 1940s, the Western response was swift and predictable. The proposal was defeated, and bills were introduced in the House and the Senate to authorize transfer of the BLM federal lands and minerals to the Western states. Utah representative Jim Hansen and Wyoming senator Craig Thomas introduced companion bills to authorize transfer of up to 270 million acres of federal lands. Neither Senator Thomas’ nor Representative Hansen’s bills were passed during the 104th Congress.

Transfer to the States (Current Efforts)

In 2012, Western voices, once again originating in Utah, called for the transfer of the federal lands to the states.

The recent transfer dialogue culminated in Utah’s Transfer of Public Lands Act and Related Study (Utah Code Ann §63L-6-103a), which proposed a new model for public-land management. The act was signed into law on March 23, 2012, though it had no force of impact on federal actions. More than 20 million acres of BLM and national forest lands in Utah, excluding designated wilderness areas, were to be transferred to the state, and the act designated the Constitutional Defense Council (CDC) to draft legislation for future management. The federal government did not reassign the land, but the movement garnered national attention.[[1]](#footnote-1) By April 2016, at least 14 other states had proposed similar bills or resolutions to transfer or study transfer issues.

Multiple studies have examined the land transfer proposition and potential outcomes. For example, the CDC and Utah Public Lands Policy Coordination Office (2014) commissioned an economic feasibility study. The study, prepared by a conglomeration of Utah universities, estimated that the state could cover the costs of managing the transferred lands. However, it would likely strain the state’s funding priorities, at least in the short run, until forest conditions were improved to reduce wildfire threats and subsequent suppression costs, and revenue could be generated from mining and mineral leases.

A study by Keiter and Ruple (2015) suggests states would likely lose money from a transfer. Their study predicts the management expenses would exceed revenues and are largely dependent on commodity revenues and prices. High commodity prices could help a state cover costs. They also note concern about the ability of the trust land model to achieve multiple-use outcomes, conservation in particular. The state trust land agencies manage for multiple uses, but by law resource allocation is prioritized to maximize revenues. Hence, trust land management has an inherent concentration on productive capacity.

A study by Fretwell and Regan with the Property and Environment Research Center (PERC) compared the financial outcome of the multiple-use federal land agencies to the state trust agencies in several Western states (2015). As discussed later, the state trust land agencies are able to generate significantly greater net revenues than are the federal agencies. The state agencies have greater financial efficiencies for a number of reasons, but it comes down to the incentives driven by different agency structures and bylaws. The state trust agencies are required to generate revenues in excess of expenditures; their federal counterparts are not.

The variation of predicted outcomes and costs from the numerous transfer studies stems from the different assumptions made in each study and the counterfactual nature of the analyses. A state agency that mirrors the federal land agencies and is required to abide by the same laws and regulations will have outcomes and costs that closely reflect the existing federal outcomes. While decentralizing control and ensuring managers are accountable to local constituents can increase efficiencies, because management decisions respond to those on the ground who are most greatly impacted, the federal laws allow little flexibility. State agencies under the federal laws would still be required to respond to national input.

Alternate management mechanisms that change the incentives change the outcome. As demonstrated in the PERC report, state trust agencies generate positive revenues, but they also focus on revenue-generating activities. Under the state trust model, the balance of resource use is influenced more by market signals than by political determination.

Uprisings to transfer the federal lands and adjust commodity fees are a common thread over the history of the federal estate. The final outcome is consistently influenced by political decision making. As noted by Stroup, government action is not reinforced by market signals. Special interest groups sway federal resource allocation. Little land has been transferred out of the federal estate.2 Many fees charged for commodity use on the federal lands remain below the market rate. At the same time, most extractive uses on the federal lands are declining. 2One exception is BLM lands that were transferred to tribal agencies under the Alaska Lands Conservation Act following survey.

The attention the transfer movement has received has instigated a closer look at federal land management and greater consideration of alternative methods that could better enhance stewardship and efficiency.

Privatize

Whereas Secretary Watt favored the transfer of the public domain to the states, others in the administration favored the privatization of the public lands. Steve Hanke, a senior economist on President Reagan’s Council of Economic Advisers during 1981–82, was one such advocate. Hanke (1982), borrowing the word “incompetence” from Honoré de Balzac, the nineteenth-century French author, addressed the Public Lands Council in Reno in September 1981:

In that one word, incompetence, the author characterized the management and use of publicly owned resources. Pertaining to that subject, he observed and studied two general laws: (1) public ownership necessarily leads to an unproductive and inefficient use of resources; and (2) private ownership is a necessary condition for the productive and efficient use of resources.

According to Hanke (2017), Watt was furious because he [Watt] fervently opposed privatizing the public lands. However, President Reagan was sympathetic to Hanke and included proposals in his 1983 budget to privatize unappropriated public lands. Reagan’s budget purported to save $9 billion through disposal of “unnecessary” properties. The privatization proposals were met with resistance from the public and were never codified.

Hanke, Stroup, and Baden advanced Hardin’s (1968) critique of communal ownership and advised the Reagan administration to consider privatizing ownership of federal lands. Stroup, quoted in Clawson (1983, p.156), articulated the benefits of privately owned and managed property:

Probably the gravest error … is the assumption that short-sightedness will dominate in market situations, relative to government. A strong logical argument can be made that precisely the reverse is true. In the market, one’s charitable instincts toward the future are reinforced by market incentives and signals. Not so in government, where only charitable instincts help future generations.

Baden and Stroup (1982) wrote about the inefficiencies of government ownership of land, including grazing land, national forests, and wilderness. Specifically, they argued for the transfer of wilderness lands to environmental groups. They pointed out that with fee simple interest ownership in wilderness lands, environmental groups would bear the opportunity costs of not developing these lands. The belief was that these groups would not oppose mineral development, but would instead focus on obtaining some economic benefit while maintaining the character of the lands. The takeaway was that “Different incentives lead to different behavior” (Baden and Stroup 1982, p. 117).

Stroup and Baden (1982) also supported the Reagan administration’s Asset Management Program, which focused on the divesture of surplus federal lands. As a part of this program, they suggested creating endowment wilderness areas managed by an Endowment Wilderness Board comprised of environmental interests. The stated purpose of these areas would be to foster wilderness values, not to promote the public interest. The authors hypothesized that the Board would ultimately favor some amount of limited development in wilderness areas to promote overall amenity values.

Whereas various divestiture models have resurfaced throughout the history of the management of the national forests, the legal and political hurdles to such an action are daunting. Others have supported pilot efforts to impose a new management model for the national forests more akin to the management of state trust lands (Fairfax 2000; O’Toole 2000; Kemmis 2001; and US House of Representatives 2013). Clarity of mission, provided by a clear fiduciary responsibility and solidified in case law, and coupled with positive economic and environmental outcomes have fueled the enthusiasm for this management model.

Trust Land Management Model

The Establishment of the State Trust Lands (Acquisitions, Dispositions, and Reservations)

As mentioned previously, the General Land Ordinance of 1785 established a rectangular survey system and provided for the disposition of Western lands. A key component to that act was the reservation of section 16 in every township for the maintenance of public schools. Schultz (2007) pointed out that the idea of establishing land grants to promote public education was one of Thomas Jefferson’s. Jefferson, while governor of Virginia, argued that persons “endowed with genius” should have access to education regardless of their income, birth status, or other accidental conditions. Jefferson deemed that an educated citizenry was a requisite for a republican form of government. Another key statute in the development of the public domain was the Northwest Ordinance of 1787. This law provided a process by which territories could become states and outlined key governance provisions and population minimums necessary before Congress would pass the requisite Enabling Act to allow a territory to become a state.

Ohio was admitted to the Union in 1803, roughly one year after Congress approved its Enabling Act. Section 16 in every township was granted to the inhabitants of that township for the use of schools (Souder and Fairfax 1996). Whereas states like Ohio (and 13 other states) received section 16 in every township for support of schools, subsequent states, including Oregon, Kansas, Nevada, Nebraska, Colorado, Montana, North Dakota, South Dakota, Washington, Idaho, Wyoming, and Oklahoma, each received two sections (16 and 36) at statehood. Given their arid nature, three states—Utah, New Mexico, and Arizona—each received four sections (16, 36, 2, and 32) at statehood (Souder and Fairfax 1996, pp. 20–21). These sections were referred to as “in place” land grants (Burnett 1976). In some cases, the “in place” sections identified to be reserved for schools (16, 36, etc.) had already been reserved from the public domain. In these instances, indemnity selections were authorized by Congress. The states could select other lands “in lieu” of those sections 16 and 36 that had already been reserved for military installations, railroads, Indian reservations, or forest reserves, or if they had been homesteaded. In addition to the school land grants, other lands were granted for institutions in various state Enabling or Admission Acts. These land grants were referred to as “in quantity” lands. These grants, a specified amount of land without a predetermined location, were provided for the express purpose of benefiting universities, schools for the deaf and blind, veterans’ homes, insane asylums, and prisons. Burnett (1976) and Schultz (2007) detailed the process by which the State of Montana selected its trust lands. Andrus (1965) highlighted some of the key elements of Idaho’s selection of its trust (endowment) lands. Thus began the disposition of that portion of the public domain to the states for the said purpose of maintenance and use of these lands for schools and other endowed institutions.

Initially, the state land grants (school lands) could not be sold. It wasn’t until 1827, at the urging of Ohio, that school lands could be sold. Prior to that, the lands could only be leased. With the potential sale of these lands, Congress required the establishment of a permanent fund in Colorado’s Enabling Act of 1876. The establishment of permanent funds became required in subsequent state Enabling Acts and directed the placement of the proceeds from the sale of land and minerals (dispositions) into these funds. The initial investments of these funds were limited to government bonds and farm mortgages (Souder and Fairfax 1996). With endowment reform (Strong and Maynard 2014) in Idaho and a few of the other states, investments have been expanded into equities and even real estate, with governance strategies that are consistent with current fiduciary standards of pension funds and other institutional investors. The corpus of the permanent funds is guaranteed against loss or diversion. Interest and dividends earned on the permanent funds are distributed to the various endowed beneficiaries. In some states, those distributions to the school beneficiaries represent only a small portion of overall state funding; however, in Montana and New Mexico, that percentage has averaged greater than 10 percent, with New Mexico’s funding being as high as almost 20 percent in some years (Bird 2010). The debate about whether to sell or retain the state trust lands occurred during constitutional debates in some states and played out through legislative and Land Board actions over the past 100 years.

Both Montana and Idaho retain a large percentage of their original land grants. Idaho was granted approximately 3.65 million acres at statehood and retains approximately 2.45 million surface acres today (67 percent of the original land grant). Montana was granted approximately 5.85 million acres at statehood and retains approximately 5.17 million surface acres today (88 percent of the original land grant). Many other states, including Ohio, California, Nevada, and Wisconsin sold off most or all of their original land grants and placed the proceeds into permanent funds. Schultz (2007) documented the acquisition and disposition processes and policies adopted by various Land Boards in the administration of Montana’s trust lands. The initial policy of the state was one of disposition. In 1912, the Montana Land Board authorized the sale of 210,210 acres of range and farm land. In his 1928–1930 biennial report to the Land Board, (as cited in Schultz 2007, p. 21), I.M. Brandjord, commissioner of state lands and investments, offered a perspective in line with the Board’s earlier policy of selling lands:

It was the intent and purpose of the Enabling Act, granting the lands to the State, that they should be sold and converted into permanent funds as soon as practicable.... The lands must be sold and brought into private ownership in order to bring forth the best results in management and crop production; only by being brought into private ownership will the lands contribute their proper share toward the development of the community in which they are located.

However, the policy of the Montana Board of Land Commissioners (as delineated in its 6th Annual Report from 1896), when it came to timber land, was to retain these lands.

The experience of the board during the past few years in the matter of handling the timber lands belonging to the state brings us to the conclusion that these lands should not be sold except in cases where unusual conditions prevail.... By holding the lands … as the board has done in the case of all sales made; a growth of young timber is left standing on the land which will be large enough for sale for lumber in a few years; and thus by retaining the land the State will have a perpetual source of revenue.

Brandjord (1930) set aside his perspective on the sale of state land when it came to how he viewed the timber asset:

The reasons above given for the sale of State lands do not apply to timber lands. There are intrinsic reasons why at least some forests must be administered by the State and Nation. This has been done from ancient times and is the well-established policy of civilized countries throughout the world today.

The history of acquisitions and dispositions of the school land grants deriving from the General Land Ordinance of 1785 was very similar to that of the acquisition and disposition of the public domain. Wilkinson (1980) and Clawson (1983) categorized various eras of public land management. The eras are classified as: 1) Acquisition (1789–1867); 2) Disposition (1789–1934); 3) Reservation and Custodial Management (1872–1970); 4) Intensive Management (1950–1960); and 5) Modern Land Management (1970– ). The main departure from the federal experience is on the fifth period of history (Modern Land Management). State trust land managers, similar to federal land managers, began intensively managing state natural resources (oil, gas, coal, timber, and range) after World War II. However, that management regime has intensified and become more focused between 1960 and the present day (Fretwell 1998; Koontz 2002; and Fretwell and Regan 2015). Real estate development, land sales, increased oil and gas production, increased timber harvests, and coal and phosphate mining all characterize present-day management of state trust lands (Souder and Fairfax 1996; Bird 2010). One might ask, if the first 70 years of managing publicly controlled lands and resources were similar, what caused the departure following the 1970s?

Incentives Inherent in Trust Land Management

A look at the different incentives that come from the Forest Service multiple-use mandate and the fiduciary mandate of the state trust land agencies can help clarify the importance of institutional structure. Agency structure is defined by the laws, regulations, and cultural norms, both formal and informal, that agency personnel respond to. That structural arrangement drives the incentives. The incentives motivate the decision-making behaviors that determine resource allocation and produce the outcomes.

We have discussed the disjointed incentives that exist for federal land managers. The lack of a clear mission opens management to debate over purpose and appropriate action.

Disagreement over purpose contributes to a weak culture in which personnel with different values, backgrounds, and expertise push for different outcomes. Oversight over this type of institutional structure is tedious at best, as undefined goals cannot be measured. The result is that actions proposed on national forest lands often turn into battles between factions that desire different ends. The conflict that ensues is costly, as it slows active management and sucks personnel time and dollars away from more-productive management uses.

Public stakeholders, that is, all Americans as owners of the federal lands, who oppose current proposed actions rely on the plethora of environmental and federal land laws to justify their desired means. These are the laws that have been layered on over a hundred years of redefining the mission of the Forest Service. There is an alphabet of acronyms—MUSY, NFMA, NEPA, ESA, CWA, to name a few—for forest planning. Some require coordination among federal agencies; others require public input. The process of collecting data, agency collaboration, and public input is time consuming and costly. The Forest Service estimates that about 40 percent of direct spending at the forest level is on planning and assessment (USDA 2002, p. 35). Of course, some planning is necessary, but the GAO estimated that 40 percent of those planning expenditures are excessive (USDA 2002, p. 35). The *Process Predicament* report written under the tenure of Forest Service chief Dale Bosworth, noted that “improving administrative procedures could shift up to $100 million a year from unnecessary planning to actual project work to restore ecosystems and deliver services on the ground.”

Perhaps the most powerful environmental law in terms of forest planning is ESA. It has been called the “pit bull” of environmental law because of the strict language that allows it to trump all other laws and planning processes. In that sense, ESA has become a default dominant use of national-forest resources. In 2009, for example, a federal court determined that the 2008 forest planning rule was in violation of ESA and NEPA. This was one of several attempts to rewrite the 1982 planning rule; a rule outdated in its scientific understanding. It wasn’t until 2012 that a new planning rule was developed. It took more than seven years to develop, revise, and amend that planning rule. The result is high-cost planning that leaves fewer resources for on-the-ground management.

There is not opposition to every forest service plan of action, but to reduce potential objections agency personnel treat every plan as a “potential target.” Excessive time is often spent trying to “bulletproof” plans in hopes of reducing opposition (USDA 2002, p. 36). The counterfactual is important to consider. Resources currently used in excessive planning could instead be used on the ground. Neither the disproportionate monies spent on plans, nor the reduced management actions on the ground, are likely to improve critical wildlife habitat.

In contrast, state trust land agencies have a specified dominant-use mandate to generate revenues greater than expenditures. This fiduciary goal is clearly defined and easy to measure. The beneficiaries of the trust revenues are the state institutions, most significantly K-12 schools. The beneficiaries are clear and the stakeholders—school administrators, teachers, parents, etc.—have been given legal standing. The courts continue to uphold the trust fiduciary mandate when agencies have neglected to meet the fiduciary goal. This provides a clear line of oversight to ensure state trust agencies are performing efficiently and it bolsters their accountability.

The clearly defined, measurable, and enforceable goal designed for the state trust land agencies encourages accountability and efficiency. Agency personnel have a clear understanding of priorities and expected outcomes; efficiency can be measured from those expectations; and poor performance can be penalized and corrected. None of that is possible under the federal agency structure that has multiple competing goals with no clear process to prioritize.

The strategic plan of the Forest Service has four defined goals to: 1) sustain the nation’s forests and grasslands; 2) deliver benefits to the public; 3) apply knowledge globally; and 4) excel as a high performing agency (USFS 2015, p. 1). Though the agency’s 2015–2020 strategic plan defines these as “outcome oriented goals,” there is no particular result that can be measured. This leaves immense room for argument over desired outcomes, best practices, and methods for measurement. The central overriding problem for the federal multiple-use agencies is the lack of mission clarity. The absence of clear, definable, and measurable goals within that mission invites conflict among competing parties, each trying to define agency priorities.

That the clear state trust goal is of a fiduciary nature is also important. Relative resource values are demonstrated by market-determined price. Market price is derived from human action.

People act based on their perceived values and obtained information. Every human interaction adds information about social value that is incorporated into the relative resource value. The cumulated market information about relative resource values is signaled through market price. There is no sufficient non-market mechanism to tabulate this information.

Everybody helps drive the market through their response to price, which is based on individual value judgments and consideration of alternative options. Resource decisions that are made without considering market price are ignorant of the full gambit of social values and are instead dependent on the preferences and limited knowledge of the decisionmakers. Non-market decisions miss the information of circumstance, time, and place, as explained by Hayek (Hayek 1945).

The fiduciary goal of the state trust land agencies is dependent on market price to help make resource allocation decisions. Price directs decisionmakers to consider the value of alternative resource uses. It is not a perfect market system and personnel do not always rely on price alone, but price plays a key role.

It is often argued that there are “non-market” goods that have value but will not be incorporated into a market-based calculation. Non-market amenities, such as habitat and species diversity, may indeed be difficult to price. Regardless, state trust land agencies have not precluded managing for wildlife habitat, conservation, and ecosystem services even under a revenue maximization goal. To the contrary, they negotiate with parties interested in helping to protect wildlife and habitat, species diversity, water quality, and other environmental amenities.

There are multiple examples of state trust agencies contracting with other parties to enhance what are often considered non-market goods. The Nature Conservancy has contracted with several Western state trust agencies to protect species habitat (Fretwell 2015, p. 77). The Western Watershed Project has held several leases on Idaho trust lands and manages them for wildlife habitat and conservation.[[2]](#footnote-2) The WildEarth Guardians maintains a lease with the Arizona State Land Department, and the group has restored a stretch of the Babocamari River that flows through the Sonoran Desert (Fretwell 2015, p. 77). The Colorado State Land Board has invested in its lands to enhance conservation outcomes. It has leases with various nonprofit groups and with the Colorado Division of Parks and Wildlife for recreation provision. There are multiple opportunities for trust agencies to manage for conservation and other environmental amenities and remain aligned with their fiduciary requirement.

The flexibility to accommodate the variety of leases is not consistent across states. Some states have provisions that allow for bids for different resource uses. Other state agencies have dominant-use leases with little flexibility or are required to go through a tedious process to adjust the resource uses allowed. When resource use is too specifically defined, it may prevent agency personnel from allowing differing uses to compete, precluding the market outcome. If grazing leases require livestock grazing, there is no option for alternative resource users to bid on the allotment, which could potentially move the resource to higher-valued use as determined by the market. This has been problematic in a number of states as historical grazing leases are looked at for alternative uses (See Fretwell 2015). This type of rigidity reduces the ability of personnel to respond to changing use values.

The state trust land model is not a panacea for public land management. A comparison of state and federal land agencies, however, demonstrates the benefits that can be accrued from a clear fiduciary mission. The clarity reduces conflict. If active management on the federal lands is desired to create a more sustainable environment that provides a plethora of public benefits, a move toward a clearer mission, such as the state trust land model, would be advantageous.

For those that prefer inactive, hands-off management, the status quo is working well. Groups that oppose timber harvest and are compensated for legal opposition are getting their desired outcome. But there is the cost of planning. That cost includes the expenditure of excessive resources to plan and the reduction in management action that results from a limited budget heavily spent on planning.

The management challenge on the federal lands is to determine how to prioritize resource use and allocation. The state trust land agencies have demonstrated that clarity of the desired outcomes helps reduce conflict. Cooperation and innovation have been encouraged when parties are allowed to compete in the market for alternative resource uses. When the determination of agency goals is up for grabs, conflict is the result as interested parties vie for their preferred use with little consideration of the relative resource values.

Clarity of Mission and Benefits of a Strong Culture

The combination of a clear mission and a strong culture limits competing factions, reduces conflict over objectives, and facilitates the achievement of goals aligned with that mission. However, it is unrealistic to assume that a clear mission eliminates all conflict over the management practices that occur on state trust lands. Both Idaho and Montana recognize principles of stewardship and the need to consider environmental impacts in their missions. The main difference in the Forest Service mission and the missions in Idaho and Montana is that the Forest Service generally operates under a multiple-use framework, whereas the states operate under a dominant-use framework. When managing state trust lands, disputes over management should tip to the alternative that best accomplishes the trust mandate of maximizing or generating long-term returns. A multiple-use mandate does not provide direction over which use should receive priority treatment; however, a dominant-use framework does. Examples of where the Forest Service does operate under a dominant-use mandate are in wilderness areas and areas determined to function as critical habitat under the Endangered Species Act. The National Park Service also operates under a more dominant use–type framework. Cawley (1993, pp. 35–36), cited a Public Land Law Review Commission (PLLRC) recommendation from 1970 that recommended such a framework for managing the federal lands:

A more useful approach, PLLRC argued, would be the adoption of a “dominant use” philosophy. Under this procedure, federal lands with a clearly identifiable “highest primary use” were to be managed for that use and any “secondary uses that are compatible with the primary purpose.” The remaining areas, then, would be managed so that “all uses are considered equal until such time as a dominant use becomes apparent.”

The dominant-use framework embodied in managing state trust lands not only has the potential to limit conflict by providing clarity in prioritizing management options, but has also demonstrated that significant economic benefits can be derived while protecting the revenue-generating capacity of the land.

Comparison of Federal and State – Economic and Environmental Outcomes

The divergence in management outcomes on state and federal lands was becoming clear following the environmental movement in the 1970s, but the impetus goes back to the post–World War II era. Prior to the 1970s, conservation was measured by timber availability, with little attention on wilderness values, biodiversity, and ecosystem services that are more common in resource debates today.

As veterans returned home from World War II, there was a political movement to provide low-cost housing. The rising demand for timber was pushing housing prices up. The Forest Service saw a way to respond that would enhance agency visibility and maintain low wood prices (Fedkew 1998, pp. 85–86). An increased budget would enable the agency to enhance timber management and get a greater cut out of the forest.

Leaning on Congress, the Forest Service successfully received increased budget appropriations that would allow increased timber management. National forest timber harvest nearly tripled in the post-war decade from about two BBF to more than six BBF cut by 1955. The fact that many Forest Service timber sales cost more than the timber revenues was not a concern. Revenues and expenditures are not the underlying driver for Forest Service decision making. The majority of agency revenues are deposited in the federal treasury, and budgets are provided through congressional appropriation.

The political management of the Forest Service is the wedge that pushed federal and state land outcomes in different directions. Following intense production in the post-war period, public interest in forest management began to drift from production to aesthetics. Interest in forest recreation, wildlife habitat, and wilderness preservation grew in the 1960s and ’70s, as demonstrated by the passage of environmental laws like the Wilderness Act of 1964, the National Environmental Policy Act of 1970, and the Endangered Species Act of 1973. Yet, the Forest Service continued to focus on getting the cut out. National forest timber harvest remained high in the ’70s and ’80s, even after a multitude of new laws requiring enhanced habitat protection and greater focus on alternative resource uses. That set off a controversy that brought national attention.

Clear-cuts in the Bitterroot National Forest became a national story. Reports argued that harvest levels exceeded sustainable targets and that they were politically determined (Burk 1970, pp. 65–66). Conservation groups were outraged by cutover slopes. Some were bulldozed into terraces for mechanical regeneration. Estimates of the cost of one Bitterroot harvest in the late 1960s was 35 times greater than the value of the timber removed (Bolle et al. 1970). What were known as below-cost timber sales were not uncommon.

Legislation required the agency to manage for multiple uses, but the budgetary incentives were not aligned. About half of Forest Service timber revenues remain with the agency to be used for reforestation and restoration. These revenues provide local managers greater flexibility and a larger budget to get on-the-ground work done. Like other activities the agency manages for, timber expenditures are covered by appropriated budgets, and they often exceed the revenues generated. The Forest Service timber sale program lost an average of $0.46 for every $1 spent between 1998 and 2001 (Fretwell 2009, p. 35).

The bottom line for the Forest Service was and remains congressional appropriations. As a result, most resource-allocation decisions are inherently political. As quoted in Anderson and Fretwell (2015, p. 55), Jack Ward Thomas, the US Forest Service chief from 1993 until 1996, claimed the administrative and congressionally “favored activities receive funding” and “lobbying ... [is] an integral part of this process,” (Thomas and Seinkiewicz 2005, pp. 41–42). It is the way the system works.

The environmental movement of the 1970s was the beginning of the end for large quantities of Forest Service timber harvest. Harvest levels trended upward until the late 1980s, when they exceeded 12 BBF, and have since dropped to less than two BBF since 2000 (USFS 2016). This is a political rather than a market response. Congressional favor has shifted away from timber harvest, and environmental groups have won influence by using the many environmental laws that give them power to impact agencies decisions.

The Endangered Species Act, for example, has been used multiple times to reduce timber harvest. The northern spotted owl provides the most exorbitant case. The northern spotted owl was listed as threatened in 1990. The bird’s historical home range is late-seral forest in the Pacific Northwest region. Years of court battles between environmental groups and the Forest Service resulted in the 1994 Pacific Northwest Forest Plan that restricted harvest on 24 million acres of national forest land, prohibiting harvest on 30 percent of that.

Under the National Environmental Policy Act, the public can oppose and appeal Forest Service decisions. ESA is just one of many laws on the books that can be used to contest proposed action. The shifting paradigm from timber production to conservation comes from changing social values, political pressures, and increased influence from environmental groups that now outweigh timber interests.

The US demand for wood products, however, remains strong. Different than the politically influenced decisions made on the federal lands, the state trust land agencies respond to market prices that signal demand. On the state trust lands, managers must generate revenues in excess of expenditures. That fiduciary responsibility is at the forefront of decision making.

The incentives for agency managers are defined by agency configuration and the rules that they must abide by. Understanding the different organizational environments provides an appreciation for alternative management mechanisms.

The state trust model has recently been proposed as an alternative method to federal management. The state trust agencies have a clear mission to generate net revenues into perpetuity. They also have oversight from the defined trust beneficiaries and are given reasonable flexibility at the agency level to meet their goals.

Though there is some variation among the state trust agencies, there are significant differences in the organizational structure of state trust lands and federal land agencies. The key differences are the defined goals, the flexibility to meet those goals, and oversight to ensure the goals are met.

The Forest Service and Bureau of Land Management both have a multiple-use mandate. The Forest Service is governed by the Multiple Use and Sustained Yield Act of 1960 and the BLM operates under the Federal Land and Policy Management Act of 1976. They are required to manage for a variety of resource uses to meet the needs of Americans. There is no strict mechanism under the multiple-use laws to prioritize agency decision making for resource use. As discussed earlier, it is special interest influence that sways decisions for resource allocation. The pendulum has swung from timber production in the middle of the 20th century to ecosystem services, biodiversity, wildlife protection, and recreational opportunities at the present time.

Alternatively, the state trust agencies have a single defined goal to generate revenues in excess of expenditures into perpetuity. This fiduciary goal drives resource decision making, creating a culture of dominant use. Timber management takes place where revenues are sufficient to cover costs, both in the present and in the future. Net revenue generation is a perpetual goal that requires long-term management. In comparison, the federal land agencies are not required to generate revenues, let alone cover expenditures. Federal agency budgets are provided through congressional appropriation. The bulk of revenues are not retained by the agency but instead are deposited into the federal treasury. As a result, while the state agencies are looking out for the financial bottom line and responding to market prices, the federal land managers must bow to political budgets.

The clearly defined goal for the state agencies reduces confusion and conflict. State trust beneficiaries provide oversight and can hold an agency responsible for failure to meet the fiduciary goal. The trust revenues support public schools and other state institutions. School administrators, teachers, parents, and other beneficiaries can and do hold the trust land agencies responsible to generate perpetual financial returns. In contrast, it is harder to provide oversight at the federal level with multiple agency goals and no clear mechanism to determine required output. And any American can take the federal land agencies to task through the public input process.

Different outcomes are to be expected from the federal and state land agencies due to the differing governing frameworks. Though all manage for multiple uses, such as timber harvest, grazing, recreation, and minerals management, there are different statutory, regulatory, and administrative frameworks that define the managing structure for each agency.

The PERC report by Fretwell and Regan (2015) demonstrates the different financial outcomes by comparing revenues and expenditures on the federal multiple-use lands with state trust agencies across four Western states: Montana, Idaho, New Mexico, and Arizona. The study determined that the state agencies generated an average of $14.51 for every dollar spent on state trust land management, compared to an average loss of $0.27 per dollar spent on the federal multiple-use lands between 2009 and 2013. In fact, the federal agencies spend more on nearly every activity than they generate. The exception is minerals management.

If managed like state trust lands, the federal lands could potentially earn greater revenues, but the other outcomes would also change. The state agencies focus on activities that have revenue-generating potential. Most revenues for New Mexico trust lands are from mineral leases. Timber sales provide the greatest portion of Idaho state land revenues. Arizona trust lands earn the bulk of their revenues from land sales and commercial leases—uses not presently available on the federal lands managed for multiple uses. The state agencies focus management on their most valuable resources for revenue generation. That is a different focus than the multiple-use federal lands and produces different outcomes.

Before comparing agency outcomes, it is useful to take a closer look at why active management on the federal lands has diminished. Federal land agency decision making is slow, costly, and acrimonious. After serving as the US Forest Service chief from 1993 to 1996, Jack Ward Thomas commented that he agreed with each agency law, but that “there were intractable roadblocks to management related to laws and regulation and the conflicts pursuant to those laws" (Thomas 2001). There were too many overlapping laws for anything to get done. A conundrum he called the “Gordian Knot” (Thomas 2012).

In a similar vein, Dale Bosworth, Forest Service Chief from 2001 to 2007, complained that the agency was stuck in analysis paralysis stemming from the legal and procedural requirements with which the agency must comply (USDA FS 2002). In 2002 testimony before Congress, he presented a report titled *Process Predicament*, which explained these management hurdles.

Such gridlock is causing a default of inactive management on the federal lands. Timber sold has declined from nearly 11 BBF in the late 1980s to about three BBF in 2017 (USFS 2017). The federal agency paradigm has shifted from commodity production to sustaining a healthy landscape, but inactive management is not necessarily congruent with forest health and good stewardship. Excessive harvest and fire suppression over the years, together with a changing climate and reduced harvest over the last several decades, have changed the structure of the forest. What creates a healthy forest depends upon the eye of the beholder, but federal inaction should not be confused with conservation.

While the state trust agencies remain focused on revenue generation, they do not forego conservation, but they must generate revenues while doing so. One way they do this is through conservation leases. Conservation groups, such as The Nature Conservancy and WildEarth Guardians, lease state trust lands and manage them for conservation. (See Fretwell 2015 for a discussion on converting traditional grazing leases for alternative uses.) Other state or federal agencies also lease state trust lands for wildlife habitat and recreation (Fretwell 2015, p. 76).

Where the state trust agencies look to economic return to make resource allocation decisions, the federal agencies must rely on a political determination that includes public participation constrained by congressional appropriations and legislation. The public participation process provides a false sense of promise that participating parties can get what they want. There is little give-and-take, as parties do not have to consider the value of alternative uses when lobbying. The outcome is polarized decision making with little negotiation among interested parties.

A frustration from dissatisfaction results from the winner-takes-all end. This is opposed to the more market-oriented approach taken by trust management. The clearly defined goal of the state trust agencies—to generate revenues—reduces animosity and public frustration. The state agencies have flexibility to meet the goal, they can respond to changing resource values, and they have oversight from the trust beneficiaries.

Conflict vs. Cooperation

Marion Clawson has aptly described the federal land agencies as functioning at the “interface between public ownership and private use of the same lands” (1983). The result is more conflict than cooperation when allocating resource use. Conflict has been a part of federal land decision making for decades and is inherent given the current agency structure. Conflict over federal resource use is the result of competing demands for scarce resources under a political allocation system.

The conflict among parties competing for use of federal resources is a result of the conventional processes that encourage lobbying and hinder trade. The loudest voice has political clout but may not understand the costs and benefits of alternative resource uses. Individuals and groups interested in resource use on the federal lands do not have the rights to negotiate for use with competing interests. A logger cannot negotiate with a recreation group to leave a portion of a timber sale standing or harvest only selectively. These negotiations must be made with the agency. Similarly, grazing rights on the federal estate cannot be sold or leased for non-grazing uses.

Conflict is inherent in this type of management system. Early in the last century, interest in the Western range was more homogenous and focused on livestock grazing. The federal system of allocating grazing rights made more sense then. Ranchers with nearby property could lease federal lands for additional livestock forage. Ranchers competed with ranchers for land use. There was little other competition for use of the range.

Today, however, there is a rising demand for amenities that compete with commodity production. The number of livestock allowed to graze on BLM land today is half of what it was in 1954 (USBLM 2015). There are multiple competing interests on the range. Under federal grazing law, parties that would prefer less grazing have no rights to negotiate with the lessee. Instead, they must lobby or act during the public input process to convince the agency to reduce the grazing allocation.

A study by Shawn Regan (2016) examines multiple conflicts that have occurred on the federal range. Regan seeks to understand why some disputes are resolved cooperatively and others are fought out. Borrowing from Anderson and McChesney’s theory of raid or trade (1994), Regan concludes,

The institutions that govern federal grazing lands have failed to evolve to accommodate new environmental demands in a manner that encourages trading instead of raiding... . [The] system has proven unable to reconcile competing environmental demands in an effective or cooperative way (Regan 2016, p. 9).

When trading costs more than raiding, the raid will supersede. In the case of public lands, raiding is lobbying government to sway resource use. Under federal grazing law, trading is not an option.

The existing system of resource allocation on the federal lands produces a winner-take-all result. Groups opposed to livestock on the federal range lobby to remove the cattle, and ranchers fight to maintain their right. Agency personnel, or sometimes the judicial system, decide how to resolve the conflicting demands over resource use, and one party’s win is the other's loss. Slogans from the 1990s demonstrate the animosity by some environmental groups. Earth First! made popular the sayings “No more moo in ’92,” and “Cow free by 93” (Bauman 1990).

There is a better way. As frustration intensifies from polarized outcomes, some groups have become more innovative and found more-cooperative methods to resolve resource use conflicts.

Wildlife advocates in the Greater Yellowstone region would like to see livestock removed from the range to reduce conflict with predators. The region has seen increased encounters between livestock and wildlife as populations of grizzly bears, wolves, and bison move out of the Yellowstone National Park range. Rather than lobby to abolish the grazing rights, the National Wildlife Federation (NWF) offered to buy grazing rights from ranchers in the high-predator-risk region through voluntary agreements. A number of ranchers have made the trade and often use the money received to relocate livestock to an area with less predation. Federal law, however, limits who can hold a grazing permit and requires livestock grazing to maintain it. To be successful, NWF had to also convince the federal agency to retire the grazing permits (National Wildlife Federation). NWF has found a successful mechanism to reach a win-win solution if the agency is willing to retire a permit.

A similar story can be told about grazing permits in the Grand Staircase Escalante National Monument. The Grand Canyon Trust purchased grazing allocations in the monument in the late 1990s and convinced BLM to retire them. This was another win-win solution: The ranchers wanted to sell, and the trust wanted the cattle out to protect the fragile soils and habitat for the endangered southwestern willow flycatcher (Hedden 2015).

Cooperative solutions under political management, however, only last as long as they have political support. In 2015, Utah’s senator, Orrin Hatch, proposed a bill to reactivate the grazing permits in the monument (Utah Senate Bill 365). Under existing federal grazing law, a change in resource allocation requires a political or judicial decision. Such decisions can be reversed regardless of the negotiations that took place between the competing resource users.

Timber management on the federal lands runs into similar resource use conflicts. When the Forest Service proposes a timber sale, it works through a preparation process of planning and scoping that includes identifying purpose and need for the project, and considers public interest, management concerns, and resource availability. The project is designed using environmental analysis to compare alternative actions consistent with the Forest Plan and NEPA decisions. Timber sales follow an appraisal process. A sale does not include an opportunity for non-logging interests to bid on resource use. They have no trading rights. Non-timber interests can only influence the sale through the public input process.

Groups that oppose timber harvest have little to gain from a timber sale, so they lobby against harvest without any consideration of timber value or other implications of reduced harvest. The process encourages polarization and conflict. Competing views perceive little benefit from negotiation. Groups opposed to logging can use environmental statutes, such as the Endangered Species Act and NEPA, to hold up active management when they perceive environmental threats. They have no incentive to consider the value lost when production declines. The timber revenues that could be earned and used to enhance conservation and stewardship are not available to the appealing group. Under the current federal system, there are no rights to trade.

On the other side of the coin, those seeking increased commodity production have little ability to influence agency decisions outside the public input process. Environmental groups can oppose and appeal a harvest, but there is no reciprocal action available to loggers to oppose non-active management.

The conflict in resource allocation on the federal lands is inherent in the laws. When trades can be made, solutions can be reached through negotiation. When trades among users are not allowed, each party must instead seek to influence agency decisionmakers to gain its preferred use.

The extreme frustration from the poor results that come from hands-off management has encouraged increased collaborative and decentralized efforts. Though collaborative groups of governance do not have the formal ability to make decisions for resources on the federal estate, they can help the federal agencies by creating consensus among typically competing parties. These collaborative groups, however, must still work under the existing federal laws.

Cooperative Federalism Defined and Applied

Having explored various models for managing the national forests, from divestiture to dominant use, we propose a model of federal land management that builds on lessons learned from previous models and draws from recent successes at the state and federal level.

The Environmental Council of States (Stine et al. 2017) provides a framework for implementing federal environmental regulation across private, state, and federal lands that relies on principles embedded in cooperative federalism. Specifically, they identify roles for both the states and the Environmental Protection Agency (EPA) when it comes to performing their designated functions under various environmental laws. Stine et al. (2017, p. 2) provided the origins of the concept of cooperative federalism:

When the foundation of environmental protection was established in the United States in the late 1960s and early 1970s, a key constitutionally based tenet was cooperative federalism. Under this tenet, the US Congress establishes the law, the federal government implements the law through national minimum standards for the media/pollutant in question, and states can seek authorization or delegation to implement the programs needed to achieve these standards. Generally, states may develop programs to go beyond these standards if a state chooses to do so.

Initially, when states first began to implement programs delegated to them in the 1970s and 1980s, many state programs benefitted not only from federal funding, but also from significant US EPA oversight. Over the last 45 years, states have become the primary implementers of these environmental statutes, such that today, states have assumed more than 96 percent of the delegable authorities under federal law. These state programs have now matured, and states have undertaken many continuous improvement efforts to address new environmental challenges and to modernize and streamline decision-making processes. Indeed, from the first fledgling state programs to those we implement today, we have always sought out ways to be better and inspire public confidence in our efforts. States are a critical part of achieving our nation’s environmental and public health goals and mandated responsibilities in an effective and efficient way.

Whereas cooperative federalism has been defined by Stine et al. (2017) as the primary relationship between the states and the federal government for the purposes of implementing federal regulatory environmental laws, Babcock (1995) suggested that cooperative federalism could show promise as a new model for managing the federal lands.

One of the fundamental premises of Babcock’s (1995, p. 4) analysis was that the current federal-state balance on public domain lands was too broken and weighted to the federal side to be fixed with minor changes. She (1995) outlined trends that suggested changes to the current framework were warranted. Specifically, FLPMA failed to provide a meaningful role for the states in federal land management. Existing federal agencies didn’t have sufficient resources to oversee management of the public resources and they have become degraded. She cited poor range conditions as evidence to support Hardin’s (1968) theory detailing the tragedy of the commons. She noted that state environmental and land management capabilities (legal, scientific, political, and economic) had significantly improved, which would support improved decision making and resource outcomes. Finally, she felt that the current tensions and frustrations that fueled the Wise Use Movement and county supremacy movements could be mollified with greater cooperation between state and federal governments.

Secondly, she argued that the dialogue should move away from “who should own the public lands” to what process or institutions should be in place for their management. Another assumption in her analysis was that the Western states were more sympathetic to protecting the natural resource values today than in the past. She raised concerns about unfunded mandates and the potential need for federal funding to allow the states to undertake new responsibilities. One final assumption was that the federal government should retain authority over the management of the lands to “ensure consistency among states and fulfillment of national norms.”

Concepts of cooperative federalism, advocated by Babcock (1995), already exist with the implementation of the Cooperative Forestry Assistance Act. Passed in 1978, this act had the primary purpose of establishing a coordinated and *cooperative* federal, state, and local forest stewardship program for the management of non-federal forestlands. The Forest Service relies heavily on the states to implement these non-regulatory programs, providing funding for state employees and pass-through dollars for forest landowners who benefit from various forestry assistance programs. The various *state* programs were established to carry out the stated purposes in the act:

PURPOSE.—It is the purpose of this Act to authorize the Secretary of Agriculture, with respect to non-Federal forest lands of the United States, to assist in—

(1) the establishment of a coordinated and cooperative Federal,

State, and local forest stewardship program for management of the non-Federal forest lands;

(2) the encouragement of the production of timber;

(3) the prevention and control of insects and diseases affecting trees and forests;

(4) the prevention and control of rural fires;

(5) the efficient utilization of wood and wood residues, including the recycling of wood fiber;

(6) the improvement and maintenance of fish and wildlife habitat;

(7) the planning and conduct of urban forestry programs;

(8) broadening existing forest management, fire protection, and insect and disease protection programs on non-Federal forest lands to meet the multiple use objectives of landowners in an environmentally sensitive manner;

(9) providing opportunities to private landowners to protect ecologically valuable and threatened non-Federal forest lands; and

(10) strengthening educational, technical, and financial assistance programs that provide assistance to owners of non-Federal forest lands.

A recent publication (Turner 2017), produced jointly by American Forests and the Forest Service, highlights successes in administering this act, including the forest stewardship, forest legacy, community forests, urban forestry, and ecosystem services/wood utilization programs.

The conflicts that surround the history of administering the patchwork of environmental laws that both guide and direct how the national forests are managed is juxtaposed against the success stories in administering the Cooperative Forestry Assistance Act (Turner 2017). The Forest Service has the responsibility to manage the national forests and provide assistance to non-federal lands pursuant to the following legal framework:

1. Forest Reserve Act 1891
2. Forest Service Organic Act 1897
3. Multiple Use – Sustained Yield Act 1960
4. Wilderness Act 1964
5. Endangered Species Act 1969
6. Forest and Rangeland Renewable Resources Planning Act 1974
7. Eastern Wilderness Act 1975
8. National Forest Management Act 1976
9. Federal Land Policy and Management Act 1976
10. Cooperative Forestry Assistance Act 1978
11. Healthy Forest Restoration Act 2003
12. Collaborative Forest Landscape Restoration Program 2009
13. Farm Bill including Good Neighbor Authority 2014
14. Omnibus Bill 2018

The centralized administration of these often competing acts gave rise to many of the conflicts previously discussed. Had elements of cooperative federalism been utilized, as has been the case with the Cooperative Forestry Assistance Act, much of the angst and frustration that has characterized public land management could be defused. Many of the ideas embedded in concept of cooperative federalism, and applied in administering the Cooperative Forestry Assistance Act, can be correlated and traced to ideas of federal/state cooperation promoted by Secretary of the Interior James G. Watt in the development of his Good Neighbor policy.

Secretary Watt’s Good Neighbor Policy

One of the first actions taken by Secretary of the Interior James G. Watt, after his appointment in January 1981, was to write each of the 50 US governors to detail his new “good neighbor” policy. As documented by Arnold (1982, p. 92), Watt pledged his department to “exercising its responsibilities in full and complete recognition of the vital role of the States in the federal system.” Additionally, this letter asked the governors to communicate with him about their thoughts and concerns and offered to speak with them at an upcoming meeting in Washington, DC.

On March 12, 1981, Watt issued a press release (USDI 1981a) describing how he intended to implement the recently passed Alaska National Interest Lands Conservation Act (ANILCA). In the release, he stated, “I think it’s time to put all past differences aside and move forward as good neighbors who work together for the benefit of all concerned.” In the same release, he also stated, “I am also fully cognizant of the State’s expressed policy regarding the Lands Act [ANILCA], and our people are being directed to consider the State’s position in our implementation of the Act, to foster good-neighbor relations with Alaska and its people.”

Watt’s Good Neighbor policy was a reflection of his desire to listen to and work with the Western states in the management of the lands controlled by the Department of the Interior. Watt’s (USDI 1981b) conservation policies were driven by four main pillars:

1. America must have a sound economy if it is to be a good steward of its fish and wildlife, its parks, and all of its natural resources.
2. America must have orderly development of its vast energy resources to avert a crisis development which could be catastrophic to the environment.
3. America’s resources were put here [by God] for the enjoyment and use of people, now and in the future, and should not be denied to the people by elitist groups.
4. America has the expertise to manage and use resources wisely, and much of that expertise is in **State** Government and in the private sector.

Emphasizing the department’s Good Neighbor policy (Watt 1981b), Watt said, “On all fronts we will be removing unneeded regulations and policies which have irritated people not only in the West, but all over this country.” Arnold (1982, p. 61), quoted Watt as saying, “[A] good neighbor does not come in and dictate like an oppressive landlord,” which Interior had done in recent years. According to Cawley (1993, p. 122), Watt’s Good Neighbor policy was instituted not only to address the complaints of the Sagebrush Rebels but would also serve as a foundation to challenge the recent influence that the environmental movement had gained in public land management under President Jimmy Carter and Secretary of the Interior Cecil Andrus.

Perhaps the best description of the accomplishments under Watt’s Good Neighbor policy are described by Arnold (1982, pp. 195–196) when Watt addressed the Western governors at the Western Governors’ Conference in Jackson Hole, Wyoming, on September 12 and 13, 1981:

When Watt told the conference that he was reversing the Carter Administration policy allowing federal pre-emption of state water rights and returning all control to the states, Republican Governor Robert List of Nevada said, “If I’d been on my horse, I’d have fallen off. In the past, we had to bleed on the floor to get any help from Interior.”

Watt that day delivered on his good neighbor policy: He agreed with Alaska Governor Hammond to delay several offshore oil lease sales in Bristol Bay until the impact on fisheries resources could be thoroughly studied. He pledged to act on 384 requests for transfers of 700,000 acres of federal land to local governments. He announced his intent to expand the National Wilderness Preservation System by proposing to the President wilderness status for Arizona’s Aravaipa Canyon. Democratic Governor Scott M. Matheson of Utah told Watt he was “close to driving the last nail in the coffin of the Sagebrush Rebellion.” Newsweek clucked, “Even the most skeptical Westerners had to admit that Watt deserved much of the credit for dissipating their cause—by easing tensions between them and the federal government.”

Whereas Watt’s Good Neighbor policy was lauded by Western governors, there were those in the Reagan administration who were at odds with elements of it.

A key component of Watt’s Good Neighbor policy was working with the states. Watt believed that the states had both the expertise and the wherewithal to manage both state and federal lands. By 1982, there were those in the Reagan administration who were actively calling for the privatization of the federal public lands. Reagan in his inaugural budget claimed that he could raise $9 billion from the disposal of surplus federal lands, which could be used to retire the national debt. As previously discussed, Watt did not support this proposal. Steve Hanke, economic adviser to President Reagan was quoted in 1983 as saying:

Why does the (self-proclaimed) most conservative and loyal member of the president’s cabinet oppose Mr. Reagan’s land-sales program? This opposition arises because Mr. Watt, a celebrated “sagebrush rebel,” believes in public land ownership—but at the state, rather than at the federal, level (Cawley 1993, p. 123).

Cawley (1993, p. 126), cited an article in the *New York Times* from 1982, attributed to one of Watt’s aides, that detailed Watt’s views on privatization:

Watt has closed down the asset management effort because he regards it as a political liability to President Reagan. Selling off public lands to retire the national debt is not sound policy and never was endorsed by Watt.

Cawley (1993, p. 122) concluded that the privatization efforts by Hanke and others were both inconsistent with the goals of the Sagebrush Rebellion and Watt’s Good Neighbor policy. This is key for understanding the current approach to addressing the conflicts and frustrations in management of the national forests today. Whereas calls for transfer of the federal lands to the states continue, perhaps a more pragmatic model for managing the national forests lies in the passage of the 2014 Farm Bill and 2018 Omnibus Bill. Similar to what Secretary Watt argued for, the Good Neighbor Authority from 2014 recognizes a key role for the states in the cooperative management of federal lands. The latest efforts to utilize collaboration on the national forests can be seen in new authorities derived from the passage of a new Good Neighbor policy in 2001.

Department of the Interior and Related Agencies Appropriation Act of 2001: Good Neighbor Authority Reintroduced

In 1998, the US Forest Service (USFS) and the Colorado State Forest Service (CSFS) began discussing ideas for how to mitigate wildfire threats across different ownerships in the development of community wildfire-mitigation plans. Both agencies recognized the benefits of collaborating in the development and execution of fuels treatments across mixed ownerships. The idea was to utilize Colorado state foresters to serve as “agents” of the Forest Service to conduct forest management projects on federal lands adjacent to state or private lands targeted for fuels treatments (GAO 2009). In 2001, under the Interior Appropriations Act, Good Neighbor Authority was authorized for Colorado. The term Good Neighbor was chosen due to the collaborative nature of the projects—not dissimilar to Watt’s desire to collaborate with the various Western governors. Specific benefits to be derived from the program were summarized by the GAO (2009, pp. 9–10):

* 1. National forest, state, and private lands would be at less risk from catastrophic wildland fire;
  2. Fuel treatments would provide defensible space for firefighters to occupy while combating fires moving from forests to developed areas, or vice versa;
  3. An impediment to cross-boundary watershed restoration activities would be removed, resulting in greater protective and restorative accomplishments; and
  4. CSFS and the USFS would demonstrate cooperation as encouraged in the National Fire Plan, the federal government’s wildland fire-management strategy.

In 2004, Congress expanded the Good Neighbor Authority (GNA) to include the state of Utah and also included BLM as an authorized partner to participate in these programs. However, the Utah legislation also allowed the Utah Department of Natural Resources to participate in the management of national forest lands without having the Colorado requirement for ongoing management activities on adjacent ownerships.

Between 2002 and 2008, 53 Good Neighbor projects had been conducted in Colorado and Utah for fuel reduction and other purposes. The GAO identified several benefits attributed to using Good Neighbor Authority in the states. According to the GAO (2009, p. 30):

Given the advantages of partnering with the state—including the ability to negotiate access agreements, find suitable vendors, utilize more nimble contracting procedures, and share some project management duties—the use of Good Neighbor Authority allowed the agencies to accomplish more than they would have accomplished in the absence of the authority.

Challenges identified by GAO (2009) included lack of written procedures, inadequacy of some of the state contracting processes, and uncertainty of funding for projects due to federal budgeting cycles. In anticipation of the inevitable expansion of GNA to other states, including Idaho, GAO recommended that USFS better define roles and responsibilities between the states and federal officials. One employee at the Idaho Department of Lands was interviewed for the GAO report and expressed some potential for conflict with its trust land management mission:

…the Idaho Department of Lands manages its state’s forest resources to maximize the revenue from these resources and other state lands through activities such as timber harvesting, livestock grazing, and commercial building … the revenue generated from most of these trust lands supports the state’s public schools. Though this official could see advantages to having Good Neighbor authority in Idaho, such as the ability to conduct uniform land management practices across broader areas, she said she would be wary of any activities that would divert her agency from its primary mission of managing the state’s trust lands.

Sensing the inevitable expansion of Good Neighbor Authority, GAO (2009) made two recommendations in its final report for improving GNA in the future. The first was to adopt written procedures for GNA timber sales, and the second was to document lessons learned from past projects and how those lessons could better enhance implementation of GNA authorities in the future.

The 2014 Farm Bill

History

The passage of the Agricultural Act of 2014 (Farm Bill), and in particular, section 8206 of the bill, provided ongoing authorization for the Forest Service and BLM to enter into Good Neighbor Agreements on federal lands (excluding wilderness areas) with the governors of the United States and Puerto Rico. Pursuant to the act, a Good Neighbor Agreement means, “a cooperative agreement or contract (including a sole source contract) entered into between the Secretary and a Governor to carry out authorized restoration services under this section.” The restoration services can be carried out on federal or non-federal lands and can include forest, rangeland, and watershed restoration services. A key element of the agreements is that the federal government retains decision making authority. Silvicultural prescriptions are approved by the secretary of agriculture/interior, and any decision required to be made under NEPA with regard to restoration services shall not be delegated to a governor.

The Farm Bill not only provided ongoing authority for Good Neighbor, but section 8604 of the act also amended the Healthy Forest Restoration Act of 2003. This amendment had multiple provisions pertaining to addressing insect and disease infestations on federal lands. First, the act authorized the governors of states to designate treatment areas that had declining forest health conditions within the first 60 days of the act passing. Declining forest health is defined as a forest experiencing “substantially increased tree mortality due to insect and disease infestation; or dieback due to infestation or defoliation by insects or disease.” The act also allows the secretary of agriculture to designate additional treatment areas in the future. The treatment areas are to be at risk of experiencing substantially increased tree mortality over the next 15 years due to insect or disease infestation based on data and maps collected and provided for by the Forest Service.

Secondly, the projects within the designated treatment areas may be considered by the Forest Service for a categorical exclusion from NEPA, which allows for an abbreviated NEPA process. These projects may also be exempt from the special administrative review process utilized by the Forest Service. To qualify for a NEPA exemption (categorical exclusion), the projects to carry out forest restoration treatments must utilize three overriding principles:

1. The treatment maximizes the retention of old-growth and large trees to the extent that these trees promote stand resilience;
2. Considers the best available scientific information to maintain or restore ecological integrity; and
3. Is developed and implemented through a collaborative process that includes multiple interested persons representing diverse interests and is transparent and nonexclusive.

Additionally, these restoration projects may not exceed 3,000 acres and must be located within the wildland-urban interface or within certain stand condition classes and fire regimes if outside of the wildland-urban interface.

The Good Neighbor Authority and Healthy Forest Restoration Act amendments in the 2014 Farm Bill provide a legal framework that has the potential to significantly alter the course of forest management on the national forests by reducing conflict and providing opportunities for better economic and environmental outcomes.

Good Neighbor Authority embodies the tenets of cooperative federalism, wherein the US Congress establishes the law, the federal government implements the law through national standards, and states can seek authorization or delegation to implement the programs needed to achieve these standards. The main difference in implementing Good Neighbor Authority and the Cooperative Forestry Act is that with Good Neighbor, the state (through congressionally delegated authority) provides assistance in managing federal lands, wherein with the Cooperative Forestry Act, the state (also with delegated authority and funding from the Forest Service) provides assistance in managing private forestlands. Administration of both acts relies heavily on cooperation between the federal government and the states. The Forest Service provides funding, program standards/expectations, and audits program implementation. The states provide manpower, expertise, and local relationships.

GNA Implementation: Idaho as a Case Study

On March 31, 2014, the governor of Idaho, Butch Otter, submitted his proposed treatment areas pursuant to section 8204 of the 2014 Farm Bill (Davis 2014) to Tony Tooke, associate deputy chief of the US Forest Service. In his cover letter, Otter cautioned:

...the condition of the national forests in Idaho is grave.... Approximately 12.6 million acres of federal forest land is identified as suitable for some level of management. Of the suitable land base, 8.84 million acres or 70 percent is at high risk of mortality and fire as defined by the criteria in the Farm Bill. The magnitude of the issue in Idaho requires corrective action.

In Idaho, federal lands comprise 64 percent of the overall land base (approximately 53 million acres), and 75 percent of the forested landscape. Governor Otter’s initial designation proposed 50 different treatment areas comprising 1,815,864 acres (IDL 2014). These designated treatment areas were identified utilizing input coordinated by the Idaho Forest Restoration Partnership. Various stakeholders, forest supervisors, and citizen groups, including three federally designated CFLRP collaborative groups, participated in designating the treatment areas.

After Tom Tidwell, chief of the Forest Service, approved the governor’s designated treatment areas, the State of Idaho and the Forest Service signed a Master Good Neighbor Agreement on May 3, 2016. The purpose of the agreement is “to provide the framework and to document the cooperative effort between the parties [State of Idaho and the US Forest Service] for authorized forest, rangeland, and watershed restoration services on NFS lands.” Authorized forest, rangeland, and watershed restoration services include activities to treat insect and disease infected trees, activities to reduce hazardous fuels, and other activities to improve or restore forest, range, or watershed health.

A 2017 FAQ (IDL 2017a) jointly issued by the Idaho Department of Lands (IDL) and the Forest Service stated the goals of GNA in Idaho:

1. To contribute to healthy forests by increasing the pace and scale of forest restoration;
2. To provide additional fiber to Idaho markets; and
3. To develop a self-sustaining [funded] program in 3–5 years.

The FAQ (IDL 2017a) also highlighted the benefits of implementing GNA projects to both the Forest Service and the State of Idaho. The Forest Service would benefit by the following:

1. Having the ability to work across multi-jurisdictional ownership boundaries to treat a broader landscape;
2. Fostering a collaborative approach to addressing land management challenges;
3. Providing the ability to leverage state resources and efficiencies to increase capacity to accomplish work on National Forest lands; and
4. Providing the opportunity to strengthen the Federal/State partnership.

The state would benefit by the following:

1. Adding capacity helps restore our national forests and improves forest and watershed resilience and contributes to the strength of the forest products industry infrastructure and vitality in Idaho;
2. Improved forest health may result in reduced risk of insects and disease and wildfire impacts on state and private lands;
3. More activity on national forest lands will have added economic benefits to local economies and communities, especially Idaho’s rural communities.

When GNA was first discussed in Idaho, the IDL realized that it would need funding to begin the program. The agency approached both the forest-products industry and the Forest Service to inquire about their interest in providing initial startup funding. Key to the success of GNA thus far in Idaho has been the response of the various partners to step up and provide funding to seed the program. The GNA budget in Idaho is comprised of funding from the US Forest Service ($900,000 over three years), the Idaho forest-products industry ($1 million over three to five years), and the State of Idaho General Fund ($250,000 per year). The financial contributions from the various partners were key to initiating the program. The FY18 budget for GNA within the Idaho Department of Lands is approximately $1.4 million. Roughly half of the appropriation is from cooperators, and the other half is to be generated from proceeds derived from selling federal timber (IDL 2017a, 2017b).

On September 27, 2016, the Idaho Department of Lands sold the Wapiti timber sale on the Nez Perce–Clearwater National Forests. This was the first GNA timber sale in Idaho. The value of the sale exceeded $1.4 million and proposed to harvest 4.44 million board feet of timber. The sale was sold under a state timber sale contract using the state’s auction process.

A press release issued by Governor Otter (2016) touted the benefits of cooperative management of the national forest lands, including the Wapiti timber sale:

Our goal, in part, is to reduce large wildfires that cost taxpayers millions of dollars to suppress, damage wildlife habitat, pump millions of tons of carbon into the air, pile sediment into our waterways, hurt our economy, and harm the health of our citizens.

The Idaho Department of Lands (IDL) auctioned a federal lands timber sale for the first time in Idaho during the past week. It was a milestone for the State of Idaho in working with the US Forest Service, timber companies, and other forest partners on an “all lands” approach to restoring forested lands in Idaho and providing additional wood to sustain Idaho’s forest products industry—our mill operators, loggers, and truckers.

Before Good Neighbor Authority, Idaho could not legally help the Forest Service with the enormous and complex job of restoring our national forests.

Federal, State and private lands are intermingled in Idaho, so management practices on federal lands inevitably affect neighboring State and private lands. Idahoans wasted no time before taking advantage of the opportunities presented by Good Neighbor Authority.

We are lending IDL expertise in preparing and administering timber sales, conducting field layout for timber sales, and collecting data to augment Forest Service efforts. The State of Idaho, the timber industry, and the federal government all have pitched in and provided commitments of time and money to increase the pace and scale of forest and watershed restoration projects happening on federal lands in Idaho.

...There is no Washington, DC mandate behind the cooperation happening in Idaho. Partnership is happening here because Idahoans are results-driven people—including those in positions of leadership within State and federal agencies in Idaho.

Like me, Idahoans can be proud of the terrific progress happening in our state because of our desire to roll up our sleeves and put planning into action for the improvement of our environment and the benefit of our people.

In August 2017, Jim Petersen, editor of *Evergreen Magazine,* interviewed both Mary Farnsworth, Panhandle National Forest supervisor, and Cheryl Probert, Nez Perce–Clearwater National Forest supervisor, to gauge their interest in working with the state on GNA projects. When asked about their perspectives on the prospects of successful GNA implementation in Idaho, the two forest supervisors had this to say:

**Probert**: It’s very good news from my perspective. Partnering with the Idaho Department of Lands will allow us to leverage our resources in a way that increases both the pace and scale of forest restoration work in National Forests in Idaho.

**Farnsworth**: Good Neighbor Authority provides wonderful opportunities for us to do more work on the landscape. Increasing the amount of restoration work on the land creates healthier forests and more jobs in our communities. Combining the expertise and resources of IDL and the Forest Service allows us to accomplish more work. IDL and the Forest Service both care about healthy forests, increased restoration, and fire resiliency in north Idaho. We are also committed to jobs in our communities and supporting the infrastructure of our mills. These are common interests that we are working together to achieve.

At the August 15, 2017 Land Board meeting, IDL (2017d) presented its budget request for the 2018 legislative session and highlighted the specific items relevant to Good Neighbor Authority:

**Director Schultz:** Governor—I just wanted to highlight Good Neighbor Authority .... an increase of ongoing sustainable yield from the National Forests [in Idaho] of an additional 100 million feet [annually] over the next five to 10 years.... This is a new mission [for the agency]. The primary function for our agency, historically, has been to manage the state Endowment lands. We see this as a new mission that we are prepared to embrace. But we also need to ensure that we staff it appropriately so we don't detract from our primary core mission, which has been managing the endowment lands.

**David Groeschl, deputy director, IDL, state forester**: Governor, members of the Land Board, for the record, my name is David Groeschl, the State Forester for Idaho. And the GNA projects, as the Director has indicated, where we're working with the forest, each of the forests right now is identifying GNA projects within those HFRA [Healthy Forest Restoration Act] designation areas, those insect and disease areas. Governor, you had submitted the 50 proposed areas totaling 1.8 million acres. Since that time, the Nez-Clear [National Forest] has added an additional 1.2 million acres, so we're now up to 3 million acres of designated insect and disease areas in the state of Idaho. And the Panhandle [National Forest] is looking at an additional designation as well of about a million acres. So, we may be up to 4 million acres of designated insect and disease areas, and that's where they're focusing their treatments—where forest health and fuels are some of our biggest concerns. Now, some of those stands do have large trees in them, and so, what we do then is work with them to develop the silvicultural treatment that is most appropriate to accomplish their objective. And sometimes that does require removing large trees. Other times, we leave some of the larger, healthier trees for seed source in that. So, we actually work with them in developing those silvicultural treatments, and so far, with the sales that we’ve sold, we’ve not had difficulty marketing the various products, including some of the larger material.

At the September 2017 meeting of the Idaho Board of Land Commissioners, IDL and the Forest Service provided an update on the status of GNA implementation in Idaho. Materials (IDL 2017c) prepared by both IDL and the Forest Service summarized the current progress of GNA in Idaho. There are currently 10 proposed GNA projects in Idaho to treat about 10,000 acres producing 66 MMBF and generating $14 million in program income. The projects are spread across the state of Idaho, including two projects on the Panhandle National Forest, four projects on the Nez Perce–Clearwater National Forests, two projects on the Payette National Forest, and two projects on the Boise National Forest.

After the September Land Board meeting, Betsy Russell (2017a) of the *Spokesman Review* wrote a story on the status of Good Neighbor Authority in Idaho. The headline of the article was, “‘Good Neighbor Authority’ brings IDL a new mission: More active management of fed forests.” In that same article, Russell (2017a) cited David Groeschl when he highlighted the economic benefits to be derived from the program in Idaho:

State Forester David Groeschl said that if the program succeeds in helping the forest move toward full implementation of their forest plans, they could produce an additional 100 million board feet of timber a year. A University of Idaho study estimated that would mean $68.5 million in additional wages in Idaho; 1,300 direct forest industry jobs; 300 indirect jobs; and $118 million in state gross domestic product.

Russell (2017b), also from the September Land Board meeting, quoted Jane Darnell (deputy regional forester, Region 1) when she spoke about GNA, “We clearly are far more successful getting our projects implemented and through the decision process when we’re working together in this fashion.” Nora Rasure, intermountain regional forester, was quoted by Ridler (2017), “Idaho has really stepped up to fully embrace that ability for us to work with our state partners to get more work done.”

While the Forest Service and the Idaho Department of Lands appear to be fully embracing these new land management authorities in the spirit of cooperative federalism, the questions remain as to how researchers will gauge whether or not implementation of GNA is successful at accomplishing the purposes as stated in the 2014 Farm Bill.

Increasingly, federal and state resource managers are turning to alternative dispute resolution (ADR) as a tool to resolve disputes concerning the management of public lands (Manring 1993, 1994, 1998; Schumaker 1995; USFS 2015; and USFS 2017). Some had originally attributed this shift in decision making to being a response to the new policy of ecosystem management, previously espoused by federal land management agencies (The Keystone Center 1996). More recently, new authorities passed by Congress in the Omnibus Public Land Management Act of 2009 established a Collaborative Forest Landscape Restoration Program on the national forests with the stated purpose: “to encourage the collaborative, science-based ecosystem restoration of priority forest landscapes.” Specifically, the law requires that restoration projects be developed through a collaborative process that includes multiple interested persons representing diverse interests and be transparent and nonexclusive. Others have looked to collaboration (an ADR technique) as a way to address the inadequacies of the current federal decision making framework (Blahna and Yonts-Shepard 1989; Moote et al. 1997; Moote and McClaran 1997; Wondolleck 1985, 1996; and Yaffee 1994). Collaboration enables local citizens, many that claim to have the most at stake regarding public land management, to have varying degrees of input and power with respect to public land–management decision making. Opponents of collaboration argue that locals and corporate extractive industries have too much power and influence at the expense of urban environmental constituents and the national public interest (Amy 1990; McCloskey 1996; and Coggins 1998).

Overview of Collaboration and its Origins in the US

The writings of the Founding Fathers provide insight into many of the current debates over the role of collaboration in management of federal lands.Thomas Jefferson advocated a republican form of government. According to Kemmis (1990, p. 12), “Republicanism was an intensive brand of politics; it was, heart and soul, a politics of engagement. It depended first upon people being deeply engaged with one another and second upon citizens being directly and profoundly engaged with working out the solutions to public problems by formulating and enacting the ‘common good.’” The republican form of democracy required a high level of interaction among citizens and assumed that citizens were presented with opportunities to rise above narrow self-centeredness to espouse civic virtue. The Federalists proposed quite a different form of government.

James Madison and Alexander Hamilton advocated a federalist form of government, which they believed would ensure “domestic tranquility” through a politics of radical disengagement (Kemmis 1990). Federalism consisted of two components to achieve this tranquility. According to Kemmis (1990, pp. 12–13), “One of these means was a highly complex procedural machinery of checks and balances and mixed forms of government. The other was, quite simply, the western frontier.” The checks and balances from mixed forms of government were devised to ensure that factions would balance their vices against each other. Madison believed that in every political society, parties were inevitable. He (1906, p. 86) stated, “We shall then have the more checks to oppose each other; we shall then have the more scales and the more weights to protect and maintain the equilibrium. This is as little the voice of reason, as it is of republicanism.” He also believed that with an expansive western territory, fears of tyranny by the majority could be avoided. In *Federalist Paper* No. 10 (1961, p. 83), he wrote, “Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.” The current decision making framework utilized by federal agencies is a reflection of early federalist ideals.

Kemmis (1990) has advocated a return to Jefferson’s republican form of democracy embodied by collaboration between stakeholders intent on achieving the public good through civic virtue. Cawley (1997), professor of political science at the University of Wyoming, however, looked to Madison to describe the current trend in land management toward collaboration. In *Federalist Paper* No. 10, Madison (1961) espoused a fear of tyranny by the majority and a concern for when government was used as a tool of the majority. Cawley (1997) attributed the rise of support for collaboration in Western communities to a perceived fear of tyranny by the majority of pro-environmental interests. Traditional resource extraction industries and their employees have experienced a decline in political power, and many blame this shift in power on a growing environmental movement. With the passage of numerous environmental laws in the 1960s and 1970s, traditional Western values and economic means of production have been under assault. The rise of the Sagebrush Rebellion in the late 1970s can be partially explained as a response to the shift in values and power as the New West clashed with the Old West (Cawley 1993). While the Sagebrush Rebellion did not outlive the Reagan administration, some fear that the current trend toward collaboration may be an attempt by traditional Western interests to regain the power and influence that they once enjoyed prior to the perceived tyranny by environmental interests. Collaboration may be a mechanism for Western interests to regain the equilibrium within the political process that Madison felt was necessary to balance the latent causes of faction. Political theorists have referred to the achievement of equilibrium between interest groups as pluralism or group theory.

Collaboration Defined

Gray (1989, p. 5) defined collaboration as “a process through which parties who see different aspects of a problem can constructively explore their differences and search for solutions that go beyond their own limited vision of what is possible.” According to the author (1989) the collaborative process consists of three phases: 1) problem setting—define problem and identify stakeholders; 2) direction setting—establish ground rules, explore options, and reach agreement; and 3) implementation—build external support and monitor agreement to ensure compliance. Wilmot and Hocker (1998, p. 136) define collaboration as a conflict style and an approach to negotiation that “shows high concern for one’s own goals, the goals of others, the successful solution of the problem, and the enhancement of the relationship.” Collaboration differs from compromise in that both parties seek to maximize their goals during collaboration, whereas with compromise, both parties seek an intermediate position acceptable to both sides (Wilmot and Hocker 1998). Additionally, collaboration is a process, whereas compromise or consensus is a result that may or may not be achieved as a result of collaboration (PLLC 1998).

Collaboration is used to settle disputes among diverse interest groups and operates on the principle that the interests of competing stakeholders can be transformed into a mutual search for common solutions in which all participants have their interests represented (Gray 1989). Gray (1989, p. 5) defined stakeholders as “all individuals, groups, or organizations that are directly influenced by actions others take to solve the problem.” Ultimately, the objective of collaboration is to create a more comprehensive understanding of the conflict among stakeholders than any one of them could devise alone.

Consensus-building efforts require informal face-to-face interaction of stakeholders, or their chosen representatives, who seek win-win solutions, often with the assistance of a facilitator (Susskind and Cruikshank 1987). Susskind and Cruikshank (p. 13) believed that collaboration may be the only way to address the inadequacies of the current federal decision making framework:

…the only way to avoid stalemate, reduce the need for litigation, and restore the credibility of government is to generate agreement on how to handle the problems that confront us. We argue not for political compromise, but for voluntary agreements that offer the wisest, fairest, most efficient, and most stable outcomes possible. This requires that all stakeholders have a chance to participate directly in any dispute resolution effort. Political leaders should take more responsibility for building consensus; citizens, public interest groups, and business leaders should participate more willingly in the search for solutions that maximize mutual gain and improve long-term relationships.

Susskind and Cruikshank (1987), Gray (1989), and Wondolleck (1996) enumerated the various benefits that can be derived from the collaborative process as a technique to resolve disputes. In general, collaboration has the potential to generate a broader, more diverse set of solutions to a problem, provides an opportunity for stakeholders to have ownership in agreements that are reached, provides opportunities for relations to improve among adversaries, and generally provides an opportunity for participants to improve their communication skills while having more access to decision makers. However, other authors have been careful to point out the limitations of collaboration.

Evaluation Framework

The central tenant of cooperative federalism as applied to national forests is the sharing of authority and responsibility for implementing management actions. Could cooperative federalism as applied through the Good Neighbor Authority or other actions reduce conflict and thus ligation? Could federal-state partnerships enhance national forest management, resulting in improved ecological health and resiliency, fire-adapted communities, and fiscally prudent decisions that sustain rural livelihoods? The means by which these particular outcomes are achieved is often contested, and the differing criteria used by stakeholders to judge or evaluate the outcomes further confuse preferred courses of action. Systematically evaluating cooperative federalism against other decision frameworks requires the use of consistent criteria to reduce chaos about the value of one alternative over another. We organize these criteria into four broad categories to be applied equally to the decision frameworks discussed. The intent is to select alternatives or modify them in such a way that benefits are maximized across multiple criteria.

The first and arguably most important criteria is ecological or environmental. The current conflict over federal forest management is borne in large part from the anger over the poor state of ecological health on many Western public lands. The occurrence, magnitude, and impact of wildfires have increased exponentially over the past few decades and are expected to continue. Invasive species dominate Western rangelands. Reducing wildfire risk, improving ecological health, and restoring public lands to their natural structure and function will be the litmus test of any of any decision framework. Proponents of federal land transfer argue that divestiture will remove many legal constraints on use, thus enabling more intensive wildfire fuels reduction, which would enhance ecological health. The Good Neighbor Authority, too, could accomplish ecological goals by focusing investment around particular areas of high wildfire risk. The degree to which different alternatives maximize which ecological benefits to whom is the primary question.

The second criteria by which we can evaluate decision frameworks is economic. There exists great frustration among Western communities about the decline in the federal timber program. Federal timber harvests have dropped precipitously since the 1980s, followed by steep declines in natural resource–dependent economies. The effectiveness of particular federal policies, such as the Good Neighbor Authority or the CFLRP, will be judged by the extent to which they help restore rural livelihoods, supply fiber to emerging markets, and functionally reduce the cost to taxpayers of federal forest-restoration activities across the millions of acres necessary. Economic outcomes may not drive management decisions so much as they reinforce and incentivize restoration activities that leverage local skills and infrastructure (Nechodom et al. 2008).

The third broad category by which we can evaluate decision frameworks is ethical. Who pays for the costs of inaction? Are costs borne in the same proportion as the benefits? Who is responsible for the outcomes? At one level, local communities argue the moral imperative of thinning forests to reduce wildfire risks that threatens home and life. They are most at risk from federal inaction; they currently bear the brunt of costs with little received in return. The appeal of collaborative-based management is finding mutual solutions in which the costs are recognized and thus acted upon by a broader group of stakeholders seeking to equitably redistribute these costs and benefits. This criterion is also concerned with the legalities of certain actions as described in previous sections, for instance the transfer of federal lands to the states (Western AG Report), or authorizations providing the legal basis for GNA.

The fourth criteria used to evaluate decision frameworks relates to the procedural elements of the decision process itself. Is there equal influence over decisions? Has due process been followed? The importance of these criteria speaks directly to the legitimacy of the underlying decision framework. A key concern raised about the transfer of federal lands is the lack of procedural representation of those wishing to retain federal government oversight over environmental review activities. Opponents to land transfer are concerned that local economic interests will take priority and dispose of lands in such a way that leads to the erosion of benefits of public lands such as recreation access. A common criticism of the current situation is the paralysis of decision making; good intentions and action are repeatedly thwarted by a failure of the decision making process. Litigation of the threat of appeal prolongs implementation. This criterion is concerned with the degree to which the decision framework increases the pace of decision making and project implementation.

Measuring Success

When it comes to measuring success of a collaborative process, Daniels et al. (1994, p. 330) stated, “Several ways to evaluate the effectiveness of public participation processes are available, but an obvious one is the number of post-decision appeals that result. Other things being equal, a public participation program that produces fewer appeals per decision is better.” Daniels and Walker (1995, p.33; 1996) later changed their view of success within their “collaborative learning framework,” in which “results are measured as progress rather than by some absolute standard of success.” Susskind et al. (1993) agreed with Daniels et al. (1994) and believed that one way to measure success is whether the number of cases coming before an agency’s appeals board is decreasing.

Campbell and Floyd (1996, p. 240) were skeptical about evaluating whether or not environmental mediation could be judged as a success without looking at the end result on the ground. This point was echoed numerous times throughout the Public Land Law Conference. Campbell and Floyd (1996, p. 240) posed the question, “Do consensual solutions lead to better environmental outcomes than do adversarial approaches?” To them, a good process does not ensure an acceptable end result.

Wondolleck (1996) argued that the most successful collaborative efforts are those in which participants have the necessary skills and energy to devote to the process. Bingham (1986, p. 75) measured the success of environmental dispute–resolution processes based on the degree to which parties have reached agreement and implemented it. She distinguished between four varying degrees of success: 1) the parties reached an agreement and fully implemented it; 2) the parties reached an agreement, but only partially implemented it; 3) the parties reached an agreement, but failed to implement it; and, 4) the parties failed to reach an agreement.

Buckle and Thomas-Buckle (1986) found that 90 percent of the environmental mediations they reviewed never reached an agreement. Mediators applied a narrow test of success, which is achieved with a signed and viable agreement that expresses the parties’ mutual judgement that an acceptable resolution was reached. The failure to achieve a signed agreement was deemed a failure by most mediators, yet the participants viewed mediation as a success when the mediator’s behavior had made any significant positive contribution to the events surrounding the conflict. Participants listed several criteria that they believed represented a successful mediation, whether or not an actual agreement was signed: 1) reduction in time, delay, or costs; 2) an outcome that better fit their needs; 3) increased ability to negotiate; 4) insight into interests and positions; 5) better knowledge of options open to disputants; 6) additional staff in regulatory agencies; and 7) symbolic and instrumental tools (Buckle and Thomas-Buckle 1986).

Daniels et al. (1994) and Susskind et al. (1993) measured success by the outcome (number of appeals), whereas Wondolleck (1985, 1996) and Bingham (1986) measured success by having a good process, which resulted in implementation of an agreement. Daniels and Walker (1995, 1996) view progress as success within the collaborative learning framework. Buckle and Thomas-Buckle (1986) found that success was viewed differently by mediators and participants. Participants generally viewed mediation as a success if it contributed to the resolution of their disputes, whereas mediators generally recognized that improving relationships among the parties, providing insight, and teaching about negotiation were valuable, but did not constitute a success without a signed agreement.

McKinney and Field (2007) surveyed participants in 67 community-based collaboration (CBC) groups to assess satisfaction of those individuals with the collaborative processes that they participated in. With a 56 percent response rate, the authors noted that, in general, participants were satisfied with the use of CBC to address issues related to federal lands and resources. McKinney and Field (2007, p. 422) reported that participants tended to rank “working relationships” and “quality of the process” as more important than “outcomes.”

The Successful Path Forward

The establishment and management of the national forests in the United States has been characterized by ongoing conflict and controversy (Dana and Fairfax 1982; Clawson 1983; Yaffee 1994; Hirt 1994; Hays 1959, 2009; GAO 1997a; Sedjo 2000; and USFS 2002). “Analysis paralysis” is a term that has been used by several former Forest Service chiefs to describe the web of environmental regulation and the associated impact analysis required to make defensible decisions. The ensuing gridlock, which many have attributed to inadequate decision making processes, conflicting environmental laws, litigation, and agency culture, has impacted the Forest Service’s ability to accomplish it varied missions. Some have called for the abolishment or reorganization of the Forest Service (Sedjo 2000; Fairfax 2005), citing its descent from a storied organization to one that is out of touch with its constituents and no longer an organization of elite professionals.

With a glass-half-full perspective, we have traced the history of the establishment of the forest reserves and analyzed different frameworks for future management of the national forests. History has shown that support for public ownership of land has shifted over time. Efforts to transfer ownership of federal lands to the states or to privatize public lands have been defeated and defused in the past, only to reemerge. The embers of disdain for the federal government and what some see as paternalistic management by an absentee landowner, continue to burn.

We examined the ramifications of divestiture of federal lands through various means and concluded that this effort would undoubtedly be wrought with conflict. Nevertheless, with control and the locus of decision making shifted from DC to the Western states or private parties, management expectations for those lands would be more clear. Eventually, that clarity would likely diminish the conflict over time.

We also examined a second decision making framework that looked to the states as a model. State trust lands were granted from the federal government to the states under the General Land Ordinance Act of 1785. The history of the establishment of the state trust lands is not dissimilar from that of the federal lands. Western states also experienced eras of land acquisition, disposition, and reservation. These lands were granted with specific purposes to benefit schools and other endowed institutions. The fiduciary obligations associated with managing trust lands for the sole benefit of designated beneficiaries resulted in a dominant-use philosophy of land management. This is contrasted with the Forest Service mandate of multiple-use management. Dominant-use management requires that managers identify the driving principles or assumptions that dictate how competing views will be balanced and prioritized. In the example of trust lands, the legal mandate to generate the most revenue over the long term for the endowed beneficiary is the dominant use. Trust land managers have fiduciary incentives that provide mission clarity and drive decision making. The clarity of mission also creates a strong agency culture that leads to consistent, yet sometimes rigid, views of what constitutes an appropriate range of alternatives. So, when faced with competing uses, trust land managers must choose the option that is in the best long-term interest of the beneficiaries. Governor Butch Otter of Idaho testified at the Committee on Natural Resources, US House of Representatives (2013, pp. 10–11) and advocated for the use of a trust model in managing federal lands. He stated:

A trust clarifies in absolute terms the fundamental objectives in managing those lands, the beneficiaries and, by extension, the mission and the responsibilities of the trustees and managing agencies. The clarification of mission and objectives is in stark contrast to the Federally administered lands where the mission and objectives for management has been confused and contorted after a century of statutory and regulatory changes, and an unhealthy dose of judicial activism.... Mission clarity gives trustees, the trust managers, a well-defined purpose to guide decision-making. It would be inappropriate to suggest an abrupt move to a different management system for Federal lands without first testing the organizational, management, and the results of the system on a smaller scale.... The concept is not new. The trust model is widely used for 135 million acres of land in 22 different States.

The national forests could establish pilot projects (Kemmis 2001) or designate areas within the Forest Plans that prioritize competing uses. The pilot projects could also identify specific beneficiaries (counties, schools, nongovernmental organizations) that would benefit directly from the management of those lands. A framework, prescribed in law, which identifies how competing uses would be prioritized, would lead to less conflict and more efficient decision making processes.

A third management framework, relying on collaboration as the dominant decision making model, was also explored. Benefits of collaborative decision making processes include increased ownership in the decisions by the stakeholders, improved relationships between previously competing interests, and the potential to reduce litigation from the parties. Collaboration is a decision making process grounded in the pluralistic view of decision making, which recognizes that competing interests with differing values vie for control and influence. It is the role of the decisionmaker to find the equilibrium point of the conflict through negotiations, concessions, and shared learning and, ultimately, to choose the alternative that best achieves that balance. Collaboration has the potential to reduce land management conflicts and result in decisions that can better withstand environmental challenges. Within the past 10 years, collaboration as a decision making process has been embraced by the Forest Service and codified by Congress in several land management statutes, including the Omnibus Public Land Management Act of 2009.

We detailed a fourth management paradigm for the national forests that relies on the concept of cooperative federalism. Ideas of cooperative federalism are grounded in the US Constitution that specifies that certain authorities are retained by the federal government and others are delegated to the states. The federalist form of government in the US recognizes a shared responsibility for governing the people and resources of this country. Within this framework is a shared responsibility in the administration of federal environmental laws (Clean Air Act, Clean Water Act), wherein the states can attain primacy to administer the federal laws on private, state, and even federal lands under the oversight of the federal government. In a similar fashion, cooperative federalism as a land management framework would dictate a shared responsibility to manage the federal lands. Federal laws enacted to manage and protect federal public lands would be administered by the states in a cooperative fashion with the Forest Service. The states would assist in the planning, development, and execution of land management projects on federal lands, yet the Forest Service (and eventually, BLM) would retain decision making authority for projects. This framework would reduce the underlying causes of the current federal land management conflicts and gridlock.

There are four main reasons why a cooperative federalism framework is well-positioned to address the primary causes of conflict that have and continue to define and typify federal land management.

1. States Have a Legitimate Interest in Protecting Their Citizens

Protecting public health and safety is one of the police powers of state and local municipalities. The state has an inherent interest and responsibility to protect its citizens from natural disasters, including floods, hurricanes, earthquakes, and catastrophic wildfire. Federal agencies like the US Geological Survey and the National Weather Service provide assistance to the states with collection and monitoring of geological data and weather forecasting to help inform local and state government officials about weather or environmental hazards that could affect the lives of their citizens. However, it is the responsibility of state and local government officials to protect their citizens from these hazards. The federal government also has a support role through agencies like the Federal Emergency Management Agency (FEMA) to provide assistance to local governments once assistance has been requested through formal disaster declaration procedures initiated by the state’s governor.

According to GAO (1999), the Forest Service identified 39 million acres of national forest lands in the interior West that are at high risk of catastrophic wildfire. In 2012, the Forest Service updated their insect and disease maps for the country and identified more 81 million acres of forests at risk of dying by the year 2027 due to insects and diseases. This number was an increase of more than 23 million acres since 2006. (USDA FS 2014). As has been previously mentioned, in Idaho, three-quarters (8.8 million acres) of the manageable (non-wilderness, roaded areas) national forests are at high risk of increased mortality from insects, disease, and wildfire. More recently, Dr. Paul Hessburg (2017), a USFS research scientist, developed a multimedia presentation that he presented throughout the Pacific Northwest in 2017. He warned,

The rise of highly destructive megafires—wildfires over 100,000 acres—has become one of today's most pressing and complex problems. Our communities, homes, businesses, and even our very way of life are threatened by them. Facing the reality of this issue can be nothing short of daunting. But like all wicked problems, **through education we can change the way fire comes to our forests and communities.** [emphasis added[

Hessburg’s call to action is directed to federal, state, industrial, and nonindustrial private-land managers. He is advocating for more active management of the national forests and state and private lands through the use of prescribed fire, mechanical harvest, and sensible community planning regulations that recognize the threats associated with living in the wildland-urban interface.

A recent article by Sarah Coefield (2017), air quality specialist with Missoula County (Montana), warned of the hazards associated with smoke from wildfires that was so prevalent in Montana this summer, particularly in the community of Seeley Lake:

The massive Rice Ridge Fire burns directly above the community of Seeley Lake, and every night, smoke fills the valley, building by the hour and creating dangerous breathing conditions the likes of which we have never seen. To our south, the Lolo Peak Fire sends daily smoke to the Bitterroot Valley, creating frequently hazardous, unbreathable air. Never have we seen so many wildfires so close to home for so many weeks. As with most mountain valley communities, Missoula County’s most worrisome and prevalent air pollutant is the fine particulate in wood smoke, so tiny it can enter your bloodstream when you breathe it in. It’s a cumulative pollutant: The more you’re in it, the worse it is for you. The particulate aggravates asthma symptoms and causes reduced lung function and wheeziness. It increases the risk of heart attack and stroke and can damage children’s developing lungs. The elderly, people with heart or lung disease, pregnant women, and children are most at risk. Wildfire health studies are still part of a growing science, but we know the smoke is dangerous. We know there will be more emergency-room visits, more hospital stays and probably more deaths.

Governor of Idaho, Butch Otter (2017), recently cautioned:

With more of the West’s growing population living in previously undeveloped areas, we no longer can afford to let wildfires manage our lands for us. We must do more to minimize the impacts of the small percentage of fires that escaped initial attack and become long-lasting megafires costing taxpayers millions of dollars to suppress, damaging wildlife habitat, pumping millions of tons of carbon into the air, piling sediment into our waterways, hurting our economy and harming the health of our Citizens.... The one factor of fire behavior over which we have immediate control is the buildup of wildfire fuels such as dead and dying trees and vegetation.

Research by O’Laughlin (2013), examined studies to answer the question of whether or not actively managed forests are more resilient than passively managed forests. O’Laughlin (2013) defined passive forest management as benign neglect as compared to active management with the focus on vegetative treatments to meet landowner objectives. He summarized that

Scientists and forest managers generally agree that fuel treatments can be effective, but effectiveness varies according to type of vegetation, type and extent of treatment, weather, topography, intensity of fire when it encounters a treated area, and time since treatment. Fuel treatments have been shown to be effective at reducing wildfire severity at the stand level, and research is beginning to show their effectiveness at the landscape level.

In 2009, Congress passed the Federal Land Assistance, Management, and Enhancement Act (FLAME Act). In the act, Congress directed the Forest Service to develop a National Cohesive Wildland Fire Management Strategy (WFLC 2014). The cohesive strategy was developed collaboratively with federal, state, local and tribal government participants, as well as nongovernmental partners and members of the public. The cohesive strategy has three main goals:

1. Restore and maintain landscapes—Landscapes across all jurisdictions are resilient to fire-related disturbances in accordance with management objectives;
2. Fire-adapted communities—Human populations and infrastructure can withstand a wildfire without loss of life and property; and
3. Wildfire response—All jurisdictions participate in making and implementing safe, effective, efficient risk-based wildfire management decisions.

The cohesive strategy involved three components, including 1) developing a comparative risk assessment for planning; 2) understanding regional and local fire management opportunities and challenges; and 3) developing a national strategy and action plan. The national strategy (2014) outlined four challenges: 1) managing vegetation and fuels; 2) protecting homes, communities and values at risk; 3) managing human-caused ignitions; and 4) safely, effectively, and efficiently responding to wildfire. The plan also recognized that successful implementation of the national strategy would require collaboration among local, state, tribal, and federal governmental agencies, including elected officials and citizen groups.

The cohesive strategy and the subsequent national strategy and national action plan provide a framework of federal and state cooperation in planning for and management of catastrophic wildfire across federal, state, and private lands. Consistent with cooperative goals identified in the cohesive strategy, a state has the responsibility to protect the health and safety of its citizens from the risk of catastrophic wildfire. It is reasonable and necessary that the state not only has a role in fire suppression actions on federal lands, but also in assisting in the management of these federal lands to reduce the risk of wildfire through active forest management. The vast extent of intermingled ownership patterns, coupled with the imperiled health of the national forests, necessitates an “all hands on deck” approach to managing these lands. Cooperative federalism provides a structure for that assistance by the states.

2. Improved Decision making Processes

Cooperative federalism draws on several of the alternate management frameworks identified in this analysis. Key to this concept is shared responsibility. Historical and even current decision making processes utilized by the Forest Service have been criticized for being indecisive, non-responsive, and non-binding due to administrative appeals and opportunities for litigation (GAO 1997a). Within the cooperative federalism framework, collaboration is encouraged not only between the federal government and the states, but also between the federal government and local stakeholders. Through the use of newer legal authorities (CFLRP, GNA, HFRA), over the past 10 years, the Forest Service has begun to embrace collaborative decision making processes and the benefits derived therefrom. In a recent federal district court ruling in Idaho on the Payette National Forest, Judge Edward J. Lodge supported the Forest Service’s decision to treat 80,000 acres of forest in the Lost Creek–Boulder Restoration Project. He wrote, “The Court finds the Forest Service’s decision selecting Alternative B and identifying a MRS of 401 miles is not arbitrary or capricious and does not violate the TMR (Travel Management Rule).” The project proposed to treat 40,000 acres of forestland using commercial and non-commercial harvest prescriptions, as well as using prescribed fire to treat an additional 45,000 acres. The Payette Forest Coalition came in as an intervenor in the litigation to support the project. Judge Lodge (*AWR v. USFS et al.* 2016, p. 3) noted their involvement in the project planning process as a component in his rationale for sustaining the decision:

The Project was developed consistent with the Collaborative Forest Landscape Restoration Program (CFLRP) using a collaborative process between the Payette Forest Coalition (PFC) and the Forest Service. The PFC met regularly for two years beginning in 2009 to develop recommendations for the Project. Those recommendations were then used by the Forest Service to formulate the proposed action.

Recent authorities in the 2014 Farm Bill further encourage collaborative decision processing, by allowing for categorical exclusions (limited environmental review) from NEPA for projects smaller than 3,000 acres that utilize collaboration to design restoration projects within HFRA-designated treatment areas. The collaborative process outlined in the Farm Bill requires inclusion of multiple interested persons representing diverse interests and that the process be transparent and nonexclusive. Collaboration generates greater buy-in and support from stakeholders, while enhancing local relationships, which can reduce future land management conflicts. In Idaho, Governor Otter utilized collaborative groups to identify the initial HFRA-designated treatment areas, which totaled more than 1.8 million acres. That number now exceeds four million acres. The Forest Service continues to use those collaborative groups (which now includes participation from the IDL) to help design restoration projects within the designated treatment areas. Under the statewide Good Neighbor Agreement, the State of Idaho implements projects on federal lands utilizing state employees and state contracting procedures. Decisions made by the Forest Service within the HFRA-designated treatment areas and implemented using Good Neighbor Authority include input from local stakeholders, the states, and the federal government. The state then implements those projects using its own contracting procedures. This overall process ensures that *all* interests, including the states which choose to participate in the decision making process are represented. Cooperative federalism, with its emphasis on shared decision making, should reduce both local and regional conflict and increase the efficacy of management of the national forests. To date, none of the GNA projects have been litigated in Idaho.

3. States’ Expertise and Governance Experience

Western states employ skilled land, water, fire, and wildlife managers, including foresters, hydrologists, fish/wildlife biologists, fire wardens, engineers, GIS specialists, recreation specialists, procurement specialists, and fiscal staff to manage state trust lands and other state lands. The expertise and experience that these employees have gained through the management of state lands is directly transferable to similar management projects on federal lands. GAO (2009) noted that in Colorado, state foresters have the competence and skill to cruise stands of timber, determine timber volumes in stands to be harvested, conduct timber sale appraisals, and administer timber sale and service contracts. That same GAO report noted that the Forest Service in partnering with the state under Good Neighbor Authority was able to accomplish more restoration work than if they had not had the state as a partner. In effect, under GNA, the whole is greater than the sum of its parts.

Governor of Idaho, Butch Otter (2017), recently wrote:

Right now, Good Neighbor Authority is the only realistic option for states like Idaho to be actively involved in managing the federal lands within our borders. And we are seizing that opportunity. The Forest Service is using streamlined State contracting processes and additional Idaho Department of Lands foresters to carry out its federal forest plans. The projects have been vetted through the federal environmental review processes and are supported by local collaborative groups.

In addition to having the requisite expertise to manage federal lands, state employees have the experience of having managed state lands to draw from as well. State land managers must balance competing uses, address conflict, provide customer service, work with legislators, perform environmental analyses, and have an awareness of the political processes and expectations that govern the management of state lands. Even when challenged with similar conflicts and political pressures as encountered by their federal land managers, state land managers continue to accomplish their mission, while maintaining the confidence of elected officials. Souder and Fairfax (1996), Koontz (2002), Fretwell (1998), and Regan and Fretwell (2015) have documented the economic and financial successes that have arisen from managing state trust lands, especially in comparison to similar metrics when studied on federal lands.

Utah representative Rob Bishop, in testimony before the US House of Representatives, Committee on Natural Resources (2013, p. 2) presented examples of the differences between management of state and federal lands:

In front of me on the dais here are two stacks of papers. The one stack represents 1,212 pages of documents that have been prepared by the US Forest Service for a 2000 Collaborative Landscape Restoration Project in Montana, the Cold Summit Hazardous Fuel Reduction Project. And though the scoping of this project started over 3 years ago, we are still anxiously waiting for them to actually do something and conclude the project.

This other stack of papers in front of me is 29 pages prepared by the Idaho Department of Lands for a timber sale that was prepared over a matter of months, and recently sold for a half-million dollars. And more than that, it is more than the US forest timber receipts for the entire state of Idaho in 2012. So, two percent of the paperwork, nearly 1,000 times the result, and this is a lesson we need to take very seriously. And I welcome any input from our witnesses as to why we face this kind of disparity of red tape and paperwork.

The fiduciary responsibility associated with the trust mandate and the strong organizational culture that it helps to create and sustain are key ingredients to the successes ascribed to trust land managers. The management culture of trust land agencies is not only influenced by the strong mission, but also by the historical and political events that led to the establishment of the state trust lands.

The history of establishing and managing the state and federal lands has followed some similar paths, which provides additional lessons and insights for state land managers who are tasked to provide assistance in managing federal lands. Both the federal government and the states started out with a general policy of acquisition of public lands. The federal government purchased from foreign governments and acquired through treaties with Indian nations hundreds of millions of acres of public lands. The states were granted both state trust lands and sovereign lands (under the Equal Footing Doctrine) from the federal government as part of early divestiture and land settlement policies of Congress. As noted by Souder and Fairfax (1996), many states pursued their own divestiture policies early on in their histories, similar to divestiture policies enacted by the federal government. By 1976, with the passage of FLPMA, the public domain was closed to homesteading and the overriding federal land management policy became one of reservation. Some states, including Montana and Idaho, experienced similar reservation policies through the statutory retention of timber lands and provisions in code or state constitutions that limit the sale of state lands and encourage the acquisition of new state lands through various land banking mechanisms (Schultz 2007). However, given past disposition policies enacted by the states to generate revenue for school beneficiaries, critics argue that the states are not to be trusted to assist in the management of federal lands.

The expertise and experience of state land managers gives them legitimacy in the eyes of the public and the Western policymakers. There exists an almost inverse relationship between the credibility of the national and state land management agencies. As Fairfax (2000) noted, the legitimacy of the Forest Service as an institution able to perform its mission with efficacy has been seriously questioned. At the same time, the drumbeat to have the states take over or manage the federal lands has become deafening in recent years.

4. Move the Locus of Control

The fourth reason that cooperative federalism will succeed in reducing federal land management conflicts is that the locus of control of those lands will shift from Washington, DC, to west of the 100th meridian. Much of the rhetoric regarding the transfer of federal lands to the states and others has originated in the West. Arnold (1982), Cawley (1993), Pendley (1995), and Kemmis (2001) traced much of the history of frustrations expressed by westerners regarding the ownership and management of the federal lands. Absentee landlords in Washington, DC, are ill-equipped to make decisions that affect the livelihoods and experiences of millions of US citizens who use the national forest lands. Cooperative federalism will not only engage local stakeholders in developing reasonable management alternatives but will also rely on state governments and their employees to implement land management projects in a cooperative fashion.

Conclusion

Reliance on the states as a cooperative partner is a game changer. State land management agencies are run by statewide elected officials or their appointees. This ensures that the citizens, legislators, and locally elected officials of a state are represented by their state governments’ land management agencies in the management of the national forests. Similar to Secretary James Watt’s claim that he won the Sagebrush Rebellion because he was a Westerner who listened to and worked with Western governors, policies of cooperative federalism will tamp down Western calls to transfer the federal lands to the states and will encourage greater levels of engagement and cooperation by western politicians and the citizens that they represent to solve the problems surrounding the management of the National Forests.

If Mark Twain is correct, there are no new ideas. Fortunately, managing the national forests under a framework of cooperative federalism doesn’t require the passage of new laws or the appropriation of millions of dollars by Congress. It requires leadership, pragmatism, and hard-nosed commitment to work together to meet the ever-increasing demands on the federal public lands. America’s history demonstrates that the necessary components for successful forest management already exist. By insisting on a model of cooperative federalism, stakeholders will have fashioned something new from the best parts of prior good ideas, thereby serving as a beacon of light and hope that diverse interests working together can achieve more than when pursuing their self-interests. The whole is truly greater than the sum of its parts. Our nation needs a vision for success that promotes civility, collaboration, and results on the ground. Cooperative federalism provides that framework, which will assist the Forest Service in achieving Pinchot’s grand utilitarian goal of maximizing the public interest over the longest time.

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1. US Fish and Wildlife acres were included in the federal transfer requirement and a portion of the National Park Service–owned Glenn Canyon Recreation Area. [↑](#footnote-ref-1)
2. E-mail correspondence with Marin Sanborn, Endowment Leasing, Idaho Department of Lands, October 25, 2017. [↑](#footnote-ref-2)