

**Gary R. Herbert**  
Governor of the State of Utah  
and Chairman of the Western Governors' Association

Testimony before the

**House Subcommittee on Public Lands and Environmental Regulation**  
Oversight hearing on

*“Perspectives on the Management of Federal and State Land”*

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Good morning. I am Gary R. Herbert, Governor of the great state of Utah. I also currently serve as the Chairman of the Western Governors' Association, although for today's purposes, I am not speaking on behalf of that organization.

Thank you, Chairman Bishop and Ranking Member Grijalva, for holding this important hearing. I appreciate you inviting me to share with you and members of this committee some thoughts on management concepts for public lands.

One of my core principles is the doctrine that states can and should find their own solutions, tailored to their unique circumstances. This principle applies to most policy issues, including public lands. Sadly, we have strayed far from this vision of states as independent and robust policy innovators. No one understands state challenges and demographics better than the people who reside and govern there. No one is more committed to the most effective use of limited resources for the best possible outcome, for both our lands and our citizens, than those who will directly live with the consequences of those decisions.

I understand that the citizens of the rest of this great nation have an interest in the natural resources found within Utah, and the rest of the West. However, a balance of powers between the states and the federal government is needed in public land policy if we are ever to find solutions to the complex problems we face as Americans.

Utah strives to have a good working relationship with the local offices of the federal land management agencies, and certainly works with the agencies on many range and forest improvement efforts. The concept of federal-state partnership is becoming more and more like Big Foot – frequently touted, but rarely actually seen in the flesh.

### **Federal Land Management Challenges**

Federal land ownership and good management are not inherently synonymous. In fact, I sometimes wonder if they are antonyms. For example, National Parks have an estimated \$11 billion maintenance backlog. The U.S. Forest Service has its own multi-billion dollar backlog. Meanwhile, millions of acres of national forests have fallen victim to bark beetles and other

insect and disease plights and are at risk to catastrophic wildfire. At the same time, a good portion of our federal grazing lands throughout the West are in poor condition. All of these conditions have resulted in an increase in the number and complexity of wildfires, leading further to exponentially higher suppression costs.

Unfortunately, federal land management agencies operate within a statutory and regulatory framework that keeps them from effectively addressing rapid declines in range and forest health. Similarly, federal land management decisions today are paralyzed by litigation. Often, special interest groups use the judicial process to simply delay in an attempt to either wear out or bankrupt the opposition. This leads to further gridlock and the infamous “analysis paralysis.”

While examples of federal inefficiency and mismanagement abound, let me be clear that these failures are typically not attributable to the efforts of competent and hard-working federal employees. Instead, most of these failures are symptomatic of outdated and non-functioning federal land management policies and processes.

In short, the federal land management apparatus is massive. It’s bureaucratic. And it is too rigid.

Just as Henry Ford offered his first customers a choice of any color car they wanted as long as it was black, federal land management agencies today provide states flexibility in land management - as long as they do it the way Washington tells them. It is becoming increasingly apparent that the current federal land management process is outdated – like a Model T.

Given these realities, many observers have concluded that today’s federal land management policy is a vestige of the past that has outlived its usefulness. Its top-down, one-size-fits all structure is an outdated regulatory and governing framework that fails to meet the needs of 21<sup>st</sup> century America.

Clearly, the status quo isn’t working as well as it is capable. There is room for improvement.

The time has come for the nation to undertake a sensible reassessment of current land ownership and management patterns. Indeed, I believe we are, as Chairman Bishop likes to say, on the cusp of a “paradigm shift” in public lands management.

### **A Paradigm Shift – Time for Change**

A growing number of individuals across the West are realizing that the current paradigm of a remote and centralized administration of vast amounts of western landscape has reached its limits. For example, Daniel Kemmis, the former Mayor of Missoula and Democrat Speaker of the Montana legislature, has argued that over the last half-century, “*the national government has*

*lost its ability to effectively manage the West in a way that assures access, proper management, let alone the sustainability of western communities.”*

A steadily growing number of westerners from both sides of the political fence are realizing that their communities, economies and their ecosystems would be better served by working together in a collaborative, bottom-up fashion outside the existing centralized governing framework. As westerners and many astute observers increasingly turn away from the top-down, Washington-led public land management regime, it is important that the new models of public land management that arise to take their place are based on a local, collaborative-based approach.

For a number of reasons, Utah is an ideal leader in charting this new approach to public land management. For one, Utahns deeply care about, and intuitively know the value of the state's lands and resources. And, as the often-recognized “best managed state” in the nation, Utah is well positioned, both administratively and economically, to bring effective management practices to many of the public lands within its boundaries.

### **State Land Management**

State management of public lands is not a new concept. The 50 states have substantial land holdings, including an estimated 57 million acres of state forests, 20 million acres of state wildlife areas, and roughly 12 million acres of state parks. An estimated 36 percent of New York State, 29 percent of Alaska, and 16 percent of New Jersey is state owned.

Although states rely on a variety of organizational structures, each has created management agencies—such as state forestry, wildlife management, and park agencies—to manage their lands. Like the federal land management agencies, the state agencies base management of their lands on their distinct missions and responsibilities.

Utah, the thirteenth-largest state in the United States by area, features a diverse and ruggedly beautiful landscape. Of its 54 million acres, roughly 37 million of them are owned or managed by the federal government. Roughly 21 percent of the state is privately owned, and 10 percent is owned by the state.

States have long demonstrated the ability to manage their lands and resources in a responsible fashion. Many management issues involve multiple jurisdictions - lands owned privately, by state agencies and by federal agencies. Private lands are managed in an effective manner which creates sustainable use. State land agencies can engage in meaningful public input, and make decisions in a reasonable amount of time.

Unfortunately, once the federal land management agencies become involved, the complications intensify, and effective solutions become nearly impossible to achieve in a timely manner. Additionally, the increased amount of centralized control exerted by Washington D.C. leads to ineffective decision-making processes at the local level. Let me share just a few Utah-based examples.

### **Forestry – Fire Management**

Many of the Western Governors have been concerned for some time that federal forest lands throughout the West are experiencing serious environmental stresses that affect the health and vitality of these ecosystems. These forests are overgrown and they exhibit all the symptoms of an unhealthy ecosystem. In a saner world, these conditions would demand urgent attention.

In 2010 only about 30 percent of the total U.S. Forest Service budget was allocated to manage our national forests. In the mid-1980s, that number was closer to 70 percent. Most of the agency's budget is spent on fire suppression, administrative support, research, and other programs. Forest Service officials have estimated that planning and assessment consume 40 percent of total direct work at the national forest level.

As an example of confused leadership, a few years back, the Forest Service was interested in employing a technique known as a "prescribed burn" as a tool to reduce the fuel load within a wilderness area in Southwestern Utah. Prescribed burns are an effective tool for preventative fire management, and are typically only initiated under the cooler conditions found in the fall. Believing that it could only allow prescribed burns to be initiated naturally in wilderness areas, the Forest Service allowed a lightning-caused fire to burn when it occurred in an area scheduled for a prescribed burn. Of course, the lightning was generated as part of a summer thunderstorm. After burning slowly for some time, the fire eventually grew dramatically under the summer conditions, and destroyed several structures near a small Utah town. When I asked the fire managers why the prescribed burn was not concluded earlier, under the usual, more-favorable conditions, the response was that a human-caused initiation was not allowed in wilderness. I asked the Regional Supervisor to review this authority, and he eventually concluded that the Service did have the ability to initiate prescribed burns by hand, and reduce the fire risk accordingly.

### **State Solutions – Utah Style**

#### **Management of Wildlife and Rangelands – New Solutions**

Private landowners have demonstrated the ability to manage lands and natural resources in Utah effectively. Deseret Land & Livestock (DL&L) is a 205,000-acre privately owned ranch in Utah. Approximately thirty years ago DL&L adopted a holistic management plan using time-controlled grazing. The changes in management have healed stream corridors, improved ground cover, increased water infiltration and provided a wildlife conservation program that is recognized for its success worldwide. DL&L has been named as a globally important bird area by the Audubon Society, because over 280 species of birds have been documented on the ranch. These additional ecological services have been provided for wildlife while simultaneously doubling the number of livestock using the property. The increase in livestock enabled DL&L to go from an economic loss to economic prosperity, and has preserved the landscape from possible development.

The State of Utah is now sponsoring an effort to implement the same type of management that has been so successful at DL&L on 150,000 acres of public and private land nearby. Necessary partners are the U.S. Forest Service, Bureau of Land Management, private landowners, and the school trust lands to implement the same type of management. The proposal is known as the Three Creeks Project. Unlike the situation at DL&L, progress on duplicating the program is extremely slow, however, it is currently undergoing a lengthy NEPA analysis. If approved, the time-controlled grazing program will be fully implemented in 2014, and improved rangeland

conditions will follow rapidly. The State of Utah is a strong advocate for this type of superior management, as it is critical for the sustainable management of public lands. This methodology provides for the ecological health of the land, and allows enhanced revenues to be generated from the land. Increased economic opportunity allows local citizens to retain the vital connection with the land. BLM and Forest Service should be required to give these ideas great weight, and rapidly expedite all necessary environmental and economic reviews.

### **Management of the Greater Sage-Grouse – Local Plans for Protection**

The U.S. Fish and Wildlife Service determined in 2010 that the greater sage-grouse is warranted for listing under the provisions of the Endangered Species Act, but has put off the listing action due to higher priorities. The greater sage-grouse is a species that lives in the vast sagebrush habitat found in eleven states in the West, including Utah. Given this geographical diversity, the protection and management of the greater sage-grouse cries out for solutions specifically tailored to the local situation, and for solutions that are not blind to the character and the needs of local communities. Each of the eleven western states with sage-grouse has been working on a state plan, or other protective mechanisms for sage-grouse.

Utah began finding such solutions 15 years ago for greater sage-grouse by empowering local working groups composed of state and local officials, private landowners, and federal agencies to determine the factors affecting the species locally, and to generate solutions. Utah has invested millions of dollars over the last 15 years, in partnership with federal agencies such as the Bureau of Land Management and the Natural Resources Conservation Service, for habitat restoration and rehabilitation work which has demonstrably improved the status of the bird in Utah.

Utah's Conservation Plan for Greater Sage-grouse was finalized in April of 2013. The Conservation Plan creates a balanced suite of protections which are designed to encourage a cooperative spirit of conservation, yet allow economic conditions to thrive as well. The state's Plan provides protection for 94 percent of the birds in Utah, and contains clear objectives and goals designed to not only stabilize population trends in Utah, but to also seek an increase in the population trends. These goals and objectives are based on solid scientific evidence, but do require the enthusiastic support of local government, private citizens and the federal agencies in order to succeed. Many aspects of the Plan are the equivalent of those protections employed by the Fish and Wildlife Service in the event of a listing.

Yet the BLM and the Forest Service now advise us that the protection of the species may require each of them to consider protective stipulations designed to be an independent response to the 2010 listing decision. The Fish and Wildlife Service indicated in a recent letter to the state that the Service, contrary to the state's Plan, would work with the BLM and the Forest Service to seek protections for a particular area within Utah – which protections would cover an additional 1.5 percent of the birds in Utah. If adopted, these independent provisions, on their own, will *not* be sufficient to conserve the bird, will antagonize the effort to earn the necessary protections on private lands, and will only serve to toss the cooperative spirit of a joint response on its head.

Of equal significance, the Fish and Wildlife Service and the BLM have altered direction in terms of support for these state plans. Secretary Salazar, at a meeting in December 2011, clearly stated that the state-written Conservation Plans were the preferred method for the protection of sage-grouse, and that the federal agencies in Interior would work cooperatively to support state plans.

Specifically, the states were lead to believe that BLM management of sage-grouse habitat would conform to state plans while the BLM was working on long-term plans, and that BLM plan revision efforts would favorably consider the state plans in their process to provide protections for the species now underway. This has not proven to be the case to this point in time.

BLM and the Service now assert that the effort to review the state plans, and amend the interim guidance is not favored, because the schedule is too tight to accommodate such a review. As a result, BLM will not be adopting the newer, more accurate state data as part of the NEPA review, and will be relying on outdated data as the fundamental basis for its analysis.

The State of Utah has begun the implementation of its Conservation Plan. The state continues to seek a partnership with the BLM, NRCS, Forest Service and the Fish and Wildlife Service in this effort. However, it is becoming increasingly clear that the drive to finish the BLM plans by an arbitrary date is driving the BLM to use outdated information, among other fundamental flaws. The Congress should consider an extension of time to allow the states, The Fish and Wildlife Service, the BLM and the Forest Service, to rationally conclude this conservation planning and species status review process.

### **First Outdoor Recreation Office**

Outdoor recreation provides many benefits to Utah's economy. It has stimulated the growth of an outdoor products and sporting goods industry in Utah, creating jobs and generating public revenue. It is a primary driver of Utah's large tourism industry. It attracts employees and businesses to Utah. Companies cite our quality of life, natural beauty, and varied outdoor recreational amenities as key factors in their decision to relocate to Utah.

Southern Utah is a mecca for outdoor recreationists, who enjoy pursuits ranging from river rafting and boating to rock climbing, and backpacking. Many areas offer the opportunity to get farther into the region's backcountry by horseback, bike, or all-terrain vehicle. The remote La Sal, Abajo, and Henry mountain ranges punctuate the landscape of this region. Southwest Utah has long been a destination for those looking for relaxation and recreation.

Utahns have long recognized the value and importance of sound conservation and ensuring sustainable recreational access. To secure the significant benefits of outdoor recreation to Utah, and ensure that great recreational opportunities are available in perpetuity, I convened a stakeholder process last year to develop a detailed and substantive Utah Outdoor Recreation Vision. I was pleased to implement the primary recommendation of that vision earlier this spring when I signed legislation creating the nation's first state office of outdoor recreation.

### **Utah State Parks**

Utah, like many other states, has a multi-decade experience demonstrating its ability to manage lands for multiple purposes. For example, Utah's State Park system began in 1957 with four heritage parks: Camp Floyd (near Lehi), Sugar House Park (now no longer a state park), Utah Territorial State house in Fillmore, and This is the Place Monument in Salt Lake City. Today,

there are 43 Utah State Parks located throughout the state. The Utah Division of State Parks and Recreation in the Utah Department of Natural Resources manages over 95,000 acres of land and over a million surface acres of water.

Utah's state parks are popular. There were 4.8 million visits to Utah's state parks in 2011, which generated \$67 million in revenue. A Utah State University study showed that Utahns highly value their state park system, and a large majority of those surveyed reported that they had visited several parks. About 75 percent said they had visited a park in the past year and, on average, residents made about four visits a year to state parks.

## **SITLA**

Another example of Utah's track record of success with land management can be seen in how state entities have managed those lands set aside for the benefit of the State's schoolchildren. The Utah School and Institutional Trust Lands Administration (SITLA) was created to manage twelve real estate trusts granted to the state of Utah by the United States at statehood. SITLA currently manages a 3.5 million-acre real estate portfolio (7 percent of Utah's land area) for the financial benefit of the twelve beneficiaries. Given the incentive of an improved education system for Utah's children, these lands are well-managed. SITLA has grown the permanent trust fund from \$95 million in 1995 to over \$1.5 billion in 2012, and as the fund grows, the interest flows annually to fund Utah's schools. In 2012 alone SITLA distributed \$34 million toward public education.

The mission of the agency can support viable methods for the support of conservation and wise development of the resources. For example, SITLA has created a mitigation bank for prairie dogs on its lands. Developers seeking credits for the use of prairie dog habitat near cities in rural Utah can move prairie dogs to these locations. SITLA has also created habitat preserves for rare plants as required.

## **Regulation of Hydraulic Fracturing**

Finally, I'd like to take a moment to address the recently proposed rules from the BLM to further regulate the oil and gas production process known as hydraulic fracturing.

Within Utah, the approval process for oil, gas and water wells administered by the state's Division of Oil, Gas and Mining (DOG M). DOGM's regulatory charge, which includes all permitting, inspection, compliance, and enforcement efforts, is to ensure the responsible development of Utah's resources with due regard for and protection of the environment. The professional staff of DOGM has the local knowledge and expertise to address the technical and scientific challenges posed by Utah's unique geology and geography. BLM has been making use of this expertise.

Because of this expertise, in all its history, Utah has never had a single recorded instance of hydraulic fracturing fluids polluting Utah's waters. Recently, in response to the public's desire

for further transparency DOGM instituted a rule to require disclosure of the chemicals used in the hydraulic fracturing process. State regulations are effective, and require transparency, yet the State and the industry are now again faced with unnecessary duplicative federal regulations.

A nationwide hydraulic fracturing regulation may have noble intent, but will be no more effective in achieving better oversight of hydraulic fracturing operations than the existing state regulations. While new federal rules, perhaps from the EPA, could potentially provide standards for pollution control, it is clear that new BLM rules cannot be expected to improve the program, and could very well slow processes and add unnecessary costs.

Mr. Chairman, I would suggest that the only threat to our technology dominance and the ability of our country to become energy independent is a federal government that believes it should justify itself by issuing unnecessary rules. The proposed BLM HF rules are a perfect example of a solution-in-search-of-a-problem mentality.

### **Grand Bargain**

Perhaps the best example of a state-based solution to land management is the effort initiated by Chairman Bishop to enact legislation providing for designations of conservation units, and the consolidation and exchange of both state and federal lands to promote more efficient land management. Some in the state have begun to call this effort the “Grand Bargain.” I am a proud and staunch supporter and proponent of this effort.

Public land disputes, particularly wilderness designation, have occurred in Utah for many decades. With rapid population growth, widespread energy development, and increased recreational use on public lands, these disputes will continue and potentially grow more divisive and serious unless people of goodwill find collaborative solutions that balance economic needs with environmental protection.

To be successful, I believe this “Grand Bargain” will need to incorporate a few important principles, including:

- The process to find common ground must be bottom-up, not imposed from the top-down by the president, Congress, or state leaders. Local leaders and local interests must be fully engaged in the process, not simply observe as bystanders.
- The process must be fully collaborative, with all willing stakeholders and interest groups involved. No stakeholder will get everything they want, and all must be willing to negotiate and compromise, but it is important that all are at the table.
- The solution must incorporate economic benefits, including possibly SITLA land exchanges, increased tourism opportunities, energy development, land privatization, infrastructure needs and, to the extent possible, certainty about land use status.
- The solution must also incorporate meaningful and appropriate environmental protection, including conservation designations that protect fragile and pristine areas for future generations.

I, along with Congressman Bishop and many other Utahns, believe the timing is right for a large deal. Events have converged to provide Utah a unique opportunity to accomplish something truly remarkable – protect Utah’s wild places and enhance outdoor recreation, while at the same time, strengthening Utah’s economy and increasing much needed school funding.

### **Conclusion**

From the days of our pioneer forefathers, Utahns have been finding Utah solutions to Utah problems. I am here today to assert our right and responsibility to continue to do so.

Utahns have a history of working together to solve tough problems. It’s part of our character. With good will, respect, creativity, and simple hard work, we will sustain Utah as the premier location – the right place – for outdoor recreation, smart conservation, and responsible energy development.

The reality is that people don’t flock to Utah from all over the world because its lands are federally managed. They flock to Utah because Utah lands are unique, precious, and visually and even spiritually stunning. These lands will be just as precious and valued if they are managed by state or local entities. The last thing Utahns would support would be policies that permanently impaired its incredible landscapes and resources.

It is time to revitalize and replace outdated federal land policies. The new era of public lands will be one in which state and local entities take on a greater role and will use their skill, flexibility, and innovation to meet the recreation, environmental, and energy needs of the 21<sup>st</sup> century.

States, like Utah, will continue to be at the vanguard of this new era of public land management.