

To: Mark Lawyer[mark_lawyer@ios.doi.gov]
From: Romanik, Peg
Sent: 2017-12-08T16:07:28-05:00
Importance: Normal
Subject: Fwd: Petition for rule making
Received: 2017-12-08T16:08:18-05:00
[Wilderness Society Petition for Rulemaking.pdf](#)

Hi Mark, do you know what we (NPS) does with a petition for rulemaking received from the public? Any advice would be appreciated. Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
Office: (202)208-5578
Cell: (202)515-1000

----- Forwarded message -----

From: Foster, Maureen <maureen_foster@ios.doi.gov>
Date: Tue, Dec 5, 2017 at 9:16 AM
Subject: Petition for rule making
To: Peg Romanik <peg.romanik@sol.doi.gov>

Peg:

We have received a rule for petition making. To whom should we refer it?

Thanks.

Maureen D. Foster
Chief of Staff
Office of the Assistant Secretary
for Fish and Wildlife and Parks
1849 C Street, NW, Room 3161
Washington, DC 20240

202.208.5970 (desk)
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Maureen_Foster@ios.doi.gov



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EXECUTIVE SECRETARIAT

November 16, 2017

The Honorable Ryan Zinke, Secretary
United States Department of the Interior
1849 C Street, NW
Washington, D.C., 20240

Dear Secretary Zinke:

Attached is a petition for rulemaking from 25 organizations requesting that the Department of the Interior issue a rule preventing the widespread sale or disposal of America's public lands. This petition is submitted under the Constitution of the United States, the Administrative Procedures Act, and the Department of the Interior's petitioning regulations.

As you have stated, "Selling off our public lands is a non-starter." We could not agree more, which is why it is time that you issue a rule making this statement the law of the land for the lands under your jurisdiction.

Please address any correspondence regarding this petition to:

Paul Spitler
Director of Wilderness Policy
The Wilderness Society
503 W. Mendenhall St.
Bozeman, MT 59715
(202) 360-1912
Paul_spitler@tws.org

We look forward to your response.

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**PETITION TO THE DEPARTMENT OF THE INTERIOR TO INITIATE RULE-MAKING TO
PROHIBIT WIDESPREAD SALE OR TRANSFER OF PUBLIC LANDS**

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Bears Ears National Monument Photo Credit: Mason Cummings

Submitted by

**ARGALI * BACKCOUNTRY HORSEMEN ASSOCIATION OF AMERICA
BADFISH SUP * BUSINESSES FOR MONTANA'S OUTDOORS
FIRST LITE CLOTHING * FISHPOND * HALA SUP
IDAHO CONSERVATION LEAGUE * IDAHO DEER ALLIANCE
IDAHO STATE BOWHUNTERS * IDAHO WILD SHEEP FOUNDATION
IDAHO WILDLIFE FEDERATION * KEEP IT PUBLIC * REDINGTON FISHING
REP YOUR WATER * RIO FISHING PRODUCTS * SAGE FLYFISHING
SEEK OUTSIDE * SHARE TRAILS * THE ACCESS FUND
THE AMERICAN ALPINE CLUB * THE WILDERNESS SOCIETY
MONTANA WILDERNESS ASSOCIATION * MONTANA WILDLIFE FEDERATION
WESTERN LEADERS NETWORK**

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I. INTRODUCTION: AMERICA'S PUBLIC LANDS ARE UNDER ASSAULT.

On or before December 31, 2014, the United States shall extinguish title to public lands and transfer title to public lands to the state.

– Utah State Code § 63L-6-103

“Selling off our public lands is a non-starter.”

– Interior Secretary Ryan Zinke.

This is a petition for rulemaking filed under the Administrative Procedure Act, the Department on the Interior's petitioning regulations, and the First Amendment of the United States Constitution. Petitioners request the Department of the Interior (DOI) to develop regulations that would prohibit the sale or transfer of public lands administered by DOI except where such sale or transfer is authorized by an Act of Congress. We also request that DOI develop and issue immediate guidance emphasizing the importance of retaining public lands for the benefit of the American people and the prohibition on widespread sale or disposal of America's public lands, beyond the narrow authority granted by Congress. As described in this petition, DOI has the authority and the obligation to issue the requested rule in order to ensure that public lands remain forever in public hands, as well as to issue companion guidance with due speed.

America's public lands are at a crossroads. While debates over public land management have spanned generations, today some are questioning the very premise of public lands and are pushing to eliminate America's public lands—including our parks, wildlife refuges, wilderness, and national monuments—by selling them off or simply giving them away.

As described below, several western states, are considering or have adopted resolutions calling on the Federal government to give away hundreds of millions of acres of the American public's land. Several states have set deadlines for public lands to be handed over and are threatening legal action if they do not get their way.

The results of such a massive giveaway would, of course, be disastrous. As history has shown, when the Federal government grants land to states, the states often simply turn around and sell it to the highest bidder. With the states inability to handle the hundreds of millions of dollars it would cost to manage public lands today, such a sell off would undoubtedly ensue again. The American public would forever lose access to public lands and the incredible wildlife, clean air and water, economic, and other benefits they provide.

Fortunately, Congress has provided only limited authority to DOI to sell or transfer our public lands and has declared the retention of public lands to be the national policy. Further, since these limitations were put into place, at a time when there was a need to clarify the change to retaining public lands, the value of our public lands to all Americans has only increased. For recreation, for economic benefits, for clean air and water, for fish and wildlife, and for the history of the occupants who preceded us, more people than ever are aware of and have come

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to treasure public lands since the decades following these initial laws. Despite this evolution, DOI has done nothing to acknowledge the increased importance of public lands or take more explicit action to prevent or prohibit public lands sell off or transfer beyond the limitations set in the fundamental authorities.

With threats to our public lands looming, now is the time for DOI to enact a rule prohibiting the widespread sale or disposal of America's public land beyond the authority granted by Congress. Only by doing so can DOI ensure the American people that our public lands will remain available for the benefit and enjoyment of present and future generations.

II. THE DEPARTMENT OF THE INTERIOR HAS AN OBLIGATION TO INITIATE RULE-MAKING TO ENSURE THAT PUBLIC LANDS REMAIN IN PUBLIC OWNERSHIP FOR THE AMERICAN PEOPLE

The Federal Land Policy and Management Act establishes that the policy of the United States is that "in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public..."¹

The Act further declares the policy of the United States is that "uniform procedures for any disposal of public land...be established by statute" and that "each disposal...be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage."²

As described below, in order to fulfill this and other policies of the United States, DOI must issue a rule prohibiting the large-scale transfer or sale of national parks, wildlife refuges, and other public lands beyond the limited authority granted by Congress.

III. PETITIONERS REQUEST THAT THE DEPARTMENT OF THE INTERIOR ISSUE A RULE PROHIBITING THE LARGE-SCALE DISPOSAL OR TRANSFER OF NATIONAL PARKS, NATIONAL WILDLIFE REFUGES, AND LANDS UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT BEYOND THE LIMITED AUTHORITY GRANTED BY CONGRESS.

For the reasons detailed below, petitioners request that DOI immediately initiate rule-making, or multiple rule-makings to prohibit the large-scale disposal or transfer of national parks, national wildlife refuges, and lands under the jurisdiction of the Bureau of Land Management (BLM) beyond the limited authority granted by Congress. This request is made pursuant to the Administrative Procedure Act,³ DOI regulations on petitions,⁴ and the First Amendment to the Constitution,⁵ all of which give citizens the right to petition for rulemaking.

¹ 43 U.S.C. § 1701(a)(5).

² 43 U.S.C. § 1701(a)(10).

³ 5 U.S.C. § 553.

⁴ 43 C.F.R. §§ 14.1-4.

⁵

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Petitioners request that the rule-making cover lands under the jurisdiction of the National Park Service, United States Fish and Wildlife Service and BLM. If the Secretary determines it necessary to issue separate rules for each agency, petitioners request that DOI issue the rules simultaneously, at the earliest possible time.

The components of the proposed rule are severable. If the Secretary determines that any portion of the proposed rule is not feasible, petitioners request that DOI proceed with the remainder of the proposed rule. Petitioners further request a detailed explanation from the Secretary regarding the rejection of any component of the proposed rule, as required by law.⁶

IV. PROPOSED RULE.

As described above, petitioners request that the Secretary immediately initiate rule-making to prohibit the sale or disposal of America's parks, refuges, and other public lands except where such disposal or transfer is explicitly authorized by an Act of Congress. The text of the proposed rule is presented below. Petitioners request that, if the Secretary determines that any section of the rule is infeasible, the Secretary proceeds with rulemaking on the remainder of the rule.

Add 43 C.F.R. § 51, to read as follows:

§ 51.1. Purpose

§ 51.2. Authority.

§ 51.3. Scope.

§ 51.4. Policy.

§ 51.5. Retention of Land Under the Jurisdiction of the Bureau of Land Management.

§ 51.6. Retention of the National Park System.

§ 51.7. Retention of the National Wildlife Refuge System.

§ 51.1. Purpose.

The purpose of this part is to implement the policy of the United States that public lands be retained in Federal ownership.

§ 51.2. Authority.

- (a) Section 102(a)(1) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(1).) declares the policy of the United States that public lands be retained in public ownership, with limited exceptions.
- (b) Section 102(a)(8) of the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) declares the policy of the United States that public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.
- (c) The Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), commonly known as the Recreation and Public Purposes Act, places strict limitations on the Secretary of the

⁶ 5 U.S.C. § 555(e); 14 C.F.R. § 14.3.

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Interior's ability to lease or convey public lands for recreational and public purposes under specified conditions.

- (d) The Act of August 25, 1916 (54 U.S.C. 100101), commonly known as the National Park Service Organic Act, establishes the fundamental purpose of national parks as to conserve the scenery and natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.
- (e) Congress affirmed these fundamental purposes in 1970 (54 U.S.C. 100101(b)(1)(B)) declaring that national parks are united through interrelated purposes and resources, and derive increased national dignity by their inclusion in the National Park System.
- (f) Congress has declared (54 U.S.C. 100101(b)(1)(C)) that the National Park System is to be preserved and managed for the benefit and inspiration of all the people of the United States.
- (g) Congress has directed (54 U.S.C. 100101(b)(2)) that the National Park System be managed to fulfill its fundamental purpose for the benefit of all people of the United States and that administration of System units be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established.
- (h) Section 4 of National Wildlife Refuge Administration Act, as amended, (16 U.S.C. 668dd(a)(6)) requires that, with very narrow exceptions, lands within the National Wildlife Refuge System shall continue to be a part of that System until otherwise directed by an Act of Congress.
- (i) The Wilderness Act declares the policy of Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness and requires that these areas be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness (16 U.S.C. 1131(a)).
- (j) The Wild and Scenic Rivers Act declares the policy of the United States that certain rivers which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations (12 U.S.C. 1271).
- (k) Congress established the National Landscape Conservation System to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations (16 U.S.C. 7202(a)) and requires the the Secretary of the Interior to manage lands in the System to protect the values" for which the area was designated (16 U.S.C. 7202).

§ 51.3. Scope.

This part applies to:

- (a) Public lands, as that term is defined at 43 U.S.C. 1702(e);
- (b) The National Park System; and
- (c) The National Wildlife Refuge System.

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§ 51.4. Policy.

- (a) It is the policy of the United States to retain public lands administered by the Bureau of Land Management, lands within the National Park System, and lands within the National Wildlife Refuge System to the maximum extent permissible by law.
- (b) Retention of public lands administered by the Bureau of Land Management, lands within the National Park System, and lands within the National Wildlife Refuge System is in the public interest.
- (c) In implementing Acts of Congress, the Secretary of the Interior, Director of the Bureau of Land Management, Director of the National Park System, and Director of the United States Fish and Wildlife Service shall utilize their discretion to ensure that lands under their respective jurisdiction remain in Federal ownership to the maximum extent permissible by law.

§ 51.5. Retention of Land Under the Jurisdiction of the Bureau of Land Management.

- (a) Except as provided by an Act of Congress, the Secretary of the Interior shall not approve or permit the sale of public lands under the jurisdiction of the Bureau of Land Management to any non-Federal entity.
- (b) Except as provided by an Act of Congress, the Secretary of the Interior shall not approve or permit the transfer of public lands under the jurisdiction of the Bureau of Land Management to any non-Federal entity.

§ 51.6. Retention of the National Park System.

Except as provided by an Act of Congress, the Secretary of the Interior shall not approve or permit the sale or transfer of any land within the National Park System to any non-Federal entity.

§ 51.7. Retention of the National Wildlife Refuge System.

Except as provided by an Act of Congress, the Secretary shall not approve or permit the sale or transfer of any land within the National Wildlife Refuge System to any non-Federal entity.

In addition, petitioners request that the Secretary issue interim policy guidance providing immediate direction to the agencies that reiterates the importance of retaining public lands and the policy as set forth in Section 51.4 of the proposed rule. The guidance should also commit to the requested rulemaking.

V. PETITIONERS REQUEST THAT THE DEPARTMENT OF THE INTERIOR RESPOND TO THIS PETITION WITHIN SIX MONTHS, AS REQUIRED BY LAW.

This petition is presented under the Administrative Procedures Act, which provides that each agency “shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule”⁷ and the United States Constitution, which protects the right to “petition the

⁷ 5 U.S.C. § 553(e).

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Government for the redress of grievances.”⁸ DOI must respond to this petition “within a reasonable time”⁹ and DOI regulations state that petitions will be given “prompt consideration.”¹⁰ Courts have found that “a reasonable time for agency action is typically counted in weeks or months, not years.”¹¹

The agency must notify petitioners of the denial of a petition, in whole or in part, and with limited exception, a denial must include an explanation on the grounds for denial.¹² A reviewing court shall compel agency action “unlawfully withheld or unreasonably delayed.”¹³

Because of the urgency of the threat to our nation’s public lands, and the deadlines and threatened legal action by those seeking control of public lands, petitioners request that DOI respond to this petition and initiate a rule-making prohibiting the large-scale disposal or transfer of public lands within six months of the date of receipt of this petition.

DOI regulations authorize the Secretary to publish this petition in the Federal Register to solicit public comments on the proposed rule-making if those public comments “may aid in the consideration of the petition.”¹⁴ Because of the intense public interest in this issue, as evidenced by the extensive media coverage, stakeholder input, and dozens of resolutions under consideration in legislatures across the western United States, petitioners request that DOI publish this petition in the Federal Register to solicit public input on the proposed rule-making.¹⁵

VI. PETITIONERS HAVE A GREAT INTEREST IN RETAINING PUBLIC LANDS IN PUBLIC HANDS.

This petition is presented under the Administrative Procedure Act, which provides that each agency “shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule”¹⁶ and the United States Constitution, which protects the right of citizens to

⁸ U.S. Const., amend. I.

⁹ 5 U.S.C. § 555(b)

¹⁰ 43 C.F.R. § 14.3.

¹¹ *In Re: American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (internal citation and quotations omitted). See *Midwest Gas Users Asso. v. Federal Energy Regulatory Com.*, 266 U.S. App. D.C. 91, 833 F.2d 341, 359 (D.C. Cir. 1987) (“This court has stated generally that a reasonable time for an agency decision could encompass ‘months, occasionally a year or two, but not several years or a decade.’” (quoting *MCI Telecommunications Corp. v. Federal Communications Com.*, 200 U.S. App. D.C. 269, 627 F.2d 322, 340 (D.C. Cir. 1980))); *Fund for Animals, et. al. v. Norton, et. al.*, 294 F.Supp. 2d 92, 115 (D.D.C 2003) (petitioners are “entitled to an answer within a reasonable amount of time.”) (emphasis in original)

¹² 5 U.S.C. § 555(e); 14 C.F.R. § 14.3.

¹³ 5 U.S.C. § 706(1). See *Telecommunications Research and Action Center v. F.C.C.*, 750 F.2d 70, 76-77 (D.C. Cir. 1984).

¹⁴ 14 C.F.R. § 14.4.

¹⁵ See, e.g. Public lands in private hands?, Jimmy Tobias, *New York Times*, Mar. 3, 2017; The siege has ended, but battle over public lands rages on, Kirk Johnson, *New York Times*, Apr. 17, 2017; Hey, Republicans, get your hands off our federal lands, Scott Martele, *Los Angeles Times*, Feb. 17, 2017; Facing backlash, Utah Rep. Jason Chaffetz withdraws bill to transfer federal land to the states, Juliet Eilperin, *Washington Post*, Feb. 2, 2017; Western voters prioritize conservation and keeping public lands public, poll finds, Bruce Finley, *Denver Post*, Jan. 31, 2017.

¹⁶ 5 U.S.C. § 553(e).

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“petition the Government for the redress of grievances.”¹⁷ DOI must respond to a petition “within a reasonable time”¹⁸ and DOI regulations state that petitions for rulemaking will be given “prompt consideration.”¹⁹ Courts have found that “a reasonable time for agency action is typically counted in weeks or months, not years.”²⁰

Like tens of millions of other Americans, petitioners have great interest in retaining public lands in public hands. Petitioners represent millions of Americans who enjoy and are concerned about our public lands. These Americans would be harmed by the sale or transfer of our parks, refuges, and other public lands.

A. PETITIONERS REPRESENT MILLIONS OF AMERICANS CONCERNED ABOUT OUR PUBLIC LANDS.

Petitioners collectively represent millions of Americans who rely on public lands for recreational opportunities, economic prosperity, scenic beauty, wildlife habitat, and quality of life and are concerned about the management of our public lands.

B. PETITIONERS WILL BE HARMED BY LARGE-SCALE DISPOSAL OR TRANSFER OF PUBLIC LANDS.

Members and supporters of petitioning organizations enjoy public lands for hiking, hunting, camping, fishing, wildlife viewing, bicycling, and other forms of outdoor recreation, study, and enjoyment. Petitioners’ members, supporters, and customers visit public lands regularly to enjoy quality outdoor recreational opportunities, seek spiritual fulfillment, connect with nature, and enjoy the peace and quiet of the great outdoors.

Petitioners will be irreparably harmed if America’s parks, refuges, and other public lands are given away or sold by losing opportunities to recreate, seek spiritual fulfillment, connect with nature, and enjoy the peace and quiet of the great outdoors.

VII. AMERICA’S PUBLIC LANDS PROVIDE GREAT BENEFITS TO THE AMERICAN PEOPLE

From outstanding wildlife habitats to world-class recreation opportunities, America’s public lands provide great benefits to hundreds of millions of Americans and are the backbone of many rural economies.

A. THE DEPARTMENT OF THE INTERIOR OVERSEES SOME OF AMERICA’S MOST IMPORTANT PUBLIC LANDS

¹⁷ United States Constitution, Amendment I.

¹⁸ 5 U.S.C. § 555(b)

¹⁹ 43 C.F.R. § 14.3.

²⁰ *In Re: American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (internal citation and quotations omitted). See *Midwest Gas Users Asso. v. Federal Energy Regulatory Com.*, 266 U.S. App. D.C. 91, 833 F.2d 341, 359 (D.C. Cir. 1987) (“This court has stated generally that a reasonable time for an agency decision could encompass months, occasionally a year or two, but not several years or a decade.” (quoting *MCI Telecommunications Corp. v. Federal Communications Com.*, 200 U.S. App. D.C. 269, 627 F.2d 322, 340 (D.C. Cir. 1980))); *Fund for Animals, et. al. v. Norton, et. al.*, 294 F.Supp. 2d 92, 115 (D.D.C 2003) (petitioners are “entitled to an answer within a reasonable amount of time.”) (emphasis in original)

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DOI manages over 481 million acres of public lands across the United States. This includes America's national parks. Spanning over 84 million acres in 59 units, spanning from Alaska to Maine, America's parks contain some of the most scenic and treasured lands in America. From Yosemite to Yellowstone, the Grand Canyon to the Great Smoky Mountains, the Everglades to Acadia, America's parks are truly American icons.

With the first national wildlife refuge established in 1903, DOI manages a National Wildlife Refuge System that has grown to cover 150 million acres of valuable habitat in 562 separate units. This includes the Arctic National Wildlife Refuge, which is one of the most important and sensitive wild landscapes in the world, as well as other important refuge lands like the stunningly beautiful Hawaiian Islands National Wildlife Refuge, and Pelican Island in Florida, America's first national wildlife refuge.

Also under the jurisdiction of DOI are the 245 million acres of land administered by BLM Management, primarily located in 12 western states. Included in this total are 32 million acres of National Conservation Lands, an impressive network of wilderness, monuments, wilderness study areas, wild and scenic rivers, historic and scenic trails, and other lands. From Utah's dazzling red rock canyons to California's sublime Mojave Desert, these scenic lands contain America's natural and cultural heritage.

B. OUR PUBLIC LANDS PROVIDE UNRIVALED RECREATIONAL OPPORTUNITIES AND ARE ENJOYED BY HUNDREDS OF MILLIONS OF AMERICANS EACH YEAR

From hiking and camping, to hunting and fishing, boating and rafting to biking, wildlife watching and skiing, America's public lands provide outstanding recreational opportunities and are enjoyed by millions of Americans and international visitors each year.

In 2016, America's national parks received a record-shattering 331 million visitors.²¹ Visitation to national wildlife refuges topped 48 million in 2015, also a record.²² That same year, over 62 million visitors experienced lands administered by BLM.²³ Combined, lands under the jurisdiction of DOI receives over 441 million visitors per year.

For Americans seeking to hike, camp, hunt, fish or just watch wildlife, refuges provide some of the best opportunities available. In 2015, 48 million people—or almost one in every six Americans—visited a refuge.²⁴ Over 90 million Americans enjoy wildlife-related recreation,

²¹ Cullinane Thomas, C., and L. Koontz. 2017. 2016 national park visitor spending effects: Economic contributions to local communities, states, and the nation. Natural Resource Report NPS/NRSS/EQD/NRR—2017/1421. National Park Service, Fort Collins, Colorado.

²² United States Fish and Wildlife Service. Annual Performance Report FY2015 National Wildlife Refuge System. Undated.

²³ Bureau of Land Management. 2016. Public Land Statistics 2015. Vol. 200. BLM/OC/ST-16/003+1165 P-108-5

²⁴ United States Fish and Wildlife Service. Annual Performance Report FY2015 National Wildlife Refuge System. Undated.

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including 71 million wildlife watchers, 33 million anglers, and 13 million hunters.²⁵ These numbers continue to grow.

Hundreds of millions of Americans would lose the opportunity to hike, camp, hunt, fish, boat, ski, and just enjoy the great outdoors if our public lands are given away. And many more would lose the opportunity to enjoy films, photographs, and videos that capture the splendor of our public lands if those lands were sold and developed.

C. OUR PUBLIC LANDS SUPPORT THE AMERICAN ECONOMY

By providing desirable places to live and work, outstanding opportunities for tourism and recreation, and increasing property values, America's public lands are an important economic engine across the United States.

In 2016, national parks contributed \$34.9 billion in economic output to regional economies.²⁶ This includes \$18.4 billion in direct spending in gateway communities, \$12 billion in labor income, and \$19.9 billion in value added.²⁷ In 2013, a comprehensive study found that national wildlife refuges generate \$2.4 billion in economic output, providing 35,000 jobs and \$793 million in employment income.²⁸

Wildlife refuges are also important economic engines for communities across the United States, generating \$2.4 billion in economic output, providing 35,000 jobs and \$793 million in employment income.²⁹ Expenditures on fishing, hunting, and wildlife watching total \$90 billion per year and continue to grow.³⁰

The positive benefits of protected public land have been well documented. A study of local economies surrounding 17 national monuments found that all had expanded after monument designation, and most at a faster pace than other counties of the same state.³¹ Economic indicators like population, employment, and personal income and per capita income also

²⁵ U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

²⁶ Cullinane Thomas, C., and L. Koontz. 2017. 2016 national park visitor spending effects: Economic contributions to local communities, states, and the nation. Natural Resource Report NPS/NRSS/EQD/NRR—2017/1421. National Park Service, Fort Collins, Colorado.

²⁷ *Id.*

²⁸ Carver, E., and J. Caudill. 2013. Banking on nature: the economic benefits to local communities of national wildlife refuge visitation. United States Fish and Wildlife Service, Oct. 2013.

²⁹ Carver, E., and J. Caudill. 2013. Banking on nature: the economic benefits to local communities of national wildlife refuge visitation. United States Fish and Wildlife Service, Oct. 2013.

³⁰ U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

³¹ Headwaters Economics. 2016. The economic importance of national monuments to local communities. July, 2016.

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increased after monument designation.³² On average, every 10,000 acres of wilderness generates 18 new jobs.³³

A comprehensive study of western economies found that since 1970 counties with the highest share of protected federal lands on average performed better for employment, personal income, and per capita income growth than those with the least protected federal lands.³⁴

Other public lands provide similar economic benefits. Quiet recreation on BLM lands generates \$2.8 billion in economic output, providing 25,000 jobs and \$800 million in personal income.³⁵ Western rural counties with the highest share of federal lands generally have faster rates of population growth, employment, personal income, and per capita income growth than counties with the lowest share of federal lands.³⁶

The most comprehensive nationwide study on the economic impacts of recreation found that Americans spend \$887 billion each year on outdoor recreation, supporting 7.6 million jobs nationwide.³⁷

These and many other benefits will be significantly diminished—or lost entirely—if public lands are given away or sold to the highest bidder.

D. OUR PUBLIC LANDS PROVIDE IMPORTANT HABITAT

Parks, refuges and BLM lands provide habitat for an astounding array of plants and animals. BLM lands support more than 3,000 species of fish and wildlife, including such iconic species as the desert tortoise, bald eagles, and Pacific salmon, as well as 245 plants and animals listed as threatened or endangered under the Endangered Species Act.³⁸ In Idaho alone, BLM lands support 4,000 plant species, 99 mammals, 230 birds, 22 reptiles, 13 amphibians, and 39 fish.³⁹

National parks are renowned for their biological diversity and parks contain over a thousand populations of threatened and endangered species.⁴⁰ Over half of America's parks contain at least one threatened or endangered species.⁴¹

Refuges contain a diverse array of habitats, including prairies, coastal and marine areas, and temperate, tundra and boreal forests. These diverse refuges provide habitat for an incredible diversity of animals, including over 700 species of birds, 220 species of mammals, 250 reptile

³² *Id.*

³³ Loomis, J.B., and R. Richardson. 2001. Economic values of the U.S. wilderness system: research evidence to date and questions for the future. *Int'l. Journal of Wilderness* 7(1): 31-34.

³⁴ Headwaters Economics. 2016. Federal lands in the west: liability or asset? Feb., 2016.

³⁵ ECONorthwest. 2016. Quiet recreation on BLM-managed lands: economic contribution 2014. Mar., 2016.

³⁶ Headwaters Economics. 2016. Federal lands in the west: liability or asset? Feb., 2016.

³⁷ Outdoor Industry Association. 2017. The outdoor recreation economy. Apr., 2017.

³⁸ <https://www.defenders.org/habitat-conservation/blm-public-lands>.

³⁹ <https://www.blm.gov/programs/fish-and-wildlife/wildlife/about/idaho>.

⁴⁰ <https://www.nature.nps.gov/biology/endangeredspecies/index.cfm>.

⁴¹ *Id.*

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and amphibian species and more than 1,000 species of fish, as well as over 380 threatened or endangered plants or animals and millions of migrating birds.⁴²

Every year, the United States Fish and Wildlife Services conducts extensive habitat restoration and management throughout the refuge system. Last year, the agency restored over three million acres of habitat on refuge lands, while another five million acres of needed habitat restoration and management went unfulfilled.⁴³

Many species, including those that don't spend their entire lives on public lands, rely on public land for migration, including wide-ranging mammals like pronghorn and caribou, migratory birds, sea turtles, and salmon and steelhead.⁴⁴

E. OUR PUBLIC LANDS PROVIDE MANY OTHER PUBLIC BENEFITS

Parks, refuges and BLM lands provide myriad other public benefits to the American people, including clean air and water, carbon sequestration, public health, scientific research, and education. Public lands play an important role in preventing and mitigating the impacts of climate change.

According to the North American Intergovernmental Committee on Cooperation for Wilderness and Protected Area Conservation, public lands will help ameliorate the effects of climate change by:

1. Conserving biodiversity;
2. Protecting ecosystem services;
3. Connecting landscapes;
4. Capturing and storing carbon;
5. Building knowledge and understanding; and
6. Inspiring people.⁴⁵

Further, parks and other public lands provide important opportunities for physical activity that contributes to improving Americans' physical and mental health.⁴⁶ These and other benefits would be lost if America's public lands are sold.

VIII. THE EFFORTS OF WESTERN STATES TO ASSUME CONTROL OF PUBLIC LANDS DEMANDS A STRONG RESPONSE FROM THE DEPARTMENT OF THE INTERIOR

For the past five years, based on spurious legal theories, various western States have considered or advanced efforts to wrest control of America's parks, refuges and BLM lands from the Federal government. If successful, these efforts would lead to disastrous results for

⁴² United States Fish and Wildlife Service. Undated. Annual Performance Report FY2015.

⁴³ *Id.*

⁴⁴ See <https://www.nature.nps.gov/biology/migratoryspecies/index.cfm>.

⁴⁵ *North American Protected Areas as Natural Solutions to Climate Change*, North American Intergovernmental Committee on Cooperation for Wilderness and Protected Area Conservation, 2012, at 6.

⁴⁶ See Erica Gies, *The Health Benefits of Parks*, Trust for Public Land (2006); Richard A. Goodman & Mark L. Miller, *Public Lands for the Public's Health*, 33 Environmental Law Reporter, 10217 (2003).

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public lands and resources as well as the people dependent on them: rampant land sales and reckless development, loss of recreational access, damaged local economies, and degraded habitat. The public land takeover efforts now demand a response from DOI.

A. SOME WESTERN STATES ARE ADVANCING EFFORTS TO WREST CONTROL OF FEDERAL LANDS FROM THE AMERICAN PEOPLE

"[T]he Legislature of the State of Utah demands that the federal government imminently transfer title to all of the public lands within Utah's borders directly to the State of Utah."

– Resolution of the Utah State Legislature (2012)

Since 2012, 10 of 11 western states have considered efforts to study, plan for, or require the transfer of public lands. Several of these efforts have gone so far as to assert that states are legally entitled to own public lands and demand that the federal government convey public lands to a state by a specified date. While many of these efforts have been defeated by significant public opposition, they nonetheless point to the sentiments among some western lawmakers that America's public lands are ripe for the taking. These efforts are described in more detail below.

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Bears Ears National Monument, Photo Credit: Mason Cummings

i. UTAH

In 2012, the State of Utah enacted legislation calling on the United States to “extinguish title to public lands” and “transfer title to public lands to the state” by December 31, 2014.⁴⁷ Since 2012, the Utah state legislature has continued to consider bills and resolutions to advance efforts to take control of Federal lands, including resolutions to acquire the Bears Ears National Monument⁴⁸, “restore” authority regarding Federal lands to the States⁴⁹, and “strongly encourage appropriate executive branch agencies to pursue all means of legislative and legal efforts to secure the transfer and control of public lands in the state of Utah to the state of Utah,”⁵⁰ among others.

⁴⁷ Utah Code § 63L-6-103.

⁴⁸ Utah State Legislature, House Concurrent Resolution 24 (2017).

⁴⁹ Utah State Legislature, House Joint Resolution 17 (2017).

⁵⁰ Utah State Legislature, House Concurrent Resolution 16 (2016).

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Craters of the Moon National Monument, Photo Credit: Bob Wick

ii. IDAHO

In 2013, the Idaho state legislature passed a resolution stating that “in order to provide a fair, justified and equitable remedy” for the state’s list of grievances against public land management, “the Legislature of the State of Idaho demands that the federal government immediately transfer title to all of the public lands within Idaho’s borders directly to the State of Idaho.”⁵¹ Since then, the legislature has considered numerous bills and resolutions on regarding Idaho’s efforts to take over public lands.⁵² In 2016 the Senate Committee on Resources and Environment and the House Committee on Resources and Conservation held a joint hearing to learn about legal efforts to wrest control of public lands from DOI.⁵³

⁵¹ Idaho State Legislature, House Concurrent Resolution 22 (2013).

⁵² Most land transfer bills stall in Idaho legislature, *Magic Valley News*, May 1, 2016. A leading proponent of taking over public lands, State Representative Christy Zito, said on her campaign website, “I believe there is no constitutional basis for the federal government to maintain control of these lands.” Managing federal lands could be major issue in Idaho legislature, Capitol Press, Jan. 3, 2017.

⁵³ Utah lawmakers face hostile crowd on land transfer, *Idaho Statesman*, Feb. 29, 2016.

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Gold Butte National Monument, Photo Credit: Mason Cummings

iii. NEVADA

In 2015, the Nevada state legislature passed a resolution calling on Congress to transfer title of certain public lands to the State of Nevada.⁵⁴ The resolution allows the State to initially select over seven million acres of public lands to be transferred to the state.⁵⁵ Next, the State, or a local government, could request, and would be automatically granted any public lands in the State, including parks and wilderness.⁵⁶ In 2017 the Nevada state legislature considered another resolution urging Congress to pass legislation requiring that DOI transfer specified lands to the State of Nevada.⁵⁷

⁵⁴ Nevada State Legislature, Senate Joint Resolution 1 (2015).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Nevada State Legislature, Senate Joint Resolution 9 (2017).

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Bridger Wilderness, Photo Credit: Mason Cummings

iv. WYOMING

This year, the Wyoming state legislature considered amending the state constitution to “provide for the management of and public access to lands granted by the federal government to the state after January 1, 2019.”⁵⁸ The proposed constitutional amendment goes on to address how Wyoming would manage the lands after they are transferred by the federal government.⁵⁹ The legislature also considered a bill requiring the state’s board of land commissioners to develop a state management plan for federal lands transferred to the state.⁶⁰ In 2015, the state legislature passed a bill calling for a study on state administration of all federal lands in the state.⁶¹ The 350-page study was released in 2016.⁶²

⁵⁸ Wyoming State Legislature, Senate Joint Resolution SJ0003 (2017).

⁵⁹ *Id.*

⁶⁰ Wyoming State Legislature, House Bill 0293 (2017).

⁶¹ Wyoming State Legislature, Senate File 56 (2015).

⁶² Y2 Consultants, LLC. Study on Management of Public Lands in Wyoming. 0373-Z. Jackson, WY. 2016.

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Alpine Lakes Wilderness, Photo Credit: Andy Porter

V. WASHINGTON

The Washington state legislature is considering a resolution calling on the United States to “extinguish title to public lands” and “transfer title to public lands to the state” by December 31, 2017.⁶³ The legislation would also create a committee to oversee the transfer of public lands to the state, and addressing management of public lands transferred to the state.

⁶³ Washington State Legislature, House Bill 1103 (2017).