



National Monument Alternatives: Innovative Strategies to Protect Public Lands

INTRODUCTION

It's time to get serious—and seriously creative—about how we protect federal lands

by Reed Watson

National monuments have always been controversial. Indeed, the very first monument created by President Theodore Roosevelt in 1906, Devils Tower in eastern Wyoming, sparked a decades-long conflict between Native American tribes who considered the butte sacred and rock climbers who wanted to scale its vertical walls. As this historical example reveals, often it is not the land itself but the designation and subsequent management of national monuments that makes them so controversial.

The Antiquities Act of 1906 authorizes the president to unilaterally protect landmarks, structures, and objects of historic or scientific interest by designating them as national monuments, often limiting or completely prohibiting extractive activities such as mining, livestock grazing, or timber harvesting on designated lands.¹

When Congress passed the act, there were very real concerns about so-called “pot hunters” looting Native American artifacts from specific, often small sites like those found in Canyon de Chelly in northeastern Arizona.² But in recent decades, presidents have increasingly used this authority to set aside millions of acres of land for reasons having less to do with antiquities and archaeology and more



Devil's Tower National Monument, Wyoming

Photo © Bradley Davis

to do with pressures from environmentalists and recreationists. President Barack Obama, for instance, used the Antiquities Act to create more national monuments than any other president, including several designations spanning millions of acres in the final weeks of his presidency.

Given how the act has been used in recent years, it's no surprise that it continues to generate controversy, especially among the communities most affected by monument designations. By allowing presidents to set aside large swaths of public land with the stroke of a pen, the act's heavy-handed approach produces acrimony among public land users and opposition from local communities. In response to these concerns, President Donald Trump issued an executive order in late April mandating the review of all monuments created since 1996 that encompass more than 100,000 acres, as well as any others the interior secretary deemed should be reviewed. In total, the Interior Department is reviewing 27 national monuments.

Regardless of the interior secretary's recommendations or the president's subsequent action, it is clear that the politicized approach to national monument protection is broken. Many of the designations are made in the eleventh hour of an outgoing president's term, and any protections these designations actually provide are politically tenuous, as evidenced by the current review process. In the end, one side of the debate will "win," but the other side will inevitably lose by a commensurate amount, and the current acrimony will only persist.

It is time to get serious—and seriously creative—about finding ways to protect important landscapes while avoiding the acrimony and pitfalls of national monument designations. That is precisely

why the scholars at PERC produced this publication. From the sacred tribal artifacts found only in Bears Ears in southeastern Utah to the glacier-carved rivers of the Katahdin Woods and Waters in Maine, this report describes innovative ways to end the acrimony and more effectively protect our lands of cultural and environmental significance.

As Terry Anderson and Brian Seasholes assert, Native American tribes should be given direct full authority—not just an advisory role—in the management of culturally significant artifacts and sites. Meanwhile, as Tate Watkins explains, rather than creating new national monuments and increasing taxpayers’ financial burden of land management, private property with unique cultural or environmental significance could be managed as a national park franchise. Similarly, as Holly Fretwell notes, lands that are already public could be managed by legal trusts with clear mandates and financial accountability. Lastly, according to Hannah Downey and Kristen Byrne, conservation groups should be allowed to bid against the energy and other extractive industries in the leasing of federal lands.

As this publication makes clear, there is no shortage of ideas or appetite to improve upon our current framework for making national monument designations. What is needed is acceptance that the current approach is broken and the willingness to try innovative, cooperative approaches that put protection ahead of politics.

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NATIVE AMERICAN MANAGEMENT

Tribes can manage their own antiquities sites on federal lands

by Terry L. Anderson and Brian Seasholes



Bears Ears National Monument, Utah

Photo © Bob Wick, BLM

There is no doubt that southeastern Utah contains an abundance of culturally significant artifacts and sacred sites. But when President Barack Obama used the Antiquities Act to declare the Bears Ears National Monument in December 2016, many objected to the scale of the designation. The monument encompasses 1.35 million acres, vastly more land than the sites containing significant Native American antiquities, and the designation puts much of the area off limits to certain uses such as grazing, energy development, and other economic activities in the future.

In his June 2017 interim report on Bears Ears, Interior Secretary Ryan Zinke recommended that Congress shrink the size of the monument to ensure that the designation is limited to “the smallest area compatible with proper care and management of the objects to be protected,” as required by the Antiquities Act.³ The report also noted that the region contains “rock art, dwellings, ceremonial sites, granaries, and other cultural resources that reflect its long historical and cultural significance to Native Americans” and called for legislation granting tribes legal authority for “co-management of designated cultural areas” within revised monument boundaries.

Although President Obama's proclamation creating the national monument contained a provision to establish the Bears Ears Commission, consisting of one member from each of five Indian tribes who will provide input on the management of the monument, it did not go far enough to grant real tribal authority.⁴ The commission's role is only advisory, so the federal government can heed or ignore its recommendations as it sees fit. Meaningful control of sacred cultural sites involves more than the chance to consult.⁵

One way the federal government could give tribes direct control over federal land containing antiquities sites would be to grant Native Americans legal rights to oversee and manage the specific sites in the region. Such a framework would confer strong and durable rights to Native Americans and provide a transparent mechanism for governance.

In fact, there is precedent for partnering with tribes to manage federal lands. Four national park units, including two national monuments, are already jointly managed by the federal government and tribal partners and could serve as models in southeastern Utah.⁶ One of the most noteworthy is the Canyon de Chelly National Monument in northeastern Arizona. The site is owned by the Navajo Nation, and about 40 Navajo families still live and farm there. The Navajo and National Park Service work cooperatively to protect the area, especially the canyon floor where antiquities sites are located.⁷ The Navajo Nation retains authority over many activities, including the right to control access to and conduct tours of the area. The model has worked well: Canyon de Chelly attracts more than 800,000 annual visitors and is one of the best known national monuments in the country.⁸

Similarly, a group of tribes could be allowed to manage the sacred sites within the Bears Ears region. One such site is Grand Gulch, a remote and narrow canyon of about 38,000 acres within the monument boundaries and home to numerous Anasazi sites of cultural significance. Tribal managers could coordinate with federal administrators in the same way that the Navajo work with the National Park Service in Canyon de Chelly. The group could control access to ensure that the gulch is not overrun with or damaged by tourists, charge visitor fees to raise revenue for protection efforts, or even prohibit visitors at certain sites that warrant it.

Granting Native Americans control to antiquities sites within Bears Ears would give tribes true authority over culturally important sites in the region, unlike a national monument proclamation that merely pays lip service to tribal authority. The approach could involve a tribal non-profit group that receives donations from foundations, corporations, and individuals to fund the protection of antiquities. Tribes granted authority could work with managing federal agencies to devise a plan to protect sites and possibly even jointly certify guides. The framework would not only do a better job protecting antiquities in the area than sole control by funding-strapped agencies, but it would also confer clear and meaningful rights to Native Americans who have historical ties to the region.

While one tribe owns Canyon de Chelly, Bears Ears is more complex because it involves five tribes and federally owned land. Furthermore, tribal members disagree over the extent of the protections needed in the Bears Ears region and over which tribes and members should have co-management authority. Therefore, some sort of fair and transparent process would be necessary to sort out competing Native American claims to antiquities on federal land.⁹

There is every reason that a co-management approach could succeed in Bears Ears—or in similar cases across the country that involve protection of Native American cultural sites and artifacts. Given Native Americans’ historical ties to the antiquities and archaeological sites in the Bears Ears region, co-management could protect sacred sites and objects better than the non-binding consultation framework of the Bears Ears monument proclamation.

Granting control of such sites to Native Americans would allow for protection of antiquities on federal land with much less political rancor and greater effectiveness than current management of Bears Ears has demonstrated so far, and the approach could also conceivably prevent similar conflicts elsewhere in the future.

Recommendations:

- Provide a legal mechanism for Native American tribes to co-manage antiquities sites on federal land. Such a mechanism would confer meaningful rights to such sites and allow for tribes to control access and collect visitor fees.
- Establish a fair and transparent process to sort out competing Native American claims to co-manage antiquities sites on federal land.
- Limit use of the Antiquities Act to its statutory intent of “the smallest area compatible with proper care and management of the objects to be protected.”

Further Reading:

- [*Unlocking the Wealth of Indian Nations*](#), by Terry L. Anderson (ed). Lexington Press (2016).
- [“Give Bears Ears To Native Americans.”](#) by Terry L. Anderson. *Forbes*. May 19, 2017.
- [“Public Comment to the U.S. Department of the Interior on the Review of Certain National Monuments Established Under the Antiquities Act of 1906: Regarding Bears Ears National Monument.”](#) by Brian Seasholes. May 25, 2017.

NATIONAL PARK FRANCHISES

Franchise partnerships could add parks to the system without adding to the federal maintenance tab

by Tate Watkins



Katahdin Woods and Waters National Monument, Maine

Photo © Katahdin Woods and Water NM

Long before the Katahdin Woods and Waters National Monument became a reality, the specter of a federal park in northern Maine stirred up disputes as deep as the rivers that run through the area. For years, Burt's Bees cofounder Roxanne Quimby envisioned creating a national park by donating thousands of acres of forestland to the government, which she began purchasing from timber companies in the early 2000s. While she and her family explicitly lobbied for the “brand name” of a national park, many locals worried that a new park unit would give the federal government a foothold in the area, threatening tighter regulations on the timber industry and on traditional recreational pursuits like hunting.¹⁰

Because the prospect of creating a national park was so controversial, Quimby eventually settled on a national monument, which can be designated unilaterally with the signature of a president under the Antiquities Act. In August 2016, President Barack Obama signed an order establishing the 87,500-acre Katahdin Woods and Water National Monument out of lands donated by the Quimby family.¹¹

The protracted controversy over the site suggests the need for a different framework to protect worthwhile natural landscapes without a full-fledged federal takeover—and with much less acrimony. Katahdin Woods and Waters could provide an opportunity to try an innovative solution: a national park franchise.

Under a park franchise, a private partner would maintain ownership of park land but manage the unit according to parameters set by the National Park Service. The franchisee could be a nonprofit group, conservation organization, outdoor recreation company, or any other private entity. It could use the national park name with stipulations that it adhere to the Park Service’s mission and rules. Franchises would have to remain open to the public, for instance, and promote the historical, cultural, and environmental values consistent with the agency’s goals. By receiving license to use the national brand, a site could attract more tourists, conservationists, and researchers, bringing additional revenues and activities to local economies.

Ideally, a franchise model would require financial self-sufficiency: private parties would only be granted a license under the condition that they receive no congressional appropriations for a site, for maintenance or otherwise. Revenues could come from fees charged for entry or to use campgrounds and other recreational amenities, and additional funds could be raised through philanthropic donations. The continued ownership by the franchisee could help ease fears that are often stoked by federal involvement in land-use decisions.

The wider payoff is that adding new parks under a franchise model would prevent further increases in the National Park Service’s deferred maintenance backlog, which now exceeds \$11 billion.¹² Interior Secretary Ryan Zinke has repeatedly said that dealing with the backlog is a priority for his department.¹³ Over the past decade, 26 national park units have been created, and the deferred maintenance backlog has increased by more than \$2 billion.¹⁴ Politicians like creating new park sites where they can hold ribbon-cutting ceremonies and win accolades as champions of conservation. There is much less political appetite to fund mundane maintenance needs, like the sewage and water systems that ensure national parks can withstand their growing visitor figures.¹⁵ A clear avenue to create new parks as franchises would benefit taxpayers across the country, who ultimately foot the bill for park upkeep.

As long as franchised parks adhere to the overarching standards laid out by the National Park Service, they should have the flexibility to set priorities as determined by on-the-ground managers. In recent years, park superintendents and government reviews have cited difficulties caused by the lengthy and inflexible processes for setting fee structures and getting approval to spend revenues collected.¹⁶ Managers at franchised parks should have authority to set fees, retain 100 percent of the funds they collect, and decide how those revenues should be spent, whether on operations, critical maintenance needs, or new amenities.¹⁷

When it comes to the Katahdin monument, a franchise would grant the site the national park status that its proponents have long called for but keep the onus to run and maintain it on a private organization. Even though the government now owns the land, it is easy to imagine a structure that nominally leases rights back to the Quimby family to operate the site as a national park. Furthermore, Quimby already established a non-profit organization for the park lobbying effort, and the land gift

included a \$20 million endowment to support the administration of the monument, plus a pledge for more fundraising. The family's years of lobbying and demands for particular conditions on the monument designation—such as leaving nearly half of the acreage open to traditional uses like snowmobiling, hunting, and fishing—demonstrates their continued interest in the site. The non-profit would be well suited to hold the franchise.

The idea is not as farfetched as it might seem—there are already eight national park units jointly managed by the National Park Service and private partners, usually non-profit groups.¹⁸ One is the Tallgrass Prairie National Preserve in Kansas. Created in 1996, the 11,000-acre preserve stands out as one of the last large tracts of prairie ecosystem in the country. Although the site is a national park unit under the purview of the Park Service, the Nature Conservancy owns 99 percent of the preserve and partners with the agency to manage it.¹⁹

As far back as the 1970s, local Kansans skeptical of federal involvement fought the establishment of the site, worrying that the feds would impose burdensome regulations and deprive communities of tax revenues.²⁰ But eventually, a non-profit group worked with the Park Service and a local cattle rancher to overcome the discord and come up with a joint-management model, including the stipulation that all the privately owned property remain on tax rolls.²¹ Tallgrass Prairie has drawn about 30,000 annual visitors in recent years and serves as an example that could be followed in Maine and beyond.²²

A national park franchise could be tailored with provisions to suit local conditions and land-use traditions.²³ Moreover, a franchise would likely be more appealing to locals unwilling to support a new park under complete federal ownership in their state. Provisions could also include a process to revoke the franchise if a grantee ever strayed beyond the license parameters or failed to meet the standards of the agreement.

In his nomination hearing, Secretary Zinke said he fully recognizes “that there is distrust, anger, and even hatred against some federal management policies.”²⁴ A framework to develop franchise parks could present just the sort of creative solution that fosters collaboration instead of ill will.

Recommendations:

- As an alternative to national monument designations, establish a national park franchise framework as an avenue to add new national parks without adding to the future maintenance needs of the National Park Service.
- Maintain federal oversight of and standards for franchised parks while granting franchisees wide flexibility in management decisions so long they operate within the federal parameters.
- Allow managers of franchised parks to set, retain, and spend fees at their discretion and without having to adhere to the bureaucratic processes that govern fee structures of traditional national parks, but stipulate that franchised parks will receive no congressional appropriations for operations or maintenance.
- Provide a clear way to revoke the national park license if a franchisee does not hold up its end of the bargain.

Further Reading:

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- [“Breaking the Backlog: 7 Ideas to Address the National Park Deferred Maintenance Problem.”](#) *PERC Public Lands Report* (February 2016).
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TRUST MANAGEMENT

Trusts could be established to manage landscapes and natural resources for the benefit of the public

by Holly Fretwell



Grand Staircase-Escalante National Monument, Utah

Photo © Bob Wick, BLM

On September 18, 1996, onlookers roared with applause as President Bill Clinton stood on the rim of the Grand Canyon in Arizona and designated the 1.9 million-acre Grand Staircase-Escalante National Monument in southern Utah. But not everyone was pleased with the president's action. Seventy miles to the north, locals in Kanab, Utah, gathered in the high school gym to protest the president's action. Kanab had long anticipated coal development on the nearby Kaiparowits Plateau—a project that was predicted to provide locals with hundreds of jobs—but that hope ended with the stroke of President Clinton's pen.²⁵

Utah's congressional delegation opposed the designation because the monument's boundaries would encompass far more than the specific historic and cultural sites that the Antiquities Act was created to protect. Moreover, prior to the designation, there were also multiple oil and gas leases, miles of roads used for recreation, and several federal grazing allotments within its boundaries.²⁶

By designating the monument, President Clinton prioritized landscape preservation but left proponents of other land uses feeling marginalized. A better way to balance competing interests would be to manage national monuments through the creation of a trust. At its simplest, a trust is a legal assignment of certain powers to an individual or a group, known as trustees, who are obligated to manage assets for the benefit of another. The trustees have a legal obligation to manage the assets according to the requirements outlined by a trust agreement.

In the context of national monuments, a trust could be established with the explicit responsibility of maintaining the unique recreational, archaeological, and environmental values of the area. The trust would specifically define the monument's environmental, recreational, and archaeological assets and establish criteria for judging management and measuring trustee performance. Such a trust could manage for conservation while also allowing the continuation of traditional uses of the land, including grazing and energy production. It would also give monument managers incentives to choose the most appropriate use for each land segment while taking into account the overall objectives established for the monument.

As a parallel, consider how a museum board of trustees sets a goal to preserve, display, and interpret a certain form of art. The trustees must have a shared appreciation of the art form they want to present. They weigh and balance the museum's resources, both financial and physical, which are used to present the art to the public. To choose one painting over another requires an understanding of the desired outcome and the relative value of each option. Similarly, on public lands there are multiple competing interests for resource use, and because resources are finite, trade-offs must be made.

A challenge of monument designations is that the managing agency is faced with the near-impossible task of overseeing areas while taking into consideration countless outside opinions of citizens who use public lands. At Grand Staircase-Escalante, the BLM created a planning team and an advisory committee in an attempt to institute a collaborative management plan that would protect the monument in its "primitive, frontier state" while also providing "opportunities for the study of scientific and historic resources."²⁷ Differing perceptions of how the land should be managed, however, have made implementing the plan controversial.²⁸ The result is that a multitude of interest groups now vie to influence management toward their preferred outcomes without considering the value of other uses of the land and resources contained on it.

To be successful, a federal land trust would need to have a clear goal that it is accountable to meet but also have the flexibility to balance potential resource uses. A monument's goal would be set at the time of its proclamation, along with parameters for resource use. A trust would also need to be accountable to a financial target. This financial accountability could mean a variety of things, from complete self-sustainability to supplemental federal funding determined by a formula based on meeting goals and outcomes. Furthermore, allowing land managers to keep net revenues for use on site would encourage them to take into account the values of competing resource uses. Revenues earned from mineral extraction, for example, could be invested in habitat restoration or enhanced conservation. This differs from the status quo, where revenues earned are typically returned to the federal Treasury.

When it comes to a particular national monument, a board of trustees could be created that represents diverse interests.²⁹ The current monument advisory committee for Grand Staircase provides a potential starting point. The group of 17 includes educators, local politicians, tribal members, and eight scientists—including an archaeologist, paleontologist, geologist, botanist, wildlife biologist, historian, systems ecologist, and social scientist. Given custodial authority and financial accountability, along with a specific and clear management goal and parameters under which to manage the land, this sort of group could manage the monument as a trust.

The key factors in setting up a trust for success would be giving it autonomy from bureaucratic decisions, accountability to federal standards for the monument, and flexibility in management. Federal oversight would ensure a trust meets the stated goals—such as meeting the financial target and protecting historic artifacts—while managing the land within the defined parameters, likely a combination of landscape preservation and various public uses. Autonomy and financial accountability motivate a trust to consider the relative values of using the land for different purposes.³⁰

National monument management will continue to be contentious as long as the perceived goal is as diverse as the population affected and the distribution of rights to resources remains a political decision. Revenue maximization is unlikely to meet the conservation goals many citizens desire for the federal estate. Providing a trust mechanism to manage certain landscapes for specific uses and making them financially accountable, however, could help alleviate conflicts over land-use decisions and encourage cooperation, improving upon current national monument management approaches.

Recommendations:

- Create a land management trust with a clear goal and broad parameters for resource use set by the federal government.
- Give trustees autonomy to make decisions about how to use resources and hold them accountable to meet the federally determined goals for the trust.
- Require a degree of financial accountability so that the managing trust internalizes the trade-offs of competing resource use.

Further Reading:

- [“A Trust for the Grand Staircase-Escalante,”](#) by Terry L. Anderson and Holly L. Fretwell. *PERC Policy Series* No. 16 (September 1999).
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- [“Divided Lands: State vs. Federal Management in the West,”](#) by Holly Fretwell and Shawn Regan. *PERC Public Lands Report* (March 2015).

CONSERVATION LEASING

Environmental groups could use markets instead of politics to protect public lands

by Hannah Downey and Kristen Byrne



Upper Missouri River Breaks National Monument, Montana

Photo © Bob Wick, BLM

When Lewis and Clark paddled the Missouri River in northern Montana more than two centuries ago, they marveled at the sheer bluffs that descended into the water and the bighorn sheep they described in their journals.³¹

In 2001, President Bill Clinton designated nearly 400,000 acres of land in this area as the Upper Missouri River Breaks National Monument. The monument was created to protect the rock outcroppings, grassy plains, and meandering river that remained relatively unchanged since the westward explorers' voyage. "Many of the biological objects described in Lewis' and Clark's journals continue to make the monument their home," Clinton said in the monument proclamation.³²

When public land becomes a national monument, the designation often precludes certain future uses in the name of preserving the landscape, as did the designation for the Missouri Breaks. Monument advocates argue that such restrictions are necessary to protect areas from the impacts of livestock grazing, oil and gas development, and timber harvests, among other activities. Opponents, on

the other hand, argue that limiting uses on national monument lands impedes local economic opportunities and undermines longstanding resource uses on the landscape.

Rather than have these competing parties fight over monument designations in the political arena, there's a better alternative: Allow environmental groups to participate in the leasing processes that govern resource use on federal lands—even if that means leaving resources idle for conservation purposes or using the land solely for recreation. Currently, conservation leasing is generally limited on federal lands due to requirements that leases or permits be granted only to parties who plan to extract or consume resources. If leasing policy was expanded to explicitly allow conservation leasing, groups could bargain for leases and then set aside the land for conservation purposes instead of it being used for grazing, energy development, or logging. This approach would allow environmentalists to protect public landscapes—regardless of whether they have monument status—through direct action.³³

The approach could apply to the Upper Missouri River Breaks National Monument: A conservation group might purchase a grazing permit from a rancher and then opt to keep livestock off the land.³⁴ Visitors floating the river or hiking, hunting, and fishing within the national monument are often surprised to find cows grazing among cottonwood trees along the river. When President Clinton designated the multiple-use Bureau of Land Management (BLM) lands as a national monument, existing grazing permits were grandfathered into the management plan, much to the dismay of organizations that believe livestock grazing is destroying the cottonwoods and riverbanks.³⁵ Today, approximately 10,000 cattle still graze within the monument's borders.³⁶

Environmentalists near the Missouri Breaks National Monument have already shown interest in acquiring grazing permits as an alternative to litigation. But the requirements that accompany federal grazing permits make it difficult for non-ranchers to secure them through trade. One obstacle is that the only current options involve lengthy legal processes that do not compensate ranchers when their grazing privileges are reduced. The BLM has been sued multiple times by various environmental organizations regarding grazing policy on the Missouri Breaks. In 2013, for instance, a U.S. Court of Appeals ruled that the BLM “violated the National Environmental Policy Act by not considering a reasonable range of alternatives that included a no- or reduced-grazing option.”³⁷ As of 2016, however, the permitted amount of grazing on the monument had remained almost unchanged for 20 years.³⁸

Complicating the process even further, to acquire a permit, ranchers must first own a so-called “base property,” usually a nearby ranch with an active livestock operation. Because the permits are attached to base properties, the only straightforward way for holders to transfer their permits is to sell the base property too. Conservation groups who want to acquire grazing permits, therefore, cannot simply purchase them; they must also purchase or already own qualifying base properties. The arrangement can raise the cost of transferring permits exponentially.

Furthermore, grazing permits have a *de facto* use-it-or-lose-it requirement. This means that conservation groups who do not run livestock on their permitted allotments risk forfeiting their grazing privileges to a rancher willing to use the land for active grazing.³⁹ Requiring active resource use as a

stipulation of grazing permits excludes groups who would seek to leave pasture ungrazed, effectively shutting environmentalists and recreationists out of the leasing process.

Despite these barriers, there are creative ways to work toward conservation within the existing permit structure. The American Prairie Reserve, a nonprofit conservation organization that aims to protect and restore the prairie landscape near the Upper Missouri River Breaks National Monument, has successfully acquired grazing permits in the region for conservation purposes. The group is striving to create a nature reserve larger than Yellowstone National Park by purchasing private ranches and the grazing permits that accompany them.⁴⁰ They fulfill the use requirements of the permits by stocking the lands not with cattle but with bison, which the BLM categorizes as livestock.

But American Prairie Reserve's effort has been anything but frictionless. On the BLM's Flat Creek allotment, for instance, when the group sought the agency's permission in 2014 to replace cattle with bison and remove existing interior fencing in the area, the BLM received more than 100 letters of protest from ranchers and others objecting to the proposal—and the permit has yet to be approved.⁴¹ Given the current rigid federal grazing system, American Prairie Reserve is only able to implement its conservation strategy by continuing to run livestock on the grazing allotments it acquires. Even then, protracted political wrangling has still been unavoidable in some cases.

Congress should change the rules governing federal rangeland management so that any groups who want to pursue environmental goals can acquire resource-use leases, even if they plan to not consume the resources. Conservationists could then purchase grazing permits and determine the stocking rate. The concept could apply in other situations too. Interested parties could potentially buy oil and gas leases to hold them out of development for specific periods of time or bid on timber-harvest rights to leave forests standing, as has already happened in limited cases in recent years.⁴²

If implemented on a widespread scale, conservation leasing could provide an alternative way to protect lands while also compensating current leaseholders and sparking less conflict.

Instead of designating swaths of public land as national monuments to “save” them from consumptive uses, agencies could allow all sorts of parties to bid on grazing allotments, energy leases, and timber harvests. Monument proponents should have plenty to like about the approach, too, because it would give them a clear path to acquire leases that were grandfathered into monument lands and then hold them out of development. A flexible alternative to the current structure would put lands toward their highest-valued uses, even—or especially—when that use is conservation.

Recommendations:

- Allow conservationists to participate in resource leasing for non-consumptive uses.
- Remove base-property and livestock grazing requirements from grazing permits.

Further Reading:

- [“Managing Conflicts over Western Rangelands.”](#) by Shawn Regan. *PERC Policy Series* No. 54 (January 2016).
- [“A New Landscape: 8 Ideas for the Interior Department.”](#) *PERC Public Lands Report* (March 2017).

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5. See also, [“Give Bears Ears To Native Americans.”](#) by Terry L. Anderson. *Forbes*. May 19, 2017.
6. “National Park System: Units Managed Through Partnerships,” by Laura B. Comay. Congressional Research Service Report R42125. April 5, 2016.
7. [“Canyon de Chelly.”](#) National Park Service. Available at <https://www.nps.gov/cach/index.htm>. Visited June 26, 2017.
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9. The court system, whether civil or federal administrative, would not be a fitting venue to resolve these disputes because of the prospect of long-term litigation. A better way to establish management rights would be through alternative dispute resolution, such as mediation or binding arbitration. For more background, see [“Public Comment to the U.S. Department of the Interior on the Review of Certain National Monuments Established Under the Antiquities Act of 1906: Regarding Bears Ears National Monument.”](#) by Brian Seasholes. May 25, 2017.
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11. Establishment of the Katahdin Woods and Waters National Monument by the President of the United States of America: A Proclamation. Barack Obama. August 24, 2016.
12. [“NPS Deferred Maintenance Reports, FY2016.”](#) National Park Service. Available at <https://www.nps.gov/subjects/plandesignconstruct/defermain.htm>. Visited June 26, 2017.
13. [“Nomination hearing of the Honorable Ryan Zinke to be the Secretary of the Interior.”](#) U.S. Senate Committee on Energy and Natural Resources. January 17, 2017.
14. Half of the overdue maintenance needed in national parks is for repairs to roads, bridges, tunnels, and similar paved infrastructure. While allocations from transportation bills largely cover funding for these items, the costs of meeting the remaining backlogged items swamp the funding available to the National Park Service. “National Park Service: FY2017 Appropriations and Ten-Year Trends,” by Laura B. Comay, Congressional Research Service Report R42757, March 14, 2017. While the biggest portion of overdue maintenance comes from parks that are more than 40 years old, such as Yellowstone and Yosemite, today’s new parks will inevitably lead to additional maintenance for future generations. [“National Park Service: Process Exists for Prioritizing Asset Maintenance Decisions, but Evaluation Could Improve Efforts.”](#) Government Accountability Office, December 13, 2016.
15. For more background, see [“Breaking the Backlog: 7 Ideas to Address the National Park Deferred Maintenance Problem.”](#) *PERC Public Lands Report*. February 2016.

16. See, for instance, [“Recreation Fees: Agencies Can Better Implement the Federal Lands Recreation Enhancement Act and Account for Fee Revenues.”](#) U.S. Government Accountability Office. September 22, 2006, and [“Review of National Park Service’s Recreation Fee Program.”](#) U.S. Department of the Interior: Office of Inspector General. February 2015.
17. Under the Federal Lands Recreation Enhancement Act, 80 percent of fees collected at a national park can be retained at that site. While the Department of the Interior has noted that raising that percentage would limit the ability to use fee revenues for agency-wide initiatives or at sites that do not charge fees, franchised parks should be allowed to retain 100 percent of fees they collect if they are required to be self-funding.
18. “National Park System: Units Managed Through Partnerships,” by Laura B. Comay. Congressional Research Service Report R42125. April 5, 2016.
19. For more background on the Tallgrass Prairie National Preserve, see [“Last Stand of the Tallgrass Prairie.”](#) National Park Service, Available at <https://www.nps.gov/tapr/index.htm>, Visited June 26, 2017, and [“Kansas: Tallgrass Prairie National Preserve.”](#) The Nature Conservancy, Available at <https://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/kansas/placesweprotect/tallgrass-prairie-national-preserve.xml>, Visited June 26, 2017.
20. [“Our Only Privately-Owned National Park Celebrates a Birthday and a Vital Conservation Easement.”](#) by Bob Janiskee. National Parks Traveler. November 12, 2008.
21. “Tallgrass Prairie National Preserve: Draft General Management Plan and Environmental Impact Statement.” U.S. Department of the Interior: National Park Service. October 1999.
22. [“Tallgrass Prairie National Preserve: Annual Park Recreation Visitation.”](#) National Park Service. Available at <https://irma.nps.gov/portal>. Visited June 26, 2017.
23. Such provisions could outline rules regarding motorized-vehicle use, hunting, or other uses. For more background, see “Motorized Recreation on National Park Service Lands,” by Laura B. Comay, Carol Hardy Vincent, and Kristina Alexander, Congressional Research Service Report R42955, February 8, 2013, and [“Hunting and Fishing on National Parks and Fish and Wildlife Refuges.”](#) U.S. Department of the Interior, Available at <https://www.doi.gov/blog/hunting-and-fishing-national-parks-and-wildlife-refuges>, Visited June 26, 2017.
24. [“Nomination hearing of the Honorable Ryan Zinke to be the Secretary of the Interior.”](#) U.S. Senate Committee on Energy and Natural Resources. January 17, 2017.
25. The Kaiparowits coal field bisects the Grand Staircase-Escalante National Monument and is estimated to hold roughly 62 billion tons of coal. [“How a Utah designation transformed politics in the West.”](#) by Phil Taylor. *E&E News*. July 13, 2016.
26. While the monument designation grandfathered in existing land-use rights, many leases were subsequently bought out. For example, the federal government acquired and retired the two largest coal leases within the monument boundaries. Similarly, the Utah School and Institutional Trust Administration’s land holdings within the monument were exchanged for productive mineral lands outside its boundary. Today, many of the grazing leases within the monument remain, though some have been bought out through a voluntary program spearheaded by the Grand Canyon Trust.
27. “Grand Staircase-Escalante National Monument: Approved Management Plan Record of Decision.” U.S. Department of the Interior: Bureau of Land Management. November 1999.
28. “Grand Staircase-Escalante National Monument Management Plan Implementation Review.” U.S. Department of the Interior: Bureau of Land Management. August 4, 2010.
29. A like-minded board—with all members dedicated to wilderness protection, for example—would reduce contention among members, and as long as managers had flexibility and financial accountability, such a board would still have to balance alternative resource uses. A board that represents diverse interests, however, is much more politically feasible.
30. Trust-like mechanisms have been tried on federal lands. The Valles Caldera Preserve in New Mexico was created in 2000 as a trust and government corporation. Similar to the trust concept recommended here, the trust board consisted of a group of various stakeholders that were to manage the land for multiple uses in a financially self-sustaining manner. There were several fatal flaws in the management system, however, as explained by Melinda Harm Benson and others. Notably, while the trust’s enabling legislation required it to be financially self-sufficient, this was not one of the primary goals defined by the board. Furthermore, as a government corporation, the trust was subject to limiting regulations, such as a liability concern that increased its costs and restricted the revenue-generating activities that could take place on the preserve. If the preserve was not financially self-sustaining after 20 years, management was to revert to the Forest Service.

- Political interest, however, cut the experiment short. In 2014, legislation transferred the preserve to the National Park Service. “Shifting Public Land Paradigms: Lessons From the Valles Caldera National Preserve.” Melinda Harm Benson. *Virginia Environmental Law Review*. 34:1-51. 2016.
31. [“May 25, 1805.”](#) Journals of the Lewis and Clark Expedition.
 32. Establishment of the Upper Missouri River Breaks National Monument by the President of the United States of America: A Proclamation. William J. Clinton. January 17, 2001.
 33. There have been limited instances of conservation groups procuring grazing permits and convincing the managing agency to retire the permits, however there is no systematic conservation leasing process that allows conservation groups to hold grazing permits for non-grazing conservation uses. See [“The Big Buyout.”](#) by April Reese, *High Country News*, April 4, 2005.
 34. Grazing permits have never been formally defined as a property right, and land management agencies have maintained the authority to reduce or revoke grazing privileges without compensation to the permit-holder. Congress should establish grazing permits as rights that are secure, transferable, and valid for non-use conservation purposes so that such trading could occur. For more background on the issue, see [“Managing Conflicts over Western Rangelands.”](#) by Shawn Regan. *PERC Policy Series* No. 54. January 2016.
 35. [“Controversy lingers at Missouri Breaks in Montana.”](#) by Marshall Swearingen. *High Country News*. May 25, 2015.
 36. [“Montana’s Upper Missouri River Breaks in the Crosshairs.”](#) by Scott Bosse. *American Rivers*. May 23, 2017.
 37. *Western Watershed Project v. Abbey*. 719 F.3d 1035 (9th Cir. 2013).
 38. [“Grazing in Clinton-era Monuments—it’s Complicated.”](#) by Phil Taylor. *E&E News*. April 18, 2016.
 39. The Grand Canyon Trust, a conservation group, spent \$1.5 million between 1999 and 2001 to purchase base properties with about 350,000 acres worth of grazing permits in and around the Grand Staircase-Escalante National Monument. The Trust offered to relinquish the grazing permits to the BLM if the agency would retire the allotments, but other ranchers applied to the agency to have the grazing permits transferred to them because the Trust had no intention to graze. To avoid having their permits transferred the Trust grazed the minimum number of cattle on the allotment in order to retain control of the grazing permits.
 40. [“Managing Conflicts over Western Rangelands.”](#) by Shawn Regan. *PERC Policy Series* No. 54. January 2016.
 41. [“Bison grazing on BLM allotment prompts protest.”](#) by Karl Puckett. *Great Falls Tribune*. January 27, 2016. [“BLM plans more study of year-round bison grazing.”](#) by Karl Puckett. *Great Falls Tribune*. May 11, 2016.
 42. In 2013, the conservation group Trust for Public Land bought out an energy company’s federal oil-and-gas-lease rights to 58,000 acres in Wyoming’s Hoback Basin for \$8.75 million. The deal was possible thanks to a provision in the Wyoming Range Legacy Act that allows groups to purchase and retire federal oil and gas leases on certain federal lands in the state if the lease rights were voluntarily acquired from willing sellers. See [“Conservation Group Agrees to Purchase Drilling Leases in Sensitive Wyo. Basin.”](#) by Scott Streater. *E&E News*. October 5, 2012.

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