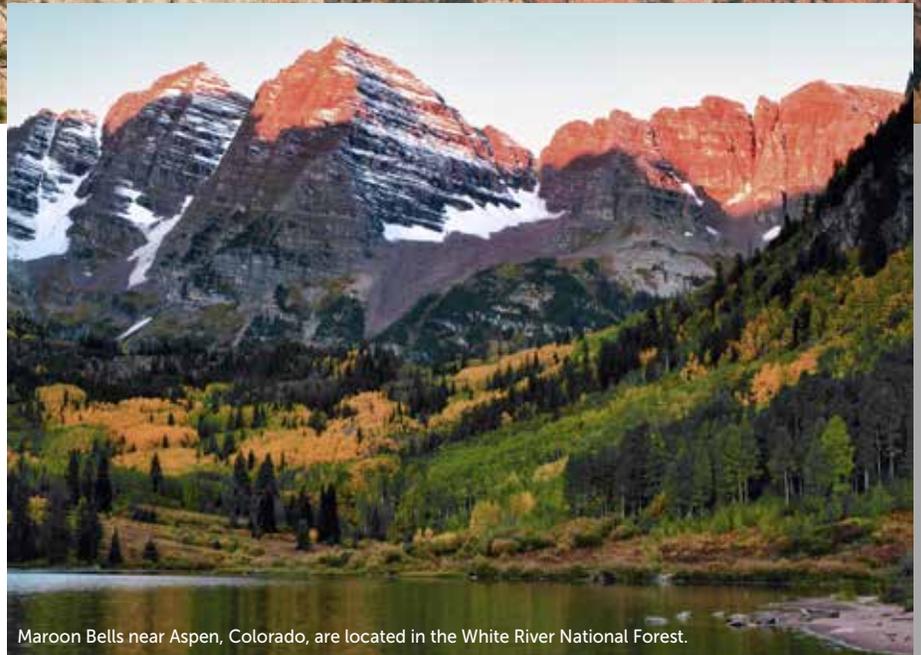


# This Land Is Whose Land?

In a renewed effort to control federal lands, an alternative path has emerged.

BY KEVIN FRAZZINI

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Maroon Bells near Aspen, Colorado, are located in the White River National Forest.

**T**he federal government has long had control issues when it comes to public lands in the West. It manages and pays for nearly everything that happens on more than 300 million acres, from recreation and wildlife conservation to mining, logging, grazing and oil and gas drilling.

This presents the states with a range of challenges as high and wide as the Western sky. Much of the land sits atop energy and mineral resources they'd love to develop. Federal lands are not subject to state or local taxes, of course, affecting revenue generation, and they sometimes wrap around state or private lands that do generate revenue, leading to conflict because of federal environmental regulations.

Furthermore, the Federal Land Policy Management Act stipulates that "public lands be retained in federal ownership." What's a state to do?

Since the federal act's passage in 1976, Western legislators have periodically chafed at what they claim are limits on their ability to manage the land inside their borders and develop their economies.

## Land Locked

Those claims took on a renewed vigor in 2012 when the Utah Legislature passed the Transfer of Public Lands Act, sponsored by Representative Ken Ivory (R), a vocal proponent of conveying federal land to state control. Ivory founded the nonprofit American Lands Council, which advocates for "locally driven stewardship to improve public access, environmental health and economic productivity on public lands," according to its website.



Representative Ken Ivory Utah



Around 93 percent of public land managed by the federal government is located in the West.

Source: U.S. Geological Survey



Bryce Canyon National Park is located in southwestern Utah.

Utah’s law, which authorized suing the federal government if it didn’t turn over more than 30 million acres to the state by the end of 2014, has resulted in a standstill: The feds haven’t transferred title to any land, and so far the state hasn’t filed suit, though it recently hired a firm to prepare a legal strategy.

The law “expressly takes off the table the national parks, congressionally designated wilderness and other national treasures,” Ivory says. Utah lawmakers passed legislation last year supporting the 2012 bill, proving that measure wasn’t a “land grab,” as some critics have suggested, the American Lands Council says. Rather, it’s “truly an effort to bring reasonable management and use practices to public lands in Utah and throughout the West.”

For Ivory, it’s a matter of fairness. “The federal government honored the promise to transfer title to the public lands to all states east of Colorado (and with Hawaii to our far west),” he said of his bill. “Yet, after 116 years, the federal government still controls more than 65 percent of Utah’s lands and our abundant natural resources.”



Senator Jennifer Fielder  
Montana

In recent years, at least 10 other states have considered legislation similar to Utah’s. Most have passed measures that call for studies of the land-transfer issue, with attention to its economic feasibility and legality.

In Montana, for example, Senator Jennifer Fielder (R) backed a measure typical of others introduced throughout the West. It would have created a task force to study the ways Montana might benefit if the state, and not the U.S. government, managed the roughly 25 million acres of federal land within its boundaries.

Although the bill didn’t pass, Fielder, like other advocates, says decisions on use and development are best made by the people closest to the issue—those living on or near the land in question.

“The goal is better management that improves access, environmental health and economic activity,” she says. The federal government is so far removed from these lands there’s “no accountability” for the way its decisions affect the people who live nearby, Fielder says.

The once-plentiful logging jobs in her rural district have become scarce largely because of federal land-management policies, she says.

**Critics Cite Cost, Access**

On the other side of what at times has been a partisan debate, land-transfer opponents—conservationists, hikers, hunters and anglers, among others—want to keep the feds involved in land-use decisions.

The biggest problem, they say, is the enormous cost of managing federal land. Paying for wildfire protection alone—it accounts for

about half of the U.S. Forest Service’s annual budget of \$6.5 billion—would burden Western taxpayers, says the Center for Western Priorities, a conservation group.

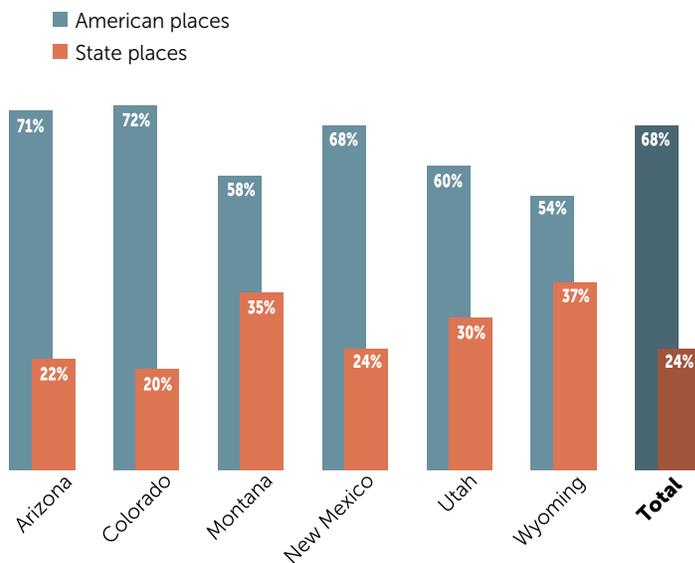
States would be forced to raise taxes or sell off iconic national properties to developers or other private investors in order to pay for everything the federal government does now—from complicated tasks like enforcing environmental regulations and maintaining cultural and historic resources to simple ones like putting up road and trail signs.

Another problem is access. If states were to pay their bills by selling federal land gained from a transfer, the amount of land available to the public for hunting, fishing and recreation could be reduced to a patchwork.

Polls of Western voters have found attitudes toward land transfers vary, though a 2015 Colorado College State of the Rockies Project survey found a majority of voters in six Western states strongly believe public lands belong to all Americans, not just the residents of particular states.

**The Western Perspective**

In each of six Western states, 400 voters were asked, “Do you think public lands are more American places that belong to everyone in our country, or state places that belong more to the people in the state?”



Source: 2015 Western States Survey, Colorado College State of the Rockies Project



Glacier National Park, Montana.

### Around the West

This year, the Arizona Legislature approved a measure to study the land-transfer issue, and Wyoming extended funding for a commission that's looking into state management. In Alaska, a bill to transfer federal lands to the state is pending.

In New Mexico, a bill that would have created a study commission died in part because of objections from conservationists and American Indian tribes. And in Colorado, a transfer-study bill died after conservationists and sportsmen rallied together at the state Capitol to "Keep public lands in public hands."

"Transferring control of public lands to the states is a budget-busting idea that is contrary to Colorado values of environmental protection and equal access to all on our open spaces and natural areas," the non-profit group Conservation Colorado said.

Sportsmen echoed the group's concerns. "For hunters and anglers, our public lands are the backbone of our passions, and it's

on public lands that we hunt and fish," Ty Churchwell, of Colorado Trout Unlimited, told the Durango Herald at the rally.

### Complicated History

The deliberate approach Western states are taking on the land-transfer issue is no surprise. They've been here before.

The current debate echoes arguments made during the Sagebrush Rebellion of the late 1970s, when Nevada—the "Sagebrush State"—filed a lawsuit claiming the Bureau of Land Management territory inside its borders.

Starting in 1980, so-called sagebrush legislation was considered—if not passed into law—in almost every other Western legislature, Robert H. Nelson writes in a history of the movement. The rebellion's rhetoric suggested that federal land ownership was being forced on Western states by a domineering U.S. government.

The reality was that the West had found the rewards of federal ownership—the right to graze certain public lands at less than market rates, for example—to be worth the annoyances.

In the end, although the sagebrush rebels opened a debate in the West on land tenure, they did not persuade the region's opinion leaders or most of the key Western members of Congress to enact significant change.

### Constitutional Hurdles

A further complication for the sagebrush rebels then and those who would renew the effort today is that the federal courts have not been sympathetic to the states' arguments, according to Martin Nie, director of the Bolle Center for People and Forests at the University of Montana.

"The courts have been consistent in their reading of the U.S. Constitution's Property Clause, which gives Congress proprietary and sovereign powers over its property and the power to delegate decisions regarding federal lands to executive agencies. The Supreme Court has repeatedly observed that this power over federal land is 'without limitations,'" Nie said in recent testimony to the Montana Legislature as part of a public land study.



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There's also the problem that states officially and explicitly gave up their rights and title to federal lands within their borders as a condition of statehood.

Section four of Montana's law, for example, says the state "forever disclaim[s] all right and title to the unappropriated public lands lying within the boundaries thereof..."

Nie argues that beyond the legal issues there's a strong case for federal control of public lands, especially given big-picture concerns besides cost: the management of wide-ranging endangered species, the expansiveness of Western watersheds and the often long-lasting impacts of mineral and energy development. Despite the long odds, some state legislators argue all of these are tasks states can do, and do better than a federal agency.

### A Way Forward

As long as legislators continue looking for greater control over land within their state boundaries and conservationists and outdoor enthusiasts remain wary of losing access to what they say belongs to all Americans, it's a near certainty that the land-transfer debate will continue.

Is there a middle way? Perhaps, if legislation Colorado passed recently is any indication. The new law offers local governments technical and financial support so they can address concerns about the management of federal lands without taking control of them. The text reads like a measured attempt to address anxieties on all sides:

"Early and consistent cooperative and collaborative involvement of local governments in federal land management decision-making processes can improve federal land management outcomes, reduce conflict and save state, local and federal resources."

The goal seems clear enough: Get people at the local and federal levels talking. Locals will feel they have more say in decisions that affect their jobs and lifestyle; the feds will be more responsive to local concerns when managing the vast resources in their care.

The bill passed with bipartisan support and was signed by the governor in May. "While the movement to transfer public lands to state control may have some merit, it's not likely to happen for a long time and not without a level of political support that doesn't yet exist," says Representative Bob

Rankin (R), the bill's sponsor. "Meanwhile, there are many ways that our communities and the state can incrementally become better and stronger partners with federal land managers."

The law will both protect the environment and provide local officials with the money and expertise they need to develop their own plans for recreation, grazing and mineral development. "This is a practical response to what local governments are asking for," says Representative KC Becker (D), a co-sponsor.

Conservationists, as well, approved of the legislators' approach. In a statement, Conservation Colorado said, "House Bill 1225 represents the best of state and federal partners working together collaboratively as stewards of Colorado's incredible national public lands." The group congratulated legislators "for choosing to lead in a spirit of cooperation rather than dead-ended bluster and conflict." ■



Representative  
Bob Rankin  
Colorado



Representative  
KC Becker  
Colorado