

"Preserving America's Wild-lands when Governments are Broke & Broken:
A proposal for institutional and ecological entrepreneurship"
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There are two basic and complementary arenas of environmental policy. They are pollution control and preservation of wild lands. Think of them as sludge and romance. I prefer romance; it is my love for our environment that motivates these ideas.

I begin with a cheerful observation, one that holds true across time and cultures: as a nation grows wealthy and well educated, environmental sensitivities increase. Hence, citizens demand and expect a safer, more pleasing environment. The question is, what institutions can best achieve and maintain a safe and pleasing environment while respecting responsible liberty and modest prosperity. I suggest we examine fiduciary trusts, a type of arrangement tuned by centuries of experience.¹

Our nation has created a large array of publicly and privately funded environmental protection and management.² They range from Yellowstone, the world's first national park, to small conservation easements held by land trusts. Clearly however, government management and protection is coming under increased pressure. This is due both to special interest groups and a decrease of governmental financial resources. I believe this trend is certain to continue; it threatens the environmental safeguards government management was intended to ensure.

¹ For a systematic discussion of trusts for preservation and management of parks and wild lands, see:

Fairfax, Sally K. and Guenzler, Darla. *Conservation Trusts*. Kansas: University Press of Kansas, 2001.

O'Toole, Randal. (2009, Jan 15). "A Matter of Trust: Why Congress Should Turn Federal Lands into Fiduciary Trusts." *Cato Policy Analysis*, No. 630.

² The latter exemplify DeTocqueville's civil society where mutual interests are achieved and function independent of the state.

The federal shutdown of October 1 is a short preview of coming distractions. Such disruptions will increase as governments confront financial liabilities, now at least \$60 trillion and probably much more.³

The decrease of governmental financial resources devoted to environmental issues is driven by the commitments to Social Security, Medicare, Medicaid and other entitlements. The costs of placating citizens will almost certainly trump discretionary spending for federal lands; most citizens never see them.⁴ Transfer payments will certainly trump spending for land management agencies. Their function is far less immediate and well understood than grandma's medical care. In addition, there will be great agitation to maximize revenue from land that is now in government ownership.

A revival of the 1970's Sage Brush Rebellion has begun in the western states. In its original incarnation, the Sagebrush Rebels wanted the management of federally owned lands transferred to states or sold to highest bidders. The goal was to foster Western economic growth. The suggested land-use options often took the form of increasing public lands revenues by additional grazing, timber and real estate sales, and mining. The drivers of this movement are economic, and they won't be confined to the West.⁵

³ "Size of the U.S. Fiscal Gap. The U.S. fiscal gap, based on the Congressional Budget Office's long-term Alternative Fiscal Scenario, is nowhere close to the \$14 trillion official debt. Indeed, the U.S. fiscal gap is \$211 trillion — 15 times larger than the official debt." - Prof. Kotlikoff, PhD in economics from Harvard, 1977

⁴ See YouTube video of "Rep. Dan Rostenkowski Running from Seniors" at www.youtube.com/watch?v=TboXsOuMQGU

⁵ National Forests and National Parks are now becoming vulnerable ... as a consequence of the "shut-down scenario" that left a scar in our memories. At the private sector and at state government level, we are also witnessing "tragedy of the commons." The sale of Hoffman Forest, an ecologically important landmass of nearly 80,000, located at the headwaters of three important water bodies of the state of North Carolina ... brings up the question, will the buyers change their mind in the future, to develop a new town from the wilderness?

... There is justification for the sale, primarily to fetch the needed money (\$150,000 million) at a time state money for higher education is dwindling in North Carolina now. - Robert Y. George PhD, Professor of Biology at UNCW (Rtd); President, George Institute for Biodiversity and Sustainability, Wake Forest, NC

Here are a few examples. From *The Wall Street Journal* in December 2012 with the headline: “Sell Yosemite, Hold a Smithsonian Yard Sale.”

It seems unlikely that Washington could repay its debts by raising more tax revenue. ... So what federal assets could be sold to meet debt payments? Consider the one-third of America held in federal lands. ... Throw in the 193 million acres held by the U.S. Forest Service. Timber lands alone could average \$2,000 per acre. Factor in the Forest Service's oil, gas, minerals and recreational lands, and the average acre could reasonably go for \$3,000, or \$570 billion total. ... Then there are the crown jewels: national parks. Disney might pay many billions for the 2.2 million acres of Yellowstone. Throw in Yosemite, the Grand Canyon and the Everglades, and we might be talking another trillion.⁶

Douglas McIntyre (with dailyfinance.com) commented on what Yellowstone National Park is worth: “...the 2.2 million acre park ... could fetch approximately \$5 billion from a major logging concern.”⁷

Salon.com reported:

The Sierra Club told Salon that the national parks need \$11.5 billion worth of maintenance. Half of this is reportedly needed for roads and bridges, whose disrepair poses serious public safety threats. The amount allocated in the 2012 budget? \$2.2 billion.

For Congress, though, it's not enough just to defund our parks so they slowly fall into total, unusable ruin. In this country, it's also important

⁶ Anderson, Terry and Johnsen, D. Bruce. (2012, Dec 28). “Sell Yosemite, Hold a Smithsonian Yard Sale.” *The Wall Street Journal*, p A13.

⁷ McIntyre, Douglas. (2011, Mar 23). “How to Pay Down the Federal Deficit: Sell America's Icons, Assets and Gold?” *Daily Finance.com*. Retrieved from: <http://www.dailyfinance.com/2011/03/23/how-to-pay-down-the-federal-deficit-sell-americas-icons-asset/>

that we “Drill, baby, drill,” not to mention, “Log, baby, log” and “Mine, baby, mine.”⁸

The good news is that some policy entrepreneurs are anticipating the problems of this process. Driven by economic pressures, increased environmental sensitivities, and growing disenchantment with government management, innovative conservationists will experiment with new arrangements to preserve the environmental protection and sound management of our parks and wild lands.

I suggest environmentalists welcome the exploration of alternative institutional arrangements to protect and manage national parks and wild lands. This implies institutional entrepreneurship. We have a solid base of experience on which to build. I have mentioned my interest in establishing fiduciary trusts for this function.

Fiduciary trusts have several advantages over management by politically dependent agencies. Three major ones are: greater sustainability, more transparency, and higher burden of proof.⁹

Perpetual trusts are ideologically equal to but legally stronger than sustained yield laws. They are obligated to preserve the corpus of the trust.

Trusts are ideologically equal to but legally stronger than freedom of information laws. They are legally obligated to open their books to the beneficiaries.

When challenging governmental agencies, the burden is on those arguing that they aren't doing a good job. In contrast, trustees bear the burden of proof that they are doing a good job.¹⁰

⁸ Shanker, Deena. (2013, Oct 8). “GOP’s hypocritical obsession: National parks?!” Salon.com. Retrieved from:
http://www.salon.com/2013/10/08/gops_hypocritical_obsession_national_parks/

⁹ My thanks to Randal O'Toole, himself a national environmental and intellectual treasure, for sharing his insights and analysis of fiduciary trusts.

¹⁰ Chevron v NRDC. Refer to:
http://en.wikipedia.org/wiki/Chevron_U.S.A.,_Inc._v._Natural_Resources_Defense_Council,_Inc.

For decades I've argued that fiduciary trusts¹¹ may be attractive arrangements for managing parks and wild lands.¹² The federal shutdown of October 1 illustrates and amplifies the advantages of this system. The recent closing of national parks and monuments was political theater, but that theater foreshadows genuine threats that we can expect later. Consider an observation in *The Economist*.

...[America's] long-term fiscal problem is immense: it taxes like a small-government country but spends like a big-government one. Eventually demography-and the huge tribe of retiring baby-boomers who expect pensions and health care-will bankrupt the country....¹³

When this occurs, the protection of our national parks and wild lands is at high risk. National parks are one of America's best innovations and federal management of them was probably optimal for their first century. Before America hits impending financial reality checks, let's explore alternative institutional arrangements.

¹¹ Not everything called a trust is a fiduciary trust (the social security and highway trust funds are not trusts). Not all fiduciary trusts are called trusts. To be a true fiduciary trust, there must be:

1. A settlor who creates the trust
2. A trustee who manages the trust on behalf of a beneficiary
3. A property that is the corpus of the trust
4. A beneficiary
5. A trust instrument that defines how the trust is to be managed

See <http://ti.org/statetrusts.html> for an excellent discussion of both the requirements for and advantages of trusts.

¹² Baden, John. (1988, Nov 23). "Take Politics out of the National Parks." *The Wall Street Journal*.

¹³ The Economist. (2013, Oct 19). "The Fiscal Deal in Washington: Worse than Europe, really." Retrieved from:
<http://www.economist.com/news/leaders/21588091-none-deeper-problems-american-government-was-solved-week-worse-europe>

Consider Yellowstone Park, a good candidate for a series of thought experiments. In the introduction to *The Yellowstone Primer*, I stated that Yellowstone "...stands as one of the finest monuments to the good intentions that led to the Progressive era reforms."^{14, 15} (The Withdrawal Act of 1891 created the seven surrounding national forests. These and 150 other national forests testify to the Progressives' overly optimistic faith in "scientific management" by federal officials.)

The Park, designated in 1872, is Bozeman's back yard. The world has learned a great deal from it and often uses it as a model. I suggest we consider Yellowstone in another experiment to conserve nature and provide public access to wild lands.

By today's standards America in 1900 was a poor Third World nation. Poor nations prefer the exploitation of natural resources to appreciation of nature and ecology. What are the implications to parks and wild lands if, as *The Economist* suggests, America again becomes poor? Under current arrangements they are decidedly unfavorable.

Reformers of the Progressive Era created federal institutions to protect parks, forests, and wild areas from the excesses of the pre WWI era. The U.S. Forest Service in Agriculture (1905) and the Park Service in Interior (1916) are the most well known. Together they manage about 640 million acres, or 1/3 of America's land.

There is an inherent problem in this approach; federal management strongly implies political management. For example, on Oct 1st Park Service police even closed the WWII memorial to veterans of that war and newspapers reported their harassment of the harassed elderly and international visitors to Yellowstone.¹⁶

¹⁴ Baden, John A. and Leal, Donald. *The Yellowstone Primer: Land and Resource Management in the Greater Yellowstone Ecosystem*. San Francisco, CA: Pacific Research Institute for Public Policy, 1990.

¹⁵ Olson, Mancur. (1990, May 13). "Does Nature Need a Landlord? Book Review of *The Yellowstone Primer*". *The New York Times*. 12.

¹⁶ Macone, John. (2013, Oct 8). "'Gestapo' tactics meet senior citizens at Yellowstone." *Eagletribune.com*. Retrieved from:

This pettiness has a benefit for those who care about America's national parks, forests, and wild-lands. We are warned how an impending budget crisis might adversely affect all American national parks, forests, and wilderness areas. Political economists have considered such political pathology for 40 years and suggested alternative arrangements for dealing with them.

People who understand little political economy can and have been seduced by the attractive mirage of state-directed (classical liberals and libertarians label this 'statist') "solutions". This implies centralized command-and-control, bureaucratic management of natural and environmental resources. People favoring this (Progressive Era) organizational model discount the positive contributions of a private, nonprofit approach, a type of social entrepreneurship.

Institutions generate the information and incentives that strongly influence management decisions. I come from economic anthropology and understand why culture matters a great deal; beliefs and values are strong incentives. Culture also imposes constraints; in this country we neither eat dogs nor sell parks.

Ecological integrity is indeed important, but it is not the only important value. Responsible liberty and modest prosperity are also requisites of a good society. The challenge is to discover and advance institutional arrangements fostering these values. The New Resource Economics (NRE) is the term applied to a branch of economics that originated at Montana State University in the early 1970s. It begins with the logic of microeconomics leavened with insights from public choice, Austrian, and law and economics. The major contribution of the NRE is the guidance it provides those seeking constructive institutional reforms and creative responses to challenging opportunities.

My thinking about this began with a debate with Milton Friedman. He proposed selling the National Forests and I objected. The debate produced a *Journal of Law and Economics* article written by colleague Richard Stroup and

<http://www.eagletribune.com/local/x1442580353/Gestapo-tactics-meet-senior-citizens-at-Yellowstone>

myself in October 1973 titled "Externalities, Property Rights, and the Management of Our National Forests". Ronald Coase accepted it without revision. We argued that both governmental and profit seeking management produce predictable problems with commercial forests.¹⁷

The October 1 shutdown is a harbinger of far more severe problems. Federal budgets will hit serious constraints within a generation, probably sooner. When this occurs Congress will slight national parks and wilderness areas as luxuries. It will emphasize revenue from lands, and under-budget management, at times to their great detriment.

There is a rekindling of interest in increasing commodity production on federal lands, transferring these lands to the states, even selling national parks. Those who remember the term "Sagebrush Rebellion," see it reigniting.

Fiduciary trusts are not novel experiments. They have evolved over hundreds of years of British and American common law. They are designed to ensure that trustees preserve and protect the value of the resources they manage, keep them productive, and disclose the full costs and benefits of their management. For trust law to apply to our national parks and wildlands, public land trusts would be established by a Congressional law. That law would clearly define the trustees, the beneficiaries, and a specific mission or missions for the trusts.¹⁸

One beneficial consequence of the recent shutdown is renewed attention to fiduciary trusts for managing and protecting parks and wild lands. If well meaning but naive Greens and modern "progressives" relinquish their affection for central controls over natural areas, the values of wild lands may be conserved, even when governments are broke and broken.

¹⁷ We soon argued in a series of chapters and articles that fiduciary trusts offer especially promising alternatives for managing wilderness and park lands.

¹⁸ A trust consists of a trustor or donor who creates the trust; the trustee, or the person or people managing the trust; the beneficiary, the person or people for whom the trust is managed; and the trust instrument, which dictates how the trustor wants the trustee to manage the trust. Fortunately, we have centuries of experience with these imperfect instruments.

There are surely hundreds, perhaps thousands of existing and emerging trusts created for the management of wild lands and wild life. A relatively new example is the American Prairie Reserve, an ambitious Bozeman based non-profit. Its goal is to create a protected reserve of well-managed wild lands in northeastern Montana, an area in economic and demographic decline since 1917.

IMAGINE

a grassland reserve of THREE-MILLION acres – a wildlife spectacle that rivals the Serengeti and an AWE-INSPIRING place for you and your children to explore.

Imagine helping to
build a national treasure

<http://www.americanprairie.org/>

This is an example of environmental entrepreneurship. It is becoming an "American Serengeti" nearly one million acres larger than Yellowstone. Complex on every dimension, it is an experiment worth monitoring--and probably replicating as threats to federal and state owned lands increase.