

Charter Forests:

A New Management Approach for National Forests

by Robert H. Nelson



PERC

PERC POLICY SERIES | No. 53 | 2015

Charter Forests:

A New Management Approach for National Forests

by Robert H. Nelson



2048 Analysis Drive, Suite A | Bozeman, Montana 59718
Phone: 406-587-9591 | www.perc.org | perc@perc.org

To the Reader

Innovation drives successful management. But when it comes to public land management, innovation is often lacking. National forests are frequently characterized by gridlock and dysfunction. As several former agency directors put it, the U.S. Forest Service suffers from “analysis paralysis,” resulting from a “Gordian knot” of laws and litigation.

Is there room for innovation on national forests? Public land scholar and former Bureau of Land Management director Marion Clawson thought so. “I reject any idea that we today are less imaginative and resourceful than the men and women who pressed for the establishment of the national forests,” he wrote in 1984. “We too can innovate; let us try.”

In this *PERC Policy Series*, Robert H. Nelson of the University of Maryland puts forth an alternative approach to national forest management—the creation of “charter forests.” Much like charter schools, the key principle of charter forests is freedom with accountability. Charter forests would be freed from the centralized administration of the Forest Service, and management would be devolved to individual autonomous forests capable of more creative and locally responsive management.

Charter forests would operate under federal oversight, including broad land use goals and performance standards to protect environmental quality. But they would have the flexibility to develop and implement innovative solutions to forest management—something sorely needed on national forests today.

Clawson was right. We too can innovate. So let us try. “Charter Forests: A New Management Approach for National Forests” is part of the *PERC Policy Series* of essays on timely environmental topics. To learn more, visit www.perc.org.

Table of Contents

2	Dysfunction in the Inner City
3	From Dysfunction to Charter Schools
6	The Educational Record
7	From Inner City Schools to Western National Forests
10	A Design for Charter Forests
13	New Management Freedom and Flexibility
17	Key Implementation Issues
22	Conclusion
23	Notes

Charter Forest Principles

- 1 Charter forests would be freed from traditional U.S. Forest Service control and management responsibilities would be transferred to individual autonomous forests.
- 2 Charter forests would remain under federal ownership.
- 3 Charter forests would be exempt from many legal and regulatory requirements that inhibit the adoption of innovative and locally responsive management.
- 4 Charter forests would operate under less restrictive hiring practices.
- 5 Charter forests would be governed by a board of directors for each forest.
- 6 A national charter forest board would oversee charter forest management.
- 7 Charter forest boundaries would be approved by the national charter forest board.
- 8 Charter forests would receive public support to cover part of their operation costs.
- 9 Charter forests would have the authority to set user fees and retain the revenues.
- 10 The federal government would provide wildfire management on charter forests.

Charter Forests:

A New Management Approach for National Forests

Concern about the low quality of federal policy making and agency administration is no longer the province of libertarian, tea party, and other critics: It has gone mainstream. A 2014 issue of *Foreign Affairs* explains that the American government is characterized by “decay and dysfunction.” As Gideon Rose and Jonathan Tepperman write in an introduction to the issue, “American politics today are marked by dysfunction, discontent, and ideological churn.”¹

The lead article by Francis Fukuyama provides a wide-ranging analysis of the sources of the federal malaise. As a primary example, Fukuyama reviews the history of the U.S. Forest Service that has brought it to a state of a “dysfunctional bureaucracy performing an outmoded mission with the wrong tools.”² The problems of the Forest Service, Fukuyama argues, date to the creation of the agency in 1905 as a prototypical product of the Progressive Era in American history, typically dated from 1890 to 1920. The core progressive idea was that, by empowering technical experts separated from crass politics, the federal government would bring a superior brand of scientific management to the forests of the nation, many of them still under federal ownership in the western United States.

A century later, however, the results show that this management philosophy has failed, and we have not yet been able to find a suitable successor

The core progressive idea was that, by empowering technical experts separated from crass politics, the federal government would bring a superior brand of scientific management to the forests of the nation. A century later, however, the results show that this management philosophy has failed.

for national forest management. Fukuyama, in his criticisms of national forest management, is not saying anything that has not been said before by economists, political scientists, retired federal land managers, and others for several decades. In the early 1980s, observing the failure of public land management, former director of the Bureau of Land Management Marion Clawson declared that “I reject any idea that we today are less imaginative and resourceful than the men and women who pressed for the establishment of the national forests, national parks, and grazing districts. We too can innovate; let us try.”³

In this report, I offer a new management approach for national forests, the creation of “charter forests,” as an alternative to the Progressive-Era thinking that still shapes our public land institutions. My proposal draws heavily upon another radical departure, the creation of charter schools, which seek to replace a failing progressive system, the inner-city schools that are part of large city school systems. These schools owe their origins to progressive philosophies of scientific management—and thus, it was hoped at the time, more efficient and effective educational provision.

Dysfunction in the Inner City

American public education in inner cities has long been as dysfunctional as Forest Service management of national forests in the West. Public school systems were typically built on ideas of consolidation of responsibilities, professionalization of administration, separation of expert administration from politics, and optimism about the ability of scientific expertise to perfect American education. By the 1960s, however, it became apparent that many of America’s school systems were failing their students, especially those in inner-city areas.

Although public education has historically been a state and local responsibility, the failings of large public school systems are similar in many ways to the failings and dysfunction of the Forest Service today. Inner-city schools are typically part of public education monopolies that apply a one-size-fits-all approach throughout large public school systems. Educators within these school systems are often inhibited from adopting innovative educational methods by tight central rules and regulations. In both hiring and promotion, requirements for certain educational credentials—where “expert” training takes priority over practical experience in the classroom—makes it more difficult or even impossible to hire potentially excellent teachers who lack formal credentials.

Powerful teachers unions are a particular obstacle, with their resistance to accountability and focus on seniority as mandated in negotiated work rules—such as for the hiring, assignment, and transfer among schools, and dismissal of teachers. In the name of applying progressive expertise, the schools were run by school administrators themselves based on their claims to having the necessary specialized knowledge and skills for school management and learning, leaving parents with little authority in the education of their own children.⁴

While the social harms and moral offense are greater in the case of failing inner-city schools, it is otherwise similar to the longstanding management failings of the Forest Service.⁵ For progressive true believers, the very existence of national forests in federal ownership is seen as symbolically ensuring the equal right of all Americans to the benefits of these forests, and as affirming a set of shared values of the American national community. It is often said that national forests and other public lands “belong to all Americans.” However, public lands—like the public schools—might be better described as shared sacred spaces in an American civil religion, as famously described by sociologist Robert Bellah.⁶

From Dysfunction to Charter Schools

Although Milton Friedman probably deserves the greatest credit, the idea for charter schools is often traced to a 1988 proposal by Albert Shanker, the longtime president of the American Federation of Teachers.

In 1991, Minnesota became the first state to authorize this radical new idea in American education. Charter schools spread slowly at first but have expanded steadily. Today, most states have charter school laws, and around 7,000 charter schools have now been established nationwide. From the school year 1999–2000 to 2013–2014, the number of students enrolled in charter schools increased in the United States from 0.3 million to 2.7 million and the percentage of public school students attending charter schools rose from 0.7 to more than 5.0 percent.⁷

Charter schools spread most rapidly in inner-city school systems where traditional public education had been the greatest failure. By 2013–2014, more than 40 percent of public school students in New Orleans, Detroit, and Washington, D.C.—three of the historically worst inner-city public school systems—were enrolled in charter schools. Other cities with high percentages of charter school students include Cleveland (39 percent of public school students), Kansas City (37 percent), and Philadelphia (30 percent). Los Angeles has the largest number of charter school students at nearly 140,000, representing 21 percent of total enrollment.

In New York City, the Success Academy charter schools have experienced remarkable success improving test scores and other educational results for students from less-advantaged backgrounds. In 2014–2015, they received more than 22,000 applicants for the 2,688 spots available.⁸ The schools have created a school environment where expectations are high for teachers and students alike, failure is not considered acceptable, and students are required to conform to a tight disciplinary regime. Needless to say, this would be difficult to do in a traditional public school. In New York City, many more students would be attending charter schools, but the defenders of the traditional public school system have been more politically powerful than in many other large cities—much as defenders of national forest management in the West have thus far been successful in their efforts to block significant institutional change.

The goal of charter schools is to introduce a new institution in American education that will be more equal, more democratic, and more effective than traditional top-down public education systems. Charter schools are part of the public school system but operate under rules that more closely

Like charter schools, the core guiding principle for charter forests would be freedom with accountability, with accountability resulting from a greater role for competition combined with national oversight and standards for charter forest performance.

resemble a private school. It gives equal access to all residents of the city. Its public school status means that, unlike a private school, charter schools typically cannot enforce a selective admissions policy based on student qualifications. If there are more applicants than available spaces in a charter school, as is often the case, the school must employ a lottery to determine which students gain admission. Charter schools are public schools in that they are government funded. The funding formulas vary, but in general a charter school receives public funds for each student that are about equal to the levels of public expenditures per student made for the traditional public schools.⁹

Charter schools promote social equality because they abolish the use of geographic boundaries to determine eligibility for school admission. Unlike traditional public schools, charter schools allow parents and students the choice to attend a school outside of a particular geographic boundary that might offer a superior education. This is especially important for inner-city poor and minority students, who are often required to attend bad neighborhood schools.

Breaking with the old progressive faith in professional expert control, charter schools are more democratic because they are run by a board of directors elected by the parents. The board selects the principal of the school, in place of the traditional practice of professional administrators choosing other professional administrators. Some charter schools are created by educational entrepreneurs, such as the KIPP charter school network, who take the initiative to create the school and then recruit principals and teachers to fit their educational design. Such educational entrepreneurs, however, have no monopoly powers such as those found in traditional public school systems. They must compete with other school systems to

maintain standards and demonstrate positive educational results to attract parents and students.

Charter schools are held accountable by official oversight bodies that must accredit and monitor individual charter school performance against certain educational standards—focusing more on actual educational outcomes as opposed to the traditional regulatory focus on school inputs. Some charter schools have been closed by charter school boards for failing to meet educational standards or other operating deficiencies. Although opponents of charter schools often seize on this fact to attack charter schools in general, they are better viewed as a positive development. Unlike charter schools, traditional public schools are almost never closed for reasons of educational failure.

The Educational Record

Studies have increasingly found favorable educational results for charter schools. The Center for Research on Education Outcomes at Stanford University, for example, published a detailed study in 2009, followed by a similar study in 2013.¹⁰ In the 2009 study, the performance of statistically comparable students had been lower for charter schools than for students in traditional public schools in reading and even more so in mathematics. By 2013, however, that had significantly reversed. The analysis “shows that charter schools now advance the learning gains of their students more than traditional public schools in reading.”

When the data was broken down by student subpopulations, the results were more striking. It was the inner-city minority students who benefited most from charter schools. As the 2013 study reported, “Within the black and Hispanic student groups, the analysis showed that students with multiple challenges—blacks and Hispanics in poverty or Hispanics who were English language learners—gained a substantial learning advantage in charter schools.” Especially encouraging, compared with the traditional public schools they would otherwise have attended, “black students in poverty who attend charter schools” gained an amount educationally equivalent to an “additional 29 days [per year] of learning in reading and 36 days in math over their TPS [traditional public school] counterparts.” In summary,

from 2009 to 2013, the Stanford studies found “slow and steady progress in the performance of the charter sector.”¹¹ Charter schools, to a greater extent than traditional public schools, are free to put the lessons of their own trial and error experiences rapidly into practice.

Two other important studies of charter school performance were published in 2013 in a leading scholarly journal of the American Economic Association. The studies meet the gold standard for statistical reliability because many charter schools are significantly oversubscribed and are required to use a lottery to select students. This means that students from the same population group are randomly divided into charter school students and a “control group” of students who had to go to traditional public schools. Based on a Massachusetts study of urban lottery charter schools, MIT economists Joshua Angrist and Parag Pathak, joined by Christopher Walters of the University of California at Berkeley, conclude that Massachusetts’ “urban charter schools, including the oversubscribed schools at the heart of our lottery analysis, serve a typical urban population characterized by low test scores and high poverty rates. On average, urban charters push their students well beyond the achievement levels characteristic of urban [traditional] public school districts.” Angrist and his co-authors see the results of their study as further contributing to a “growing body of evidence [that] suggests that urban charter schools have the potential to generate impressive achievement gains, especially for minority students living in high-poverty areas.”¹²

Another article in the same journal by economists Will Dobbie of Princeton and Roland Fryer of Harvard focuses on applicants to charter schools in New York City that are in such high demand that they must use lotteries, finding similarly favorable results for 39 such charter schools.¹³ Charter schools allow poor children to move to better schools across the whole city, even though they may not actually change their physical neighborhood residence.

From Inner City Schools to Western National Forests

The damage done to some of the least-advantaged children continues to be justified in “progressive” policy terms. The dysfunctional management of national forests is similar in many ways. As a leading commentator

on land and resource development in the American West, Daniel Kemmis observes that “the Progressive movement at the beginning of the twentieth century had succeeded in persuading policy makers that a technical elite, working primarily within federal bureaucracies, should be responsible for the majority of natural resource management decisions.” Lawmakers in the Progressive Era institutionalized this philosophy when they established agencies such as the U.S. Forest Service, National Park Service, and Bureau of Reclamation. Although immense changes have occurred in other areas of American society over the past century, Kemmis notes that surprisingly little has changed: “In many ways, the culture of these agencies retains to this day the Progressive faith in technical decision making.”¹⁴

Despite the Forest Service’s professed commitment to the use of scientific knowledge in managing national forests, such knowledge is often systematically ignored. The consequences have been particularly damaging with respect to the management of wildfires in the forests of the American West. The Forest Service persisted for years in pursuing a policy of almost complete exclusion of fire, despite decades of scientific studies establishing the essential role that fire plays in many forests. The agency has been slow to change even as this policy has come under increasing scientific criticism.

With “excess fuels” building up in many national forests due to fire suppression policies, and with timber harvesting virtually eliminated, a new pattern of devastating crown fires began to spread more widely on national forests in the 1980s. Such fires are extremely difficult to control and can cause significant environmental damage. From 2000 to 2013, the Forest Service spent \$24 billion on wildfire suppression, crowding out other areas of forest management. Much of these large expenditures and concentration of agency resources on wildfires is the result of past Forest Service mismanagement of national forests.¹⁵

As recently as April 2015, two Forest Service researchers reported that “policies and actions to reduce the cycle of ever increasing wildfire suppression effort, management costs, and resource losses will be challenging to implement,” even after years of studying the problem. Reform efforts were likely to be frustrated by the “inertia of the existing social system” of national forest management, which is “habituated by the

U.S. National Forest System



current management paradigm [that] is entrenched in social expectations and agencies' cultures."¹⁶

Across the full range of its activities, the Forest Service seeks to impose one-size-fits-all management and policies across the great diversity of landscapes in the American West. It has tried to formulate general management principles for all of its Western domains—"multiple use management" in the 1960s and then "ecosystem management" since the 1990s. These management principles, however, have failed the test of time. They are based on faulty information, weak science, philosophical confusions, and typically result in politicized decision making.¹⁷ It has proven difficult to

reconcile forest management by federal experts with the legal requirements for a large popular voice of the U.S. democratic process, such as those required by new public land laws of the 1970s.¹⁸ In the resulting confusions, similar to inner-city traditional public schools, the common outcome has been administrative waste, economic inefficiency, and the politicization of forest management.

The idea of extending the charter school approach to the management of national forests is not new. In 2002, the Department of Agriculture's budget proposal called for legislation to establish "charter forests" that would be administered outside the normal Forest Service structure. The Forest Service saw it as an experiment that could help overcome what agency chief Dale Bosworth called "analysis paralysis," as *High Country News* reported at the time. "Projects ranging from timber sales to off-road vehicle plans are stymied by endless rounds of appeals and lawsuits," the magazine reported. "That, in turn, has created a culture in which [Forest Service] managers are gun-shy and reluctant to initiate any new ideas."¹⁹

Such a large step away from the national forest status quo never received any serious consideration. But today, after yet another decade of national forest management dysfunction that has defied incremental efforts to improve the situation, it is time to consider this radical step, following after the example of charter schools. I propose that Congress enact legislation providing for a new set of operationally more flexible and decentralized administrative units on national forests known as "charter forests." Like charter schools, the core guiding principle for charter forests would be freedom with accountability, with the accountability resulting from a greater role for competition, combined with national oversight and standards for charter forest performance that will weed out badly failing forest management practices.

A Design for Charter Forests

Extending the model of charter schools, a system of charter forests would work according to the following principles:

- 1. Charter forests would be freed from the traditional tight controls of the U.S. Forest Service.** In the case of charter schools, this has meant transferring management responsibilities from a central school bureaucracy to substantially autonomous individual schools. In the case of charter forests, it would mean transferring management responsibilities to similarly autonomous individual forests.
- 2. Charter forests would remain in federal ownership as public lands.** In the case of charter schools, they remain public schools that are part of the citywide public education system. In the case of charter forests, they would likewise remain public forests that are part of the national forest system, even as management responsibilities would be transferred to more local levels.
- 3. Charter forests would be relieved from regulatory requirements that inhibit the adoption of innovative and locally responsive forest management.** In the case of charter schools, this has meant freedom from central curricula and other educational administrative requirements. In the case of charter forests, this would mean freedom from the environmental assessment requirements of the National Environmental Policy Act (NEPA), from the land use planning requirements of the Resources Planning Act (RPA) and National Forest Management Act (NFMA), from the open meeting, public involvement, and reporting requirements of the Federal Advisory Committee Act (FACA), and from other administratively constraining federal laws and regulations that create significant barriers to more locally responsive and effective forest management.
- 4. Charter forests would operate under less restrictive hiring practices.** In the case of charter schools, this has meant freedom from the traditional requirements for professional education credentials and membership in a teachers union. In the case of charter forests, this would mean freedom from traditional Forest Service requirements for professional forestry or other natural resource management credentials, as well as from federal civil service hiring procedures and federal pay scales.

5. **Charter forests would be subject to the overall governance of a board of directors for each forest.** In the case of charter schools, this has meant a board of directors is elected by the parents of attending students. In the case of charter forests, it would mean a board would be chosen—possibly by direct election—from among the users of the charter forest lands and from others with major concerns relating to the use and management of these lands. In this respect, beyond the existence of a board of directors, the analogy between a charter school and a charter forest is less exact, as will be examined further below.
6. **Charter forests would be overseen by a national charter forest board.** In the case of charter schools, there is a city-wide charter school board located outside the traditional public school system that approves the initial creation of a charter school, periodically reviews charter school performance, and can terminate a charter school in cases of malfeasance. In the case of charter forests, there would be a national charter forest board administered outside the Forest Service that would have similar functions to approve the creation of new charter forests and to monitor their performance.
7. **Charter forest boundaries would be approved by the national forest charter board.** Most charter schools do not serve specific boundaries within their city, accepting students from throughout the city. In the case of charter forests, each charter forest would have specific geographic boundaries. Much as students can choose to attend a particular charter school, most users of the national forests could choose to hike, hunt, camp, and participate in other activities among a range of charter forests—many of which may be managed for different purposes.
8. **Charter forests would receive public support to cover part of their operation costs.** In the case of charter schools, a school receives a certain payment per student from the city, based in part on the city-wide average costs of education per student in the traditional public school system. In the case of charter forests, a forest would receive a

certain payment based in part on past funding for the management of those national forest lands by the U.S. Forest Service and, in part, on the levels of various forms of public use of the charter forest (see the further discussion below).

9. **Charter forests would have the authority to set fees for the users of the charter forest lands and resources.** The charter forest would retain the revenues from these fees as a way to help cover their costs. A charter forest could hold timber sales and collect grazing fees, for instance. Some charter forests might have net positive revenues, in which a full distribution of the forest “profits” could be made to some local public body such as the local county public school system.
10. **The federal government would continue to provide wildfire management on charter forests.** The Forest Service might enter into contracts with charter forests to facilitate forest management steps that would reduce the risks of large wildfires. This continued federal responsibility for wildfires would reflect the fact that the current high risk of dangerous wildfires is in part the result of past national forest mismanagement.

New Management Freedom and Flexibility

These principles, if adopted, would provide charter forests with more freedom and flexibility than traditional Forest Service management. In recent years, the Forest Service itself has argued for related reforms. In 2002, the agency published its own study, *The Process Predicament*, in which it appealed for relief from the legal and regulatory environment that makes forest management difficult. As the Forest Service reported, it faces a “costly procedural quagmire” in which as much as 40 percent of the work at the individual national forest level was taken up in “planning and assessment.” The result was that “the Forest Service operates within a statutory, regulatory and administrative framework that has kept the agency from effectively addressing rapid declines in forest health,” including the development of potentially devastating excess fuel buildups.²⁰

No relief was forthcoming. Now, more than a decade later, observers

of the Forest Service still characterize its state of dysfunction in much the same terms. The political will has simply been lacking to confront the obstacles that have produced management failure on a large scale. One way to address these problems is to leave most major federal land laws and regulations in place as they now exist, but to exempt charter forests from their operation, just as charter schools are relieved of many traditional rules and regulations that stand as obstacles to effective education.

The National Environmental Policy Act (NEPA)

Originally conceived as a means of providing the necessary scientific and economic information to better inform federal decisions, many environmental impact statements (EIS), as required by NEPA, have become a caricature of that goal. On national forests, the practical effect of the NEPA process has been to encourage prolonged EIS litigation, transferring major parts of the decision making authority to federal judges. To the extent that the EIS process has improved public decision making, it has not been so much by the scientific information generated as by delaying public decisions. In some cases, this allows for a calmer decision making environment and a fuller public debate. But delay itself has its own costs that are seldom entered into the calculations of litigants, federal agencies, judges, and other involved parties.

As Daniel Kemmis writes of NEPA in the decades following its enactment in 1970,

For all the environmental advantages that have accrued because of NEPA and other environmental legislation, the new [1970s] approach to decision making also brought a new and substantial set of problems in its wake. Over the ensuing decades, NEPA litigation stalled many decisions or side-tracked them in long-drawn-out, confrontational, narrowly defined debates. Among both resource users and environmental interests, the entire procedural, bureaucratic framework of decision making created steadily deepening anger and frustration... In particular, the West, as the region with the majority of the country's public lands, became increasingly polarized as a more or less direct result of [NEPA and other] 1970s environmental legislation.²¹

The EIS process mandated by NEPA has become a leading contributor to current national forest management dysfunction. It serves to empower narrow elites that are skillful in filing lawsuits and manipulating the judicial process. Their efforts move the final policy and administrative decisions into the hands of unelected judges, while many legitimate economic costs and benefits are neglected. Charter forests should therefore be exempt from judicial review of any EIS they might prepare. The decision to write an EIS, moreover, should be optional. Charter forests might still prepare formal project analyses but in the context of a streamlined process redesigned to meet the actual information needs of charter forest decision makers themselves and to provide transparency.

The Land Use Planning Litigation Mill

Comprehensive planning of the kind involved in national forest land management has a long history in the United States. Following standard Progressive-Era prescriptions, state governments from the 1920s onwards required that local zoning regulations must be developed and implemented in accordance with a comprehensive plan.²² By the 1960s, however, skeptical political scientists were increasingly pointing out that comprehensive planning for zoning was another progressive fiction. As William Whyte, a leading observer of urban events, commented in 1970, “What all this amounts to is a lot of public-relations activity, and the consensus it produces is an illusion.”²³

Despite this long history of planning failure, statutes such as the Resources Planning Act (RPA) of 1974, the National Forest Management Act (NFMA) of 1976, and the Federal Land Policy and Management Act (FLPMA) of 1976 established new comprehensive planning requirements for decisions made by federal land agencies. This comprehensive planning of American’s national forests and other federal public lands—most of them located in the rural West—fared no better than the urban planning of earlier decades.²⁴ It was itself another progressive measure that began with good intentions—public decisions should be made on the basis of scientific knowledge and objective facts systematically applied—that reflected a utopianism out of touch with the real world.²⁵

In practice, the planning requirements were useful to opponents of proposed federal actions on national forests who discovered that they could often prevail by suing the government for having done an inadequate job of land use planning. The litigation is often drawn out for years. If a federal agency encountered the wrong judge, it might be faced with the prospect of developing new planning documents, this process itself taking more years. In a large number of cases, whatever their public rhetoric might have been, the actual goal of litigants was not to improve national forest management but to keep national forests so far as possible untouched by human hands—in other words, to institutionalize a regime of no management in the pursuit of “wildness.”

A student of public land management, Julia Wondolleck explained in 1988 that “with just a handful of exceptions, the forest planning process fails quite dramatically to satisfy those objectives determined earlier to hold some hope for its success. Whereas the agency [Forest Service] outwardly tries to build trust, cooperation and faith, the process used undermines their hopes by eroding all three.”²⁶ In 1992, Frank Gregg, director of the Bureau of Land Management in the Carter administration, recalled the enthusiasm of the 1970s with its high hopes for “participatory comprehensive planning.” Unfortunately, as Gregg wrote, “We have now amassed considerable history participating in and judging the revised system, and we agree that we are in another generation of dissatisfaction,” characterized by a decision making process of “gridlock” and “polarization.”²⁷

In 2014, the editor of *High Country News* reported that, with respect to efforts to remove excess wood fuels from fire-prone western forests, “even with truckloads of money, the Forest Service and the diminished logging industry just can’t seem to do the job.” As a result of the “Forest Service’s near paralysis”—little changed from previous years—“the overall effort to restore our forests will remain modest for years to come.” This will not necessarily mean the preservation of forests in their current state, but rather, “Mother Nature will continue to manage the forests with the kind of gigantic wildfires that restructure entire ecosystems almost overnight.”²⁸

Every organization engages in planning. The Forest Service, however, is locked in an unwieldy and unworkable system of formal land use

planning that is a product of a Progressive-Era faith in the ability and wisdom of professional experts to comprehensively design the future of American land use. Charter forests, therefore, should be granted relief from the formal land use planning requirements of RPA, NFMA, and other public land use planning legislation.

Key Implementation Issues

In putting the charter forest concept into practice, some key implementation issues to consider will be the following:

Transitional Employment Arrangements

In many cities, most charter schools are new and therefore do not directly displace any existing employees. A charter forest, however, would be established from lands that are now part of the national forest system and are currently being managed by Forest Service personnel. The status and treatment of existing Forest Service employees would thus be a larger issue in the case of charter forests. Also, new employment opportunities in rural areas where national forests are typically located might be scarcer than in large cities for any displaced educational personnel.

The creation of a charter forest should include the provision of transitional policies and procedures to facilitate the needed work adjustments for existing Forest Service employees who are not retained by the charter forest. There might be provision, for example, for temporary salary compensation during a transitional period of work search. There might be generous provision for payments of moving expenses to other cities. Early retirement might be offered in some cases. Conceivably, a program might be established for a charter forest to rehire displaced Forest Service personnel with part of their old salary paid by the federal government.

Many charter schools belong to networks of charter schools that are organized and run by educational entrepreneurs and innovators. It is the network that plays a large role in conceiving new charter schools, gaining approval, and organizing initial operations. Many Forest Service personnel have been deeply frustrated by the failings of the agency, some of whom have retired or otherwise left the agency. These ex-Forest Service

employees might represent a group of people who might be leading candidates to create a network that could play similarly important roles in conceiving new charter forests, winning their approval, and organizing their initial operations. Ex-Forest Service employees might be a key source for the longer-run staffing of charter forests. Even if they had to take a reduction in pay, some current Forest Service employees might be willing to resign from the agency in order to become part of a charter forest network that offered wider management freedoms and possibilities.

Creating a Charter Forest

A charter school can be created by finding a suitable facility, developing a work plan, and gaining approval from the chartering authority. In the case of a charter forest, it would be more complicated because it would be necessary to set aside an area within an existing national forest. How would the boundaries of this forest area be determined? How would the new charter forest managers be selected?

As proposed above, an independent “national charter forest board” would be established outside the Forest Service itself. Then, there would be two main alternatives. Under one alternative, this national board would be open to proposals to create a new charter forest. The proposals submitted would have to include the boundaries of the charter forest, the planned governance structure, the mission and expected uses of the charter forest, the various user groups that would be served, the planned means of protecting environmental assets, the estimated costs of charter forest management, and any expected ways of generating revenues.

The means of electing a board of directors for a charter forest would also have to be explained. This would include the manner of determining eligible candidates for the board and the relevant electorates for possible selection by vote among these candidates. Any *ex officio* members who would become members of the board outside these procedures would be specified. The national forest charter board would then decide whether to sign a contract (a “charter”) to accept the proposal. The national charter forest board would then monitor the situation to ensure that the terms of the charter contract were being observed. There might be, for example,

provision for five- or ten-year reviews that could result in the cancellation of the charter forest agreement.

An objection to this alternative is that it would give the proposing group too large a role in selecting the boundaries and other details of a charter forest. One way to address this issue would be to publicly announce charter forest proposals and solicit alternative proposals for charter forests with the same or similar forest boundaries. If other proposals were received, the national charter forest board would then choose the best among the submitted proposals.

A second alternative would be to have the national charter forest board itself (or some other appropriate group outside the Forest Service) identify possible boundaries for a new charter forest. It would then publicize the boundaries and the broad purposes of a new charter forest, soliciting proposals for the management of this newly planned charter forest. The national charter forest board would review the proposals received and select one as the basis for a new charter forest, including a management orientation, administrative team, governance structure, and other charter forest features.

The Charter Forest Constituency

Selecting the board of directors of a charter school is similar to selecting the board of directors of a homeowner association, club, or other private collective organization. It is facilitated in the case of a charter school by the fact that there is a well-defined group of “club” members—the parents of the students—who elect the board. In the case of a charter forest, there would normally be no such well-defined group. The closest analogy to some set of collective “owners” would be the users of the charter forest area, a group not as easily defined as the parents of charter school students. Other people in the United States might also feel they have a stake in the management of a charter forest—even if they had no expectation of making direct use of it.

This is perhaps the most difficult issue facing the charter forest concept: Who are the “owners,” and how will the members of the board of directors of a charter forest be selected? Again, there is more than one alternative

to deal with this issue. The first alternative would be to forego the idea of selecting the board by direct election. Instead, members of the board might be selected by political leadership. The governor of the state in which the charter forest is located, for example, might make the selection of board members, subject to certain criteria for broad representation and legislative approval. Or political leaders from several jurisdictions might have a certain number of assigned board seats to fill. Local government officials might fill two board seats, the state governor three seats, the President of the state land grant university one seat, and the Secretary of Agriculture two seats. The terms might be staggered so that political parties in power at any given time would be less likely to dominate the board membership. There might be further requirements for diversity in geography, educational background, previous government experience, or other considerations for board membership.

A different approach would be to designate various “electorates” to vote for charter forest board members. The voting might take place in person at a meeting specifically called for that purpose. There might, for example, be a meeting to select two “environmental” board members. There could be similar meetings to elect a “popular recreation” board member and additional board members for fishermen, hunters, livestock grazers, mountain climbers, timber harvesters, and so forth, depending on the actual leading constituencies for a particular charter forest. Admittedly, for national groups this would not work, given the time and costs of travel, so it may be necessary to have some board members designated by national (governmental or otherwise) leaders. The national board members would then serve in combination with state and locally chosen board members.

Yet another alternative would be to provide a system of membership in the charter forest. Becoming a member might be open to anyone but could require paying a membership fee. Membership would convey rights to vote in board of director elections and perhaps additional privileges such as free visitation rights and other terms of use of the charter forest.

Perhaps different options among the above might be employed for different charter forests. The manner of board selection would be part of

The Forest Service is locked in an unwieldy system of formal land use planning that is a product of a Progressive-Era faith in the ability and wisdom of professional experts to comprehensively design the future of American land use.

the original charter forest proposal. With greater experience, some methods might prove to be more successful than others.

Public and Private Funding of Charter Forests

Related issues would arise with respect to the role of public and private funding for charter forests. Because charter forests would provide various “public” services in addition to their private benefits, it might be appropriate to continue some amount of federal funding.

Here, again, there are alternatives. One alternative would be to allocate so many public dollars per recreational visitor or other type of direct user of the charter forest. This would be closest to the charter school approach. There might be different amounts for different types of users. In order to help to cover management costs, there might be a federal supplement given to a charter forest above the grazing fee collected for each animal unit month (AUM) of livestock grazing on the forest. Similarly, charter forests might establish fees for individual direct use, and the federal government might provide a supplement on top of these fees as they were collected. Where timber harvests served multiple purposes, such as supplying wood and reducing excess fuels, supplemental federal payments might be made to cover such costs.

One concern with this approach is that a charter forest might serve nationally important environmental values that go beyond the benefits derived from the direct use of the forests. In such cases, an alternative would be to estimate the amounts of funds that would have been available to the charter forest if it had continued as a traditional administrative unit of the U.S. Forest Service and authorize a significant part of this amount to be transferred by the federal government to the charter forest annually. The exact percentage might depend on the importance of direct recreational use

of the forest. The general public support levels might be adjusted over time as more experience with charter forests is gained and the revenue-generating capacity of individual charter forests themselves is better understood.

In some circumstances, it might be feasible to require that the charter forest be financially self-sustaining without federal transfers of any funds. Some charter forests might establish private foundations and conduct their own voluntary fundraising campaigns in the manner of, say, a private university. Instead of alumni, a charter forest might form a group of “forest supporters” or “friends groups” who would develop a sense of ownership in the forest. Public events might be organized to create stronger bonds between such groups of private donors and individual charter forests. Large amounts of money are raised privately and voluntarily for many public purposes, including national forest management. In Bozeman, Montana, for example, the “Friends of Hyalite” help pay for snowplowing and other maintenance for the Hyalite section of the Custer Gallatin National Forest.

Conclusion

If present trends continue, charter schools may bring about a broad transformation in the U.S. public education system. It might, in the end, help produce a better approach to education for less-advantaged students, substantially replacing traditional public school systems.²⁹ The charter schools that inner-city children attend would then more closely resemble the high-quality suburban schools that have long had much of the character of charter schools.

A similar state of desperation now exists with respect to the longstanding dysfunctional management of national forests. The problems have been recognized by observers of the Forest Service for at least 20 years. Many incremental proposals have been offered, seeking to improve Forest Service management within its existing institutional structure—and all of them have so far failed. One might ask, are we desperate enough to adopt a similarly radical reform strategy today? If so, charter schools provide a model for the creation of charter forests within the national forest system.

Notes

1. Gideon Rose and Jonathan Tepperman, "Dysfunction Junction," *Foreign Affairs* 5, no. 2 (2014).
2. Francis Fukuyama, "The Sources of Political Dysfunction," *Foreign Affairs* 5, no. 5 (2014). Article adapted from Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (2014).
3. Marion Clawson, "Major Alternatives for the Future Management of the Federal Lands," *Rethinking the Federal Lands*, Ed. Sterling Brubaker (1984), p. 232.
4. Frederick M. Hess, *Spinning Wheels: The Politics of Urban School Reform* (1998).
5. Robert H. Nelson, *Public Lands and Private Rights: The Failure of Scientific Management* (1995).
6. Robert N. Bellah, "Civil Religion in America," *Daedalus* 96, no. 1 (1967).
7. For data on charter school enrollments, see *National Alliance for Public Charter Schools, a Growing Movement: America's Largest Charter School Communities* (December, 2014).
8. Kate Taylor, "At Charters, High Scores and Polarizing Tactics," *New York Times* April 7, 2015: A1.
9. Charter schools are similar in many ways to a voucher system except that the money comes directly from the government to the school, rather than through payments on behalf of individual students.
10. "National Charter School Study 2013," Center for Research on Educational Outcomes, Stanford University (2013).
11. *Ibid.*, pp. 9, 17, 19, 24.
12. Joshua D. Angrist, Parag A. Pathak, and Christopher R. Walters, "Explaining Charter School Effectiveness," *American Economic Journal: Applied Economics* 5, no. 4 (2013).
13. Will Dobbie and Roland Fryer, "Getting Beneath the Veil of Effective Schools: Evidence from New York City," *American Economic Journal: Applied Economics* 5, no. 4 (2013).
14. Daniel Kemmis, *This Sovereign Land: A New Vision for Governing the West* (2001), p. 124.
15. Robert H. Nelson, *A Burning Issue: A Case for Abolishing the U.S. Forest Service* (2000).
16. David E. Calkin, Matthew P. Thompson, and Mark A. Finney, "Negative Consequences of Positive Feedbacks in US Wildfire Management," *Forest Ecology* (2015).
17. Roger Sedjo, "Does the Forest Service Have a Future?" *A Vision for the U.S. Forest Service: Goals for Its Next Century*, Ed. Roger Sedjo (2000), p. 23.
18. Sally K. Fairfax, "When an Agency Outlasts its Time: A Reflection," *Journal of Forestry* 103, no. 5 (2005), p. 264
19. Matt Jenkins, "Can 'Charter Forests' Remake an Agency? Experimental Program Seeks a Cure for Forest Service Analysis Paralysis," *High Country News*, March 18, 2002.
20. U.S. Forest Service, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management* (2002).

21. Daniel Kemmis, *This Sovereign Land: A New Vision for Governing the West* (2001), p. 126.
22. Charles Harr, "In Accordance with a Comprehensive Plan," *Harvard Law Review* 68, (1955).
23. William Whyte, *The Last Landscape* (1970), p. 168.
24. These developments are explored in Robert H. Nelson, *Public Lands and Private Rights: The Failure of Scientific Management* (1995). See also Robert H. Nelson, *The Making of Federal Coal Policy* (1983).
25. Robert H. Nelson, *Zoning and Property Rights: An Analysis of the American System of Land-use Regulation* (1977).
26. Julia M. Wondolleck, *Public Lands Conflict and Resolution: Managing National Forest Disputes* (1988), p. 209.
27. Frank Gregg, "Summary," *Multiple Use and Sustained Yield: Changing Philosophies for Federal Land Management? The Proceedings and Summary of a Workshop Convened on March 5 and 6, 1992, Washington DC.* (December 1992), pp. 311-314.
28. Paul Larmer, "Forestry Fandango," *High Country News*, September 1, 2014.
29. See William A. Fischel, *Making the Grade: The Economic Evolution of American School Districts* (2009).



PERC—the Property and Environment Research Center—is a nonprofit research institute dedicated to improving environmental quality through markets and property rights. Located in Bozeman, Montana, PERC pioneered the approach known as free market environmentalism. PERC's staff and associates conduct original research that applies market principles to resolving environmental problems.

Learn more by visiting www.perc.org.

Using the experience and successes of charter schools, Robert Nelson examines the question of innovative management of national forests. Nelson applies one of the more creative minds in public policy to the subject. He argues that the traditional progressive approach for public education has experienced large failures. An alternative is the creation of “charter forests,” drawn from the charter school experience, where the traditional bureaucratic constraints are diminished and more flexibility is allowed. Nelson provides an outline for such an approach.

—Roger A. Sedjo

Senior Fellow and Director of the Forest Economics and Policy Program
Resources for the Future

Robert Nelson is right in his diagnosis of a U.S. Forest Service out of sync with the needs of America’s national forests. The Forest Service’s organization and mission are too sclerotic and far outdated to serve the public trust in a 21st century world. His prescription for charter forests is intriguing and might just work. We desperately need new ideas if our national forests are to thrive. Charter forests deserve a proper hearing.

—Karl Hess

Ph.D., Rangeland Ecology
Author of *Visions Upon the Land: Man and Nature on the Western Range*



Robert H. Nelson is a professor of public policy at the University of Maryland. From 1975 to 1993, he worked as a senior economist in the Office of Policy Analysis of the Office of the Secretary of the Interior. He is the author of *Public Lands and Private Rights: The Failure of Scientific Management*, *A Burning Issue: A Case for Abolishing the U.S. Forest Service*, and *The New Holy Wars: Economic Religion versus Environmental Religion in Contemporary America*.