

## Montana Legislature's Joint Resolution No. 15 on the Study of Public Land Management in Montana

Montana State Legislature  
Environmental Quality Council  
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I was asked by the Montana Legislature's Environmental Quality Council to participate in a study of public lands in Montana, as called for in Joint Resolution No. 15 of the 63<sup>rd</sup> Legislature. To begin the proceedings, I was asked to place the joint resolution in its relevant historical, constitutional, and statutory context and to briefly review issues pertaining to the relationship of federal and state governments in the management of federal lands and resources. I do so below and conclude with some recommendations about how I believe the Resolution could be advanced in the most constructive way possible.

### I. Context

I will start by recognizing that the Joint Resolution is part of a regional trend. Several western states have recently decided to re-engage in fights with the federal government over the management of federal lands and resources. The strategies for doing so run the gamut from state laws and resolutions calling for state ownership or control of federal lands and resources to commencing studies for the purpose of doing so.

What shall we make of this recent escalation of rhetoric coming from some western states? First, it is nothing new. The historian Bernard DeVoto, one of the most astute observers of western public land politics, wrote about similar efforts by western states more than fifty years ago. In 1947, for example, DeVoto critiqued the West's curious position of being so antagonistic to any regulations or conservation safeguards used by the federal government while simultaneously taking so much money and subsidies from it. It shakes down to a western platform said DeVoto: "get out and give us more money."<sup>1</sup>

DeVoto traced the multiple strategies used by what he called the "landgrabbers" who challenged the notion of federal land ownership and control. "There are many ways to skin a cat," and he detailed how the skinning knife would be used on the U.S. Forest Service (USFS) as an example: "The idea was to bring it into disrepute, undermine public confidence in it by every imaginable kind of

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<sup>1</sup> Bernard DeVoto, *The Western Paradox: A Conservation Reader* (Douglas Brinkley & Patricia Nelson Limerick, eds.) (2001), 61.

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accusation and propaganda, cut down its authority, and get out of its hands the power to regulate” such things as grazing on federal lands.<sup>2</sup>

Writing well before DeVoto on these matters was the first Chief of the USFS, Gifford Pinchot. Forever the progressive, Pinchot battled multiple interests, including leaders within the USFS, that he believed were jeopardizing the national interest by becoming too cozy and deferential to the states and the commodity interests that he believed controlled them.<sup>3</sup>

More recent history also shows the enduring nature of tensions between federal and state governments in managing federal lands and resources. There are several similarities between the recent actions of western states with the “Sagebrush Rebellion” which began in earnest in the late 1970s. Then, like now, some people questioned from where such antagonism to federal land management originated and whether it was a grassroots effort or mostly precipitated by corporate interests.<sup>4</sup> The question is asked because opinion polling generally shows widespread support for federal lands.<sup>5</sup>

From wherever it originated, the sagebrush rebels challenged the basic premise of federal land ownership. These lands, they insisted, should be transferred to state and/or private ownership so that they could be managed without the nuisance of federal land laws and regulations—legal protections that were beginning to be more keenly felt in the 1970s and 80s.

1976 was also a watershed year for federal lands management with laws and judicial decisions serving as a catalyst for the rebels. Among other events, Congress passed the Federal Land Policy and Management Act (FLPMA) in 1976, a law beginning with Congress declaring that “the public lands be retained in Federal ownership.”<sup>6</sup> The tide had turned in Congress, with FLPMA serving as an important demarcation in the history of federal land disposition and ownership.

Among other tactics, the sagebrush rebels questioned the constitutionality of federal land ownership. One of their central assertions was based on the equal footing doctrine of the Constitution (Article IV, §3) which requires states to be admitted to the union on an equal footing with others. One of the arguments, then, was that an equal footing amongst the states becomes impossible given the amount of federal land in the West. But the courts disposed of this claim and others, making clear that the equal footing doctrine “applies to political rights and sovereignty, not to economic or

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<sup>2</sup> *Id.*, 114-115.

<sup>3</sup> Said Pinchot, “It has been my experience that a Legislature can seldom be induced by considerations from outside to take action against the opposition of interests dominant in the State” [and] “[j]ust as the waterpower monopolists and grazing interests formerly clamored for State control, well-knowing they could themselves control the States, so now the lumbermen will be found almost without exception against Federal and for State control, and for the same reason.” Gifford Pinchot, “National or State Control of Forest Devastation,” *Journal of Forestry* (Feb. 1920), 107-108.

<sup>4</sup> See e.g., Michelle Merlin, “Utah Lawmaker Drives Modern Sagebrush Rebellion,” *Greenwire* (June 17, 2013); Jessica Goad and Tom Kenworthy, *State Efforts to “Reclaim” Our Public Lands* (Center for American Progress, Mar. 11, 2013) (reviewing the role played by the American Legislative Exchange Council and Americans for Prosperity in recent state efforts).

<sup>5</sup> *Id.* (reviewing recent polling data)

<sup>6</sup> 43 U.S.C. §1701(a)(1)

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physical characteristics of the states.”<sup>7</sup> Furthermore, many of the states that were challenging federal land ownership, and continue to do so, disclaimed of all rights and title to federal lands within their territories in their state enabling laws.<sup>8</sup> Section four of Montana’s Enabling Act, for example, “forever disclaim[s] all right and title to the unappropriated public lands lying within the boundaries thereof...”<sup>9</sup>

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So what is the proper constitutional context of federal lands management? The best place to begin is with the U.S. Constitution’s Property Clause (Art IV, Section 3) which gives Congress proprietary and sovereign powers over its property and the power to delegate decisions regarding federal lands to executive agencies. The Supreme Court has repeatedly observed that this power over federal land is “without limitations.”<sup>10</sup> The dispositive case is *Kleppe v. New Mexico*, another significant 1976 decision, where the Supreme Court explains in no uncertain terms the “complete power” that Congress has over federal lands; “And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause.”<sup>11</sup>

The Court’s expansive reading of the Property Clause also extends to managing wildlife on federal lands. As stated in *Kleppe*, the “the ‘complete power’ that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there.”<sup>12</sup> Of course, the states also manage wildlife on federal lands, but as made clear in *Kleppe*, “those powers exist only ‘in so far as [their] exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution.”<sup>13</sup>

The Property Clause can also impact how state and private lands that are adjacent to federal lands are managed.<sup>14</sup> In one often-cited decision involving the management of state lands and waters within the federally-designated Boundary Waters Canoe Area Wilderness, the Circuit Court followed precedent in recognizing that Congress may regulate conduct off federal land if such conduct interferes with the designated purpose of federal land: “Under this authority to protect public land, Congress’ power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands. Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure that these lands be protected against interference with their intended purposes.”<sup>15</sup>

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<sup>7</sup> See *United States v. Gardner*, 903 F. Supp. 1394, 1400 (D. Nev. 1995). See also *United States v. Nye County*, 920 F. Supp. 1108 (D. Nev. 1996).

<sup>8</sup> *Id.*

<sup>9</sup> 25 Stat. 676 (1889), §4.

<sup>10</sup> *United States v. San Francisco*, 310 U.S. 16, 29 (1940)

<sup>11</sup> *Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976).

<sup>12</sup> *Id.*, at 426 U.S. 529, 541

<sup>13</sup> *Id.*, at 426 U.S. 529: 545

<sup>14</sup> *Camfield v. United States*, 167 U.S. 518 (1897)

<sup>15</sup> *State of Minnesota By Alexander v. Block*, 660 F. 2d 1240, 1249 (1981)

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The Property Clause provides the federal government a relatively stronger basis of exclusive control than does the Commerce Clause which serves as the basis for many federal environmental and pollution laws, such as the Endangered Species Act (ESA) and Clean Water Act (CWA). But environmental laws based on congressional powers over interstate commerce are nonetheless significant for federal lands. Federal law can preempt inconsistent state law, so for example, state endangered species laws cannot be less restrictive than their federal counterpart.

Federal preemption is relatively clear when Congress speaks explicitly about its intentions in preempting the states. But most federal land law issues are of a more complicated sort because the field is generally characterized by “cooperative federalism,” meaning that there is often some level of cooperation and shared powers between the two sovereigns.<sup>16</sup> As a result, one of the first steps in so many natural resource disputes is the so-called “federalism inquiry”—the basic question of what sovereign’s law governs a particular situation.

The federal lands are also encumbered by various treaty rights that were reserved by tribes.<sup>17</sup> These treaties were signed pursuant to the Constitution’s treaty clause.<sup>18</sup> These are legally binding agreements between two or more sovereign governments. Most of these agreements precede the creation of the USFS and BLM and several of them reserve various use rights on federal lands, such as hunting and fishing rights. Such rights cannot be abrogated by the states, but only by an explicit act of Congress. If done so, compensation to the tribes is due under the Fifth Amendment of the U.S. Constitution.

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The statutory context of federal lands management and its relationship to the states is more challenging to review. But before getting into the details, it is important to step back and consider the case for federal law in this field. The bottom line is that federal lands in Montana and throughout the West are of national significance. Our laws tell federal land agencies to manage them for the broader public and national interest.<sup>19</sup> Several issues facing federal land agencies go beyond state boundaries, authorities, and capabilities. Consider, for example, that on the national forests, currently 430 species are listed under the ESA as threatened or endangered and their needs are not often isolated in a single state.<sup>20</sup> Or consider the multi-state run of salmon and bull trout, the downstream impacts related to mining and energy development, and the boundary-spanning watersheds of the West.

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<sup>16</sup> See the collective work of Professor Robert Fischman, including “Cooperative Federalism and Natural Resources Law,” *New York University Environmental Law Journal*, 14 (2005): 179-231.

<sup>17</sup> For a review with a focus on Montana see Martin Nie “The Use of Co-Management and Protected Land Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands,” *Natural Resources Journal*, 48 (2008): 1-63

<sup>18</sup> U.S. Constitution, art II, 2, clause 2.

<sup>19</sup> See FLPMA language at 43 U.S.C. §1701(a)(2) and MUSYA at 16 U.S.C. §531(a)

<sup>20</sup> U.S. Forest Service, Biological Assessment of the U.S. Department of Agriculture National Forest System Land Management Planning Rule for Federally Listed Endangered and Threatened Species, Species Proposed for Federal Listing, Species that are Candidates for Federal Listing on National Forest System Lands (Washington, D.C. 2011), 14.

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The transboundary and interstate nature of issues like these justify strong federal action in federal lands and resources law. But the states also have an important role to play, partly because some actions on federal lands may spill over to adjacent state, tribal and/or private lands. Take, for example, a run of fire from federal to state lands or from one private checkerboard section to a federal one. The collective efforts required to protect a municipality's water supply provides further illustration. This is one reason why federal land laws and NEPA include limited language pertaining to "coordination" and "cooperation" in federal planning processes with the states.<sup>21</sup> FLPMA, for example, requires the BLM "to the extent consistent with the laws governing the administration of public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of States and local governments within which the lands are located..."<sup>22</sup> The National Forest Management Act (NFMA) includes similar language providing for the development of forest plans "coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."<sup>23</sup>

The BLM and USFS have considerable discretion in giving meaning to these statutory provisions, as neither FLPMA or NFMA define "coordination." The provisions are limited insofar as they pertain to state engagement in forest and rangeland *planning* processes. In no way does such language mean that federal plans or decisions must be consistent with the plans and desires of state and local governments.<sup>24</sup> There is no veto authority by the states. Instead, the provisions simply provide opportunities for coordination in federal lands planning processes. Even if they so wished, federal agencies could not, without explicit congressional action, cede or delegate its decision making powers over federal lands management to state and local governments.<sup>25</sup>

Different types of "savings clauses" are also found in federal land laws. These provisions can help separate and distinguish federal, state and tribal authorities in implementing a law or program. What they often do, however, is simply preserve the status quo, "leaving complex federalism disputes open for courts to sort out when the issues arise."<sup>26</sup> The Wilderness Act, for example, includes a savings clause pertaining to state jurisdiction of fish and wildlife: "Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests."<sup>27</sup> This provision simply retains the status quo, meaning that federal

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<sup>21</sup> NEPA regulations include a section allowing federal agencies to confer "cooperating agency" status on State and local government. 40 C.F.R. §1501.6.

<sup>22</sup> 43 U.S.C. §1712(c)

<sup>23</sup> 16 U.S.C. §1604(a)

<sup>24</sup> See e.g., *Richardson v. Bureau of Land Management*, 459 F. Supp. 2d 1102 (D. New Mexico 2006) ("The portion of FLPMA that encourages cooperation between BLM and the states, and commands BLM to pay attention to state plans, also grants deference to BLM to decide whether the states' plans are consistent with the federal goals mandated by FLPMA. In other words, the agencies have the final say over the consistency issue...").

<sup>25</sup> See e.g., *National Parks and Conservation Association v. Stanton*, 54 F. Supp. 2d 7 (D.D.C. 1999).

<sup>26</sup> Robert L. Fischman and Angela M. King, "Savings Clauses and Trends in Natural Resources Federalism," *William & Mary Environmental Law & Policy Review*, 32 (2007): 129, 147.

<sup>27</sup> 16 U.S.C. §1134

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land agencies have the power and authority to regulate wildlife in wilderness areas—if they choose to do so.

Clear from the above discussion is that federal powers over federal lands are substantial. But states can still play an important role and federal lands can be subject to both state and federal regulations. This is especially so in the context of state environmental laws, regulations, and permitting processes that may impact activities such as mining on federal lands. In *California Coastal Commission v. Granite Rock* (1987), the Supreme Court ruled that states are permitted to participate in the regulation of some uses of federal lands. Here, the state was “not seeking to *determine* basic uses of federal land; rather it [was] seeking to *regulate* a given mining use so that it is carried out in a more environmentally sensitive and resource-protective fashion.”<sup>28</sup>

*Granite Rock* gives important leverage to the states and an ability to influence decisions made by the USFS and BLM. It provides Montana the opportunity to articulate the significance of Article II of Montana’s Constitution that provides all citizens of the state the right to a clean and healthful environment. Montana and other western states also have an opportunity to fully engage in the revising of forest and rangeland plans written by the USFS and BLM. Roughly half of the national forests in the system will soon begin revising their forest plans as required by NFMA, and the 2012 NFMA regulations, which embrace an “all lands” approach to planning, require coordination with other planning efforts, including those by state and local governments.<sup>29</sup>

Another complicating factor in federal-state relations is the amount of revenue shared by the federal government with the states. As detailed in the background paper provided by the MEQC, the federal government transfers billions of dollars to the western states from revenue generated by such activities as mineral leasing on federal lands. Federal payments are also provided by the Payment in Lieu of Taxes (PILT) Program, which is designed to lessen the burdens associated with the tax immunity of federal lands.

Implied within programs such as these is a recognition by the federal government that there is a national responsibility associated with the national interest in federal lands. As stated by the Public Land Law Review Commission in 1970, “If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.”<sup>30</sup> This recommendation is equally relevant today. Of particular concern to many western states at the moment are payments from the Secure Rural Schools (SRS) Program, a law designed as a temporary fix and bridge to rural communities that were hit hard by declining timber revenues that were historically shared with county governments. The tenuous nature of this revenue-sharing program, and the PILT program,

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<sup>28</sup> *California Coastal Commission v. Granite Rock*, 480 U.S. 572, 587 (1987)

<sup>29</sup> 36 C.F.R. §219.4.

<sup>30</sup> *One Third of the Nation’s Land: A Report to the President and to the Congress by the Public Land Law Review Commission* (Washington, D.C.: 1970), 236.

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in a time of budget austerity and sequestration, has been a major impetus in recent clashes between federal and state governments.

## II. Moving Forward

The most consistent things in federal lands and resources law and management are proposals to reform them. The proposals come from every direction: federal lands should be privatized, devolved to lower levels of government, managed for a set of dominant uses, or managed as some type of trust, and so forth.<sup>31</sup> One of the most enduring recommendations, made repeatedly over the years and heard again loudly today, is to let the states own and/or control federal lands. The poor fiscal position of some states, and the significant costs associated with federal land management, such as fire-fighting, has not deterred those advocating for state ownership. And this helps explain the suspicion that a transfer of federal lands to the states would eventually lead to them being sold or leased.

The general approach is to contrast federal lands to how trust lands managed by the states are administered. But the laws and regulations governing federal lands make them fundamentally different than state trust lands that are managed for a clearer set of purposes and beneficiaries, such as raising revenue for local school systems. Any comparison of federal and state forest management must not only include economic productivity and efficiency, which the states will win given their clearer mandates, but also factors related to environmental protection and opportunities for citizen participation.<sup>32</sup>

To hold up school trust lands as an exemplar of managerial effectiveness and efficiency and contrast their management to federal lands misses the point entirely. The federal government is fully capable of efficiently exploiting its resources when it chooses to do so. The history of western water reclamation is a case in point. The USFS and BLM would also have an easier time meeting their multiple *national* mandates if they were replaced with a dominant use paradigm or a clearer set of purposes or beneficiaries like those characterizing state trust lands. It would also be possible to harvest more timber, for example, if the National Forest System was privatized and administered by a timber corporation with shareholders rather than citizens. Efficiency could also be gained if the national forests, or pieces of the system, were governed by a group of like-minded local stakeholders that were exempted from federal environmental and procedural laws. But that is not what the public or Congress has asked from our federal lands.

Some laws also make clear that economic productivity shall not be a determining factor in federal land management. Both the Multiple Use Sustained Yield Act of 1960 and FLPMA provide language

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<sup>31</sup> See e.g., Natural Resources Law Center, *Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy* (2000) and Martin Nie, *The Governance of Western Public Lands: Mapping Its Present and Future* (2008) (reviewing several reform proposals including new public land law, planning reform, collaboration, comprehensive review, and trials in policy experimentation).

<sup>32</sup> See Tomas M. Koontz, *Federalism in the Forest: National versus State Natural Resources Policy* (2002) (showing that the federal government generally ranks better in efforts to protect the environment and promote citizen participation in forest land management).

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stating that managers consider the relative values of the various resources “and not necessarily the combination of uses that will give the greatest dollar return or the great unit output.”<sup>33</sup> Even more significant are laws such as NEPA and the ESA that require agencies to “look before they leap” and to use precaution in their decision making.

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It is my professional opinion that the recent spate of resolutions and studies coming from western states will end their journey in the same Cul-de sac as the sagebrush rebellion. And like the rebellion before it, the ultimate impact of today’s protests will be more symbolic than substantive in nature.<sup>34</sup> Symbolism has its political virtues, but governing and managing federal land is different than using the issue as a political wedge. Resurrecting arguments from the sagebrush rebellion makes for great political theater but such efforts will not take us very far in solving the most pressing issues in federal lands management.

Frustration with federal land management is also at the heart of these actions by western states. Some of the frustration is simply because some interests wish to exploit more resources on federal lands, such as oil and gas, without so much of the planning, analysis, and permitting required by federal law. Of course, money is also at the heart of matters, with several states and western political representatives concerned about declines and possible stoppages of federal land payments traditionally shared with the states. Sequestration and declining budgets have a way of escalating conflict amongst those fighting for smaller pieces of the pie.

But there are also less obvious reasons for all the frustration and some of it goes beyond ideology. My research focused on national forest management in recent years shows there to be a widespread sense of frustration with the status quo. There are multiple sources of frustration, from a deeply problematic and fire-dominated agency budget to all sorts of criticisms pertaining to the agency’s management of such things as fire and restoration. This frustration is one reason why we are seeing more congressional legislation being introduced that deals with an assortment of issues on particular national forests.<sup>35</sup>

On the other hand, some criticism of federal land agencies is more difficult to understand, especially that pertaining to federal heavy-handedness with the states. There are multiple cases, for example, where the Forest Service has gone above and beyond what is required by law for the purpose of meeting state concerns. Both Idaho and Colorado, for example, were recently able to write their own state-specific roadless rules that tried to merge federal and state interests. Both were very controversial because some interests believed that the USFS was ceding too much power and responsibility over national forests to the states. There are additional examples that could be used in

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<sup>33</sup> 16 U.S.C. §531(a); 43 U.S.C. §1702(c)

<sup>34</sup> See Robert L. Fischman & Jeremiah I. Williamson, “The Story of *Kleppe v. New Mexico*: The Sagebrush Rebellion as Un-Cooperative Federalism,” *University of Colorado Law Review*, 83(1)(2011): 123.

<sup>35</sup> See Martin Nie, “Place-Based National Forest Legislation and Agreements: Common Characteristics and Policy Recommendations,” *Environmental Law Reporter*, 41 (2011): 102,29-102,46.



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this regard as well, such as the agency's Forest Legacy Program and all sorts of other agency partnerships with state and private interests. The same goes for the BLM, an agency that has historically been criticized for being too cozy and deferential to state and local interests. Other examples are provided in the context of the Endangered Species Act, with the states now playing a larger role in some programs. My point here is that there doesn't seem to be a growing indifference to state and local interests by federal land agencies.

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It is my hope that Montana's approach will differ from what is being done in other western states that will probably conclude their studies with predetermined conclusions. If Montana is going to invest time and resources in such an endeavor it should advance the Resolution by asking a set of more refined questions that can help Montanans and their representatives truly understand the significance of federal lands in the state. Answers to these questions would fulfill the Resolution's requirement to:

- (3) [P]repare a report and recommendations to the Legislature, including:
  - (a) an assessment to analyze available information pertaining to the Forest Service and Bureau of Land Management lands within Montana and identify significant concerns or risks associated with these lands relative to:
    - (i) environmental quality;
    - (ii) economic productivity and sustainability;
    - (iii) public health, safety, and welfare;
    - (iv) consistency with state and local objectives;
    - (v) ownership and jurisdictional responsibilities; and
    - (vi) other aspects as considered appropriate by the assigned interim committee

If the Report does nothing than present one-sided answers to one-sided questions it will be of limited value and discounted quickly by those viewing it as politics and nothing else. If, however, the study is serious, inclusive, and done in rigorous fashion it could provide decision makers and the public useful information. A one-sided study, for example, would focus exclusively on perceived problems with USFS and BLM management of federal lands, such as issues pertaining to wildfires, hazardous fuels, and beetle kill (as referenced in the Resolution). These are important issues but so too are such things as the full economic impact of federal lands in the state, from hunting and fishing and tourism-generated dollars to the full suite of ecosystem services that are provided by federal lands. What role do federal lands play in providing clean water, fish and wildlife habitat, and other environmental values? What role do they play in Montana's rich heritage of hunting and fishing? These are the sorts of questions that would provide a full and well-rounded view of the role

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played by federal lands in Montana. Once that is done, the study could then proceed by asking questions that pertain to how federal and state governments could work more constructively with one another in advancing collective goals and objectives.

If done in this fashion, I believe Montana's study of federal lands could be of some value. I say this because I have long believed that a more systemic study of federal lands managed by the USFS and BLM is necessary. I have made the case for doing so in other venues and outlets.<sup>36</sup> With appropriate sideboards and a clearly-defined charter, a large-scale study of the USFS and/or BLM has the potential of providing more enduring solutions to a range of issues that go beyond Montana.

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The conservation issues of the future will require actions transcending political jurisdictions. Resurrecting arguments from decades ago over land ownership and control will not help us solve issues pertaining to fire, water, fish and wildlife, restoration, and so many others that require the constructive engagement of federal *and* state governments.

Thankfully, there are efforts going on throughout the western states that are dealing with complex issues facing federal lands. Montana provides multiple examples of federal-state cooperation and problem-solving. I see evidence on my drive from Missoula to Helena. The Blackfoot Challenge, which includes federal-state-and private partners, is exemplary in its achievements conserving the Blackfoot watershed and its communities. I also drove by forest lands that were once scheduled to be developed into real estate by Plum Creek but eventually transferred into public ownership using federal and state resources and intergovernmental cooperation. These examples and others demonstrate that there is an alternative to conflict and acrimony between federal and state governments in the management of federal lands and resources.

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<sup>36</sup> See e.g., Jim Burchfield and Martin Nie, *National Forests Policy Assessment: Report to Senator Jon Tester* (2008) and Martin Nie, *The Governance of Western Public Lands: Mapping Its Present and Future* (2008). Several public land law commissions have been convened by Congress in the past, but it has been more than forty years since the last one—the longest period ever separating their use. Such a study could place the management of federal lands in their full ecological and economic context, showing the role they play in an increasingly fragmented and populated West. More than thirty-five years have passed since NFMA and FLPMA were enacted in 1976. More than 140 years have passed since passage of the Hardrock Mining Act of 1872. The world is a different place, so perhaps the crux of the matter is that these laws are simply not designed to deal with today's problems. I have made this recommendation with some trepidation in the past because I recognize how easily such a study can be politically hi-jacked. But I continue to believe that a carefully designed study could help us better understand the intersection of various laws and regulations and how the goals and purposes of our federal land and environmental laws could be more effectively implemented in the future.