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**BACK TO THE FUTURE:
PRIVATIZING THE FEDERAL ESTATE**

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Challenging Federal Ownership and Management:
Public Lands and Public Benefits

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Back to the Future: Privatizing the Federal Estate

by Terry L. Anderson

I. Summary

By the end of the nineteenth century, however, the first privatization movement gave way to politics as land management decisions were taken over by federal agencies. Especially the U.S. Forest Service and the Bureau of Land Management inherited a massive federal estate under the guise of scientific management to encourage multiple uses in the public interest. Commonly known as public lands, the federal estate is more appropriately thought of as political lands, for it is raw politics that has dominated land management especially at the federal level.

Following the American Revolution, the Founding Fathers recognized that privatizing the federal estate provided a way of generating revenues and of encouraging efficient resource use. Hence the first wave of privatization lasted for nearly a century (see Anderson 1987). Over that time the mechanisms of privatization changed from wholesale to retail marketing and finally to homesteading. The process of privatization often involved extra-legal institutions that reduced the inefficiencies of top-down rules and regulations (see Anderson and Hill 1986 and Libecap 1983).

Increasingly it is clear that political land management does not generate efficiency, equity, or environmental quality and therefore that we should be considering going "back to the future" through privatization. Free market environmentalism (Anderson and Leal 1991) stresses the importance of getting the incentives right for good resource stewardship, and privatizing the federal estates offers the best hope for doing this. Sale, lease, transfers to states, and outright giveaways can eliminate multiple conflicts over multiple users (Anderson 1994) and bring fiscal stability to federal land management.

II. Introduction

- A. To understand the history of federal land policy it is useful to consider the perspectives of the decision makers from their perspectives.
- B. In other words, sometimes we can gain perspective by wearing different hats.

- III. The first privatization movement--perspectives from a colonist's hat
 - A. The founding fathers faced two problems:
 - 1. Distributing the public domain
 - 2. Balancing the federal budget
 - B. Solving these problems led to privatization of the federal estate first through wholesale marketing and later through retailing small parcels to individuals.
 - C. The first privatization movement culminated with land "giveaways" under a variety of acts generally known as the homestead acts.
 - D. These giveaways resulted in a costly race to obtain land, the costs of which were only mitigated by local informal and often extra-legal customs.
- IV. Public lands or political lands--perspectives from a cowboy hat
 - A. The federal estate was established in the late nineteenth century under the guise of scientific management.
 - 1. Arguments for reserving land centered around inefficient private use.
 - 2. But the evidence does not support this claim, especially in the context of resource constraints of the time.
 - B. Establishment of the federal estate substitute politics for private decision making.
 - C. And it is politics fuels "multiple conflicts of multiple uses."
- V. Getting the incentives right--perspectives from an economist's hat
 - A. Recently Souder and Fairfax (1995, 41) wrote that "For decades, economists have urged critics of public resource management to embrace market mechanisms as a route to reform both the incentives managers face and the subsidies resources receive."
 - B. Though I doubt we could find many references dated before the 1980s that really advocate market mechanism and especially privatization, there is abundant literature regarding the inefficiency regarding the tragedy of the commons and the tragedy of politics.
- VI. Free market environmentalism--perspectives from an environmentalist's hat
 - A. I (1982) first referred to this as the "new resource economics," but today it is perhaps better known as "free market environmentalism."

- B. Briefly, free market environmentalism has three major themes.
1. Politics subsidizes destruction of the environment more than it protects it, and in the process often redistributes income.
 2. Markets generate economic growth that is positively related to environmental quality.
 3. Private ownership provides the basis for this growth and for good resource stewardship.
- C. Two general principles emerge from these themes.
1. Devolve the authority for management to the lowest common denominator which means minimizing externalities and agency costs.
 2. Make those with authority to manage lands accountable for their actions through "profits" (see Leal 1995).
- D. What are the policy implications that follow from these principles?
1. At a minimum charge fees and allow managers to keep a share of those fees for reinvestment in the lands under their control.
 2. When assets are put up for lease, allow all potential users to bid.
 3. Utilize long-term leasing and make the leases transferable to other uses.
 4. Privatize federal lands starting with the easy ones such as those mainly for commodity production.
 5. If there is a public goods (free-rider) problem associated with certain aspects of land management, establish funds allocated through a process similar to the National Science Foundation (but definitely not through usual political mechanisms) available to private producers of the public goods.

VII. References

- Anderson, Terry L. 1987. "The First Privatizers." In *Essays on the Economy of the Old Northwest*, Richard K. Vedder and David C. Klingaman, eds. Athens: Ohio University Press.
- Anderson, Terry L. 1994. *Multiple Conflicts Over Multiple Uses*. Bozeman, MT: Political Economy Research Center.

- Anderson, Terry L. 1982. "The New Resource Economics: Old Ideas and New Applications." *American Journal of Agricultural Economics*.
- Anderson, Terry L. and P.J. Hill. 1983. "Privatizing the Commons: An Improvement?" *Southern Economic Journal* 50(2).
- Anderson, Terry L., and Donald R. Leal. 1991. *Free Market Environmentalism*. Boulder, CO: Westview Press.
- Leal, Donald R. 1995.
- Libecap, Gary D. 1983. *Lock Up the Range*. San Francisco: Pacific Research Institute.