

Transfer of Federal Public Lands Report: Study Summary

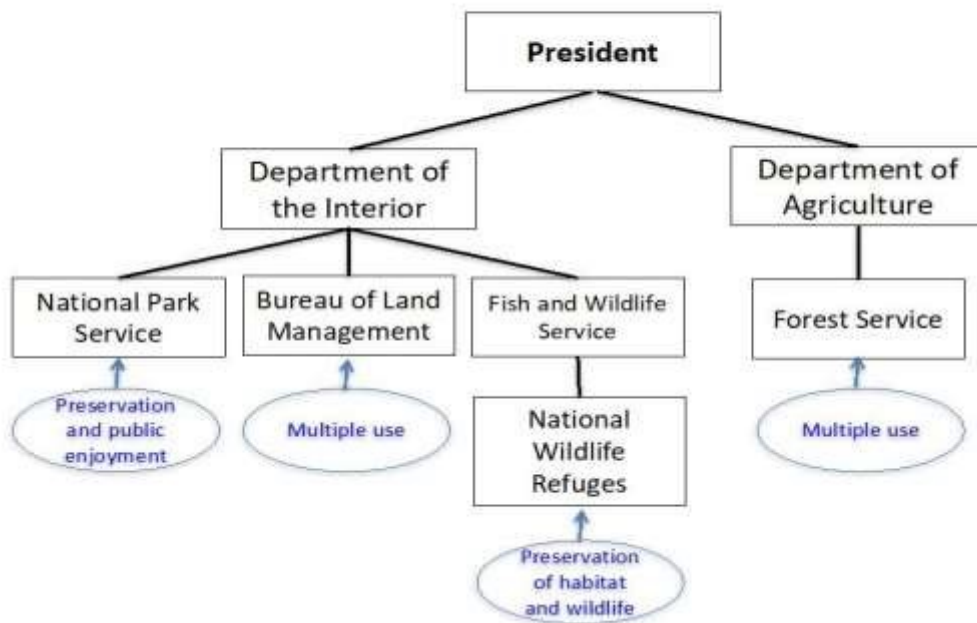
By Judy Williams, TFPL Committee Co-Chair

Introduction – Background - Context

The U.S. Government owns about 28% of the land in the United States. While every state contains some federal property, the largest holdings are in the western states. In New Mexico 35.4%, or 27.5 million of the state's 77.8 million acres are federally owned. In comparison, the New Mexico State Land Office owns about 13 million acres.

Federal lands include national parks, national monuments, Bureau of Land Management (BLM) lands; U.S. Forest Service (USFS) lands; U.S. Fish and Wildlife (USFWS) lands (refuges and responsibilities, including endangered species, and animal control); and other

Federal Agencies with Public Lands Jurisdiction



government installations (such as courthouses, military and border installations which are not covered by this study).

The chart below shows the organizations and their position in the government. The Department of the Interior has responsibility for most federal public lands.

The League Study

The League of Women Voters of New Mexico voted to undertake a study of federal lands and issues involved in transferring these lands to states. Interest was spurred by efforts in some states and among some politicians to turn over federal lands to states.

Many background papers were prepared for the study, including summaries of economic analyses, history of federal lands, legal and constitutional issues and political movements. Team members interviewed the U.S. Forest Service Regional Forester, the New Mexico State Director of the Bureau of Land Management, the New Mexico State Land Commissioner and Deputy State Land Commissioner, and the president of Rio Grande Foundation.

Background papers will be available on the LWVNM website for further reading.

History, legal and political underpinnings

The impetus behind transfer efforts is largely ideological, though there have also been legal arguments and studies of the costs and benefits of transfers.

The federal government obtained title to lands beyond those claimed by the original thirteen states by means of either purchase or treaty. Most of New Mexico was acquired by the Treaty of Guadalupe Hidalgo, which ended the Mexican-American War. The remainder was acquired from Mexico through the Gadsden Purchase.

The federal lands were never private and never belonged to the states. When the state enabling acts were signed, the federal government retained ownership of certain lands. Article XXI, Sec.2 of the New Mexico Constitution states: “The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof, and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through the United States, or any prior sovereignty; and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States;”. Thus, for New Mexico to request or demand transfer would violate the state constitution.



Legal arguments have been made about the intent of the Enclave Clause and the Property Clause in the U.S. Constitution. The Enclave Clause allows the federal government to acquire property from a state or states for specific, essential government uses, most notably to create the nation's capital. Proponents of transfer argue that Congress has jurisdiction only over the District of Columbia and other places purchased by Congress with the consent of the state legislature for the specified purposes. However, the Supreme Court has rejected this interpretation; Congress holds the power to dispose of land.

The Property Clause grants Congress the power to dispose of and regulate federal property. Federal policy was never restricted to disposal. During the 19th century federal lands were withdrawn from disposal for national parks and, eventually, for the National Forests. A New

Mexico case, *Kleppe v New Mexico* (1976), resulted in a unanimous decision by the U.S. Supreme Court reaffirming the Property clause and stating that the federal government has the right to exercise authority over activity, including protecting wildlife, on its lands. In this case, a rancher had argued that wild horses and burros (protected by Congress in 1971) were encroaching on his grazing leases.

Additional ideological impetus came from the Sagebrush Rebellion, which began over a century ago when the federal government started reserving public lands. It took off in the 1970s when many miners, loggers, ranchers, and politicians in the West rose up in opposition to new environmental laws, from the Wilderness Act to the Endangered Species Act. They were especially angry about the Federal Land Policy Management Act of 1976, which formally ended the policy of transferring federal lands to private ownership and adopted a policy of retention of those lands by the federal government.

The Rebellion was personified by the Bundy family, who have illegally grazed their cattle on federal lands in Nevada for decades, refusing to pay the grazing fees on the grounds that it was “their” land. It has since spun into such displays as ATVs on sacred lands in Utah and the occupation of the Malheur Wildlife Refuge.



Cliven Bundy greets supporters

The culmination of all this unrest over federal lands in the West was the Utah Transfer of Public Lands Act, enacted by the Utah legislature in 2012. The Act demands that the federal government transfer 31.2 million acres – 60% of Utah’s land area - of federally owned lands to the state by the end of 2014. The U.S. Government has yet to make any response.

Implications of transfer – the analyses

Regulations

It is nearly universally acknowledged that the current federal regulatory landscape on federal lands is overly complex, duplicative or conflicting among federal agencies, and sometimes outmoded. Plans for various uses such as roads and endangered species have often created much resistance and at times have been scientifically flawed.

In late 2016, the BLM released a new regulation, the Planning 2.0 Rule, designed to revise the 1983 resource management and planning process. It modernized how the public and other stakeholders engage in order to improve management decisions. The rule had been widely expected to reduce public-private and federal-local conflicts over how land is used.

The rule reaffirmed the policy guidance in the Federal Land Policy and Management Act (FLPMA) of 1976; FLPMA requires management of public lands for multiple-use and sustained-yield. Planning 2.0 included a definition of the concept of sustained yield.

Congress repealed the rule 2017. The repeal was widely seen as a setback.



Economic analyses and arguments

Most of the economic analyses we read point out the differences in management structures on current federal and state lands, as well as the varying fee structures.

Most federal lands (BLM, U.S. Forest Service) are managed under a multiple-use, sustained-yield mandate; state lands are typically managed under a revenue-maximization mandate. One result is that non-revenue

producing resources are protected under the federal mandate but not under state mandates.

Federal fees, such as those for grazing, are low and have not been raised in decades. Fees on state lands, including in New Mexico, are usually higher in order to comply with the revenue mandate. Fees on extractive industries generally follow the same pattern. Most of the analyses point out that states would likely raise fees on all of those industries on transferred lands, possibly angering those currently pushing for transfer.

In terms of economic value of Forest Service lands, recreation and tourism now contribute far more than mining, grazing and logging combined. Water is also a major component of the economic value of USFS assets as the agency is tasked with headwaters management.

Usually unmentioned in the economic analyses is the cost of fire management. The federal government expends significant funds managing and extinguishing fires in the West. Economic analyses have not monetized the costs of coordination, management, personnel and equipment that would have to be provided by the states. This can amount to hundreds of millions of dollars of unpredictable expense in Western states where, in contrast to the federal budget, budgets must be balanced.

The federal government returns funds to states in the form of Payments in Lieu of Taxes (PILT) to compensate for all the federal land exempt from property taxes. Loss of these revenue streams would have to be put into the profit and loss equation for a meaningful analysis.

Most of the analysts who have considered subsurface mineral rights seem to think the federal government would not easily, or ever, turn over those sources of revenue to the states.

A detailed analysis for the Utah legislature concluded that the state could run the federal lands at a profit – but only if they assumed high prices for oil and gas, increased production and higher royalty rates far into the future. As recent history has demonstrated, this is a risky bet. One official we interviewed said he believes New Mexico can count on no more than 25 to 30 years of oil and gas income.

Not considered in any of the economic analyses are the possible environmental impacts of transfer. If states were granted all of the federal public lands within their borders, it could create a short-term boon to their economies and long-term destruction of the environment unless they also adopt the multiple-use/sustained-yield mandate that requires managers to consider the best use of specific public lands and to regulate any natural resource production in such a way that the lands will produce in perpetuity.

If applied to lands transferred from the federal government, the revenue maximization

requirement would likely mean that states would not wish to preserve lands for endangered species or for their beautiful landscapes. The relative values of protecting headwaters and watersheds also would have to be carefully assessed.

TFPL Consensus Questions with Pros and Cons

The LWVNM Board approved the following consensus questions at the July 21 board meeting. The Transfer of Federal Public Lands Committee will visit each local League during the next few months to discuss the study and to seek consensus on the questions. Please bring the questions with pros and cons to the meeting. Below is the schedule:

SFC Nov. 13, 10 a.m.

CNM Nov. 29, 1:30 p.m.

Los Alamos Dec. 6, 7 p.m.

GLC Jan. 14, 1:30 p.m.

Following each question, the arguments are presented with the no-transfer arguments first.

1. Federal lands are meant to benefit all Americans. Would turning them over to New Mexico abrogate that promise? Why or why not?

Yes, it does abrogate the promise because:

- *With the introduction of the multiple-use sustained-yield policy, the government has made the public lands cherished by the vast majority of Americans (poll).*
- *There is no evidence that the states could or would manage the lands for the same multiple uses and public access. Access could be restricted and/or user fees could be increased.*
- *States could relax current federal environmental standards resulting in environmental damage.*
- *Transferring lands to the states would likely result in ranchers having to pay higher grazing fees, etc.*

No, it does not abrogate the promise because:

- *Some people argue that the enclave and/or property clauses in the U.S. Constitution require transfer.*
- *Some states say they can manage them as or more effectively than can the federal government.*
- *Transfers might reduce resentments in the West against the federal government.*

2. Should New Mexico require that any transferred public lands retain the same use mandates and accountability to the public as applied before transfer? Why or why not?

Yes, because:

- *The multiple-use sustained-yield mandate and the requirements for accountability assure that the land will benefit all New Mexicans, not just the extractive industries.*
- *New Mexico could raise revenue through all the multiple uses, including outdoor activities.*

No, because:

- *Eliminating the mandate could encourage a pivot to extractive industries if they are*

believed to be more profitable.

3. Are challenges with federal management and regulation sufficient reason to support the transfer of federal public lands? Why or why not?

No, because:

- *The wider American public could be excluded from oversight and decision-making, leaving the power in the hands of a few local groups or individuals.*
- *Federal oversight and regulation can be improved without transferring the lands.*
- *States do not necessarily have the expertise or the funds to manage the varied types of federal lands.*

Yes, because:

- *Some state governments maintain they would be more responsive to area residents' desires and concerns.*
- *Some state governments say they can streamline regulations.*
- *Decision-making should always be at the lowest level that is appropriate.*

4. Does the LWVNM support the transfer of federally owned subsurface rights to the state in split-estate situations? A split estate is an estate where the surface rights and the subsurface rights belong to different parties. Why or why not?

No, do not support transfer of subsurface rights because:

- *The development of subsurface rights should benefit all Americans.*
- *The historical precedent is that the federal government retains subsurface rights upon transfers.*
- *States already get a share of the revenue from extractive activities on federal lands within their boundaries.*
- *There is no evidence that state ownership of subsurface rights would make them more attractive to the extractive industries.*

Yes, support transfer of subsurface rights because:

- *Revenue from development of subsurface rights could be used to fund education or other services in New Mexico.*
- *The State Land Office, with its local focus, could be in a better position to pursue this revenue source.*

5. Should New Mexico or the federal government require that federal public lands transferred to the state not be sold to private entities? Why or why not?

Yes, it should be a requirement because:

- *Once sold to private entities, the lands will be inaccessible to the general public and be lost as a source of ongoing revenue.*
- *Private entities may be unable or unwilling to bear the costs of maintaining the land.*
- *Private owners may allow destruction of ecological and/or cultural assets on the lands.*

No, it should not be a requirement because:

- *The state may be able to generate immediate revenue by selling some of the lands.*

6. What kinds of studies of immediate and future impacts should precede federal land transfer to New Mexico?

Environmental, including air quality, water quality, land quality, biodiversity, endangered and threatened species?

Financial/economic?

Cultural resources?

Public access?

Management for fire and other natural disasters?

Other?

7. Are there any other reasons to justify or oppose transfer?

8. Should the League of Women Voters of New Mexico support the transfer of federal public lands to the state of New Mexico? Why or why not?

No, do not support transfer because:

- *The cost of administering the public lands will be high and, if the state lacks the necessary funds, could result in great pressure to sell them.*
- *Such a transfer goes against many decades of legal precedent and historical practice.*
- *The New Mexico state budget must be balanced. Managing and recovering from unpredictable natural disasters, such as wildfires or floods, would severely strain state finances.*
- *New Mexico would be responsible for the deferred maintenance costs on any transferred lands, placing additional strain on state finances. This could lead to degradation of the lands.*

Yes, support transfer because:

- *New Mexicans are able to determine the best use for lands within their borders.*
- *New Mexico could generate additional revenue.*
- *There could be fewer regulations governing the use of the land.*

TFPL Study Committee



Save the Date!

**Legislative Advocacy
Workshop,
Saturday, December 8,
10 to 12, Room 322,
New Mexico Capitol,
Santa Fe.**