



Society of American Foresters

5400 Grosvenor Lane • Bethesda, Maryland 20814-2198 • (301) 897-8720 • fax (301) 897-3690 • www.safnet.org

Community-Based Land Management and Charter Forests

Testimony at Oversight Hearing, April 25, 2002

U.S. House of Representatives

Committee on Resources

Subcommittee on Forests and Forest Health

Jay O’Laughlin, Ph.D.

Director, Idaho Forest, Wildlife and Range Policy Analysis Group, and

Professor, Department of Forest Resources

University of Idaho

representing the
Society of American Foresters

Mr. Chairman, and members of the Committee, my name is Jay O’Laughlin. I am a member of the Society of American Foresters (SAF) Committee on Forest Policy, and a Professor at the University of Idaho, where I am full-time Director of the Idaho Forest, Wildlife and Range Policy Analysis Group. The SAF is the national scientific and educational organization representing the forestry profession in the United States. Founded in 1900 by Gifford Pinchot, it is the largest professional society for foresters in the world. Throughout its more than 100-year history, SAF has advanced the science, education, technology, and practice of forestry. SAF is committed to maintaining the connection between environmental stewardship and the professional practitioner in the field.

Thank you for the opportunity to be here. The letter of invitation said, “The purpose of the hearing is to hear testimony on the concept of charter forests, and ... hearing about the projects you have been party to.”

The Forest Service has been described as an organization struggling with decision “gridlock,” or “analysis paralysis.” Many public lands scholars have called for national forest reform. Some would change the statutes, others would change implementing regulations. Still others feel the current system may be too brittle, and call for experiments with alternative governance models (e.g., Kemmis, *This Sovereign Land*, 2001).

The issues are controversial and there is no consensus as to how the current situation could be improved. One thing is clear: people are frustrated about national forest management, regardless of their positions on various issues, and many are asking for reform. The SAF recognizes that reform should not happen overnight and any change in the management system will require the involvement of a variety of interested and effected citizens. The point is not to institute reform

today, but to begin to test what we have learned, and what we believe will lead to improvements in the difficult biophysical and social problems facing national forest managers.

Congress has already chartered two experiments. One is limited authority for Stewardship Contracting, a program to facilitate innovative contracting mechanisms and community involvement. The other is authorization for the Quincy Library Group's project on three national forests in northern California. These experiments have common themes. The original proposals come from citizens frustrated with the lack of action on national forests, they involve citizens from a variety of philosophical perspectives in their implementation, they tinker at the margins of environmental laws, and they include a process for monitoring and assessing the efforts. We hope these general themes will be part of legislation that authorizes Charter Forests, and strongly support a continued dialogue on the subject.

The Potential of Charter Forests

Depending on their design, Charter Forests could break gridlock, move decisions closer to resources, manage resources sustainably, and restore public trust in the Forest Service.

The Chief of the Forest Service has described the agency as suffering from "analysis paralysis"; others say it is bound by gridlock. However one characterizes the problem, decisions are far removed from the local units of the Forest Service, thus stifling innovation and initiative at the field level, where it is most needed. Perhaps Charter Forests can bring creative solutions back into the woods. In 1976, Senator Hubert H. Humphrey's goal, and the idea behind the National Forest Management Act, was to get forest management out of the courts. That hasn't happened.

People expect resources to be managed sustainably, but we can't agree on what to sustain. Perhaps Charter Forests can help by including segments of the public in a different way, at the national as well as local levels. The SAF has defined sustainability in the forestry context as "enhancing human well-being by using, developing, and protecting resources at a rate and in a manner that enables people to meet their current needs while also providing future generations with the means to meet their needs as well; it requires simultaneously meeting environmental, economic, and community aspirations." This definition may not work for everyone, but it is a starting point for meaningful dialogue. SAF members would like the opportunity to share the science, concepts, and experience we bring as professionals to a group of citizens interested in working on a Charter Forest, to help define the possible range of desired future conditions and identify the ways to get from here to there.

Public trust in the Forest Service has eroded. We know anecdotally that many people trust local managers, but bristle when discussing any level of the agency higher than the Forest Supervisor's office. To earn trust back at the national level, the place to start is at the local level, with effective monitoring of conditions by local and national interests. Experiments with alternative models could begin to restore trust little by little, and build the basis for system-wide reform. We hope this is the vision for Charter Forests.

Essential Elements of Charter Forests

The SAF recognizes that the concept of Charter Forests will evolve over the weeks and months ahead, as Congress holds hearings and possibly develops legislative proposals to implement some of these ideas. We will continue to learn and the SAF's concept and understanding of Charter Forests will continue to evolve. However, at this point a proposal on Charter Forests should focus on a set of essential elements, as follows:

- Location. A limited number of Charter Forests from different regions across the National Forest System would be desirable.
- Initiation. There should be a NEPA notice and comment period for each Charter Forest.
- Public involvement. Charter Forest pilot projects should be collaborative in nature and involve citizens from a variety of philosophical perspectives in their implementation.
- Environmental laws. Existing environmental laws should apply to all Charter Forests. However, there should be provisions for streamlining implementation process requirements of statutes, rules, and regulations as long as the fundamental objectives of the statute are met.
- Long-range plans. The management of Charter Forests must be based on long-range plans.
- Appeals. The Forest Service administrative appeals process needs creative streamlining. Citizens are accustomed to administrative review before seeking judicial review, but there are improvements to the process that could be tried, such as limiting who can appeal, and specifying time periods for review.
- Funding. A sustained source of funding is essential for effective long-term resource management. The sources of funding for Charter Forests should be separate from the rest of the National Forest System budget.
- Outcome assessment and reevaluation. Charter Forest projects should include a process for monitoring and assessing the efforts, and a national monitoring plan to assess the effectiveness and accountability of all projects.

Idaho Pilot Projects

Introduction. The following discussion is based on my experiences in Idaho working on alternative models and pilot projects for national forest management. These efforts are neither endorsed nor opposed by the SAF. The testimony is based on three reports: *History and Analysis of Federally Administered Lands in Idaho* (Policy Analysis Group Report #16, University of Idaho, 1998); *New Approaches for Managing Federally Administered Lands in Idaho* (Task Force Report, Idaho Department of Lands, 1998); and *Breaking the Gridlock: Federal Land Pilot Projects in Idaho* (Working Group Report, Idaho Department of Lands, 2000 [online]: <www2.state.id.us/lands/LandBoard/fltf.htm>.)

Overview. An attempt to establish pilot projects on federal lands in Idaho started in 1996 with a Federal Lands Task Force. This still-evolving effort is fully supported by the state government. In 1998 the Task Force recommended pilot project tests based on three different models—cooperative, collaborative, and trust land management. I was a member of that Task Force. Six of the 9 national forest supervisors in Idaho attended one or another of the meetings held around

the state. At different times three supervisors unexpectedly took me aside and stated off the record that they wanted to try a pilot project on their forest. In 1999 a Working Group was charged with implementing the Task Force recommendations and in December 2000 identified five potential pilot projects in a report to the State Land Board titled *Breaking the Gridlock*.

Context. A congressional bill in 1995 would have allowed states to take over BLM public lands. Although it did not pass, the bill stimulated interest. However, this approach has some drawbacks. According to a report by the Idaho state controller, if the state had to follow the same rules federal land managers do, this would not be a good deal for Idaho.

The Idaho effort began in 1996 when the legislature mandated that the State Board of Land Commissioners (Land Board) forge a closer cooperative relationship between the state and the U.S. Forest Service. This is important because 39% of the state of Idaho is National Forest System land; by comparison, Oregon is a distant second at 25%. Also important is that Idaho, Oregon, and Maine are the top three states dependent on the forest products industry for labor income.

The 19-member Task Force was appointed and charged by the State Land Board to examine federal land management issues and analyze alternative management methods. Two state legislators provided bipartisan leadership. I was appointed because my full-time job is directing a university-based natural resources policy analysis program created and funded by the legislature. In 1996 it was widely known we had begun work on a *History and Analysis of Federally Administered Lands in Idaho*, in which we analyzed ten alternative management approaches. Six of them would change the rules under which the Forest Service operates. One of them is trust land management.

Attached are four diagrams from our University of Idaho policy analysis report on federal lands illustrating how the current system (Figure 1) could be modified with either a collaborative local advisory council (Figure 2), or a trust model (Figure 3), or a collaborative trust model with a local advisory council (Figure 4).

“Trust” has a dual meaning. A “local trust entity” may be able to restore public trust in the ability of Forest Service managers to provide the range of goods, services, and values people expect from our national forests. Managers can’t do it alone. They need local support and national-level support from the range of interest groups active on national forest issues as well as from higher government authorities. This will not be easy. Gridlock feeds on “adversarial legalism” and breeds distrust among citizens (Kagan, *Journal of Policy Analysis and Management*, 1991).

People disagree about what national forests should provide, as they always have. However, the current situation (Figure 1) does not provide a forum for these issues to be resolved. A formally authorized local advisory council, working hand in hand with the national forest manager, could provide meaningful public involvement in Forest Service decisions (Figure 2).

The trust land management model (Figures 3 and 4) offers features that promote sustainability to a degree that no other model does—prudence, clarity, accountability, enforceability, and perpetuity (Souder & Fairfax, *State Trust Lands*, 1996). These are possible models for Charter

Forests, but there are others. The SAF believes a range of possibilities will result in the best set of tests about more comprehensive reform.

Idaho Federal Lands Task Force Process and Accomplishments

The Task Force held 19 meetings around the state and heard stories about federal land management from almost 200 people. The 1998 Task Force report identified part of the problem as a broken decision-making process:

“In the past three decades the delivery of goods and services, as well as intangible and intrinsic values from federal lands, has not met the changing expectations of the public in general, or Idaho citizens in particular. The demand placed on resources on these lands has increased. Competing uses cannot be easily accommodated and conflicts have escalated. Current processes and laws used for the management of federal lands fail to satisfactorily resolve the inevitable competition for resources from these lands, and set the stage for continued conflict. No single group or interest seems to be satisfied with the present situation. Increasingly, many Americans turn to the courts as the forum for resolving disputes concerning federal land management. The evidence of current dissatisfaction with federal land management is the subject of disagreement among interests, but includes:

- Increasingly restricted recreational access,
- Reduced roadless acreage,
- Declining wildlife populations, particularly threatened and endangered species,
- Deteriorated water quality,
- Reduced forest management including timber harvest,
- Reduced availability of livestock forage, and
- A cumbersome and lengthy decision-making process that often results in gridlock.

“Although there is disagreement regarding the priorities, the current situation has affected Idaho through the destabilization of communities, loss of jobs, loss of economic return, and a decline in environmental quality.”

The Task Force findings concluded that the current processes of federal land management have resulted in uncertain decision making, destabilization of resource dependent communities, and deterioration in environmental quality on federal lands. In short, the system is broken. Significant changes to these processes are necessary.

The Task Force recommended that the Land Board pursue a pilot project testing one or more of the action alternatives for federal land management, which are the cooperative, collaborative, and trust models. In the Working Group's *Breaking the Gridlock* report, five pilot projects were identified. Consistent with the Task Force recommendations, none of the projects involve state management, state control or state ownership of federal land. In total, the five proposed pilot projects encompass 10.8 million acres of federal land, of which 10.1 million acres are National Forest System lands.

Currently 20,476 acres (or 0.2%) of national forest lands in the proposed pilot project areas are subject to active forest ecosystem management each year. Based on ecological objectives identified by national forest managers, the pilot projects propose to double resource management activities. Compared to actual operating expenses in 1999, additional revenues from pilot project timber sales would improve cash flow by \$30 million per year, from a net expense of \$51.4

million to a net expense of \$21.9 million.

The five pilot projects identified in the *Breaking the Gridlock* report use an ecosystem-based approach to maintain and enhance environmental quality, to attain other land management goals and objectives, and to create opportunities for more effective public participation in resource management decisions through revised decision-making frameworks. All projects feature long-range plans, environmental impact analyses, and public involvement.

The five proposed pilot projects are as follows:

- 1) Central Idaho Ecosystem Trust (5.8 million acres). This project includes all of the Boise National Forest and parts of the Payette, Sawtooth and Salmon-Challis Forests. Using a "trust law" management framework, the goal of this project is to restore vegetation to desired ecological conditions while meeting social needs.
- 2) Clearwater Basin Stewardship Collaboration (2.7 million acres). This project covers parts of the Clearwater and Nez Perce Forests and has as its goal using a "collaborative group" of stakeholders to accomplish the restoration of elk habitat and other indicator species consistent with social objectives and historical conditions.
- 3) Priest Lake Basin Cooperative (265,000 acres). This project includes all of the Priest Lake District of the Panhandle National Forest and has as its goal, under a Memorandum of Agreement involving the Forest Service and the Idaho Departments of Lands and Parks and Recreation, to restore and enhance ecological conditions and to improve resource management for wildlife, recreation and balanced economic uses.
- 4) St. Joe Ecosystem Stewardship Project (726,000 acres). This project involves the St. Joe District of the Panhandle National Forest and proposes to use the stewardship contract approach to restore and enhance ecological conditions. The projects would be similar to those authorized by Congress in 1999.
- 5) Twin Falls/Cassia Resource Enhancement Trust. Forest Service lands in the Sawtooth National Forest and Bureau of Land Management lands in the Burley and Twin Falls management areas would be involved in a "trust management" approach aimed at sustainable economic activity and enhanced ecological conditions.

All proposed projects would change the rules under which federal land managers operate. The Task Force identified seven functional objectives. Each project approaches them differently, as detailed in the *Breaking the Gridlock* report:

- Involve the public,
- Streamline and localize decision-making,
- Protect water quality,
- Base management on formalized plans,
- Protect species
- Stabilize agency budgets, and
- Stabilize communities.

For example, the planning period would be reduced from 15 years to 5 years, with one-year implementation plans that identify specific projects. The five-year plan requires an EIS, to be completed within 12 months; the one-year plan requires an EA, to be completed within six

months. Endangered species consultation is required only on the one-year plan. There would be two levels of formal appeals prior to judicial review. The right to appeal decisions would be contingent upon constructive involvement in the public comment process.

Some of these pilot projects are at a more advanced stage than others. The State of Idaho will continue to pursue the pilot project idea whether or not a Charter Forest is established there.

Trusts and Charter Forests

Descriptions of the Bush Administration's Charter Forest concept appear in three different FY 2003 federal budget documents. In the White House's Office of Management and Budget proposal, the "local trust entity" is key:

"To overcome inertia and an excessive decision-making structure, USDA will develop legislation in 2003 to establish 'charter forests.' This proposal would establish certain forests or portions of forests as separate entities, outside the Forest Service structure, that report to a **local trust entity** for oversight. Like charter or magnet schools, this proposed structure would avoid the central bureaucracy and thereby reduce organizational inefficiencies, while emphasizing local involvement, and focusing upon specific programmatic goals, such as forest ecological restoration or hazardous fuels reductions" (p.67, emphasis added).

The detailed OMB budget appendix for the USDA Forest Service repeats the two opening sentences above regarding the oversight function of a local trust entity, and then describes a pilot project structure with functional objectives for Charter Forests:

"The structure would eliminate inefficiencies and focus upon specific strengths. Pilot forests would establish and address land management objectives; comply with all Federal and State environmental laws; include a diverse and balanced group of stakeholders, as well as appropriate Federal, tribal, state, county, and municipal government representatives in the design, implementation, and monitoring of the project; incorporate current scientific forest restoration information; and include a multiparty assessment to identify both the existing ecological condition of the proposed project area and the desired future condition" (p.181).

The Forest Service's justification for its budget request introduced the idea of streamlining the decision-making process. Although the Forest Service does not specifically mention the local trust entity as such, the agency identifies its Valles Caldera Trust in New Mexico as a model:

"In an attempt to streamline the decision-making process, legislation will be proposed to establish 'charter forests,' certain forests or parts of forests administered outside the normal Forest Service structure. The goal is to eliminate inefficiencies and focus upon specific strengths. Pilot forests would: establish and address land management objectives; comply with all Federal and State environmental laws; include a diverse and balanced group of stakeholders, as well as appropriate Federal, State, Tribal, county, and municipal government representatives in the design, implementation, and monitoring of the project; incorporate current scientific forest restoration information; and include a multiparty assessment to identify both the existing ecological condition of the proposed project area and the desired future condition. A similar arrangement currently exists in the Valles Caldera Trust management of the Baca Ranch in New Mexico.

"The legislation will require expedited endangered species consultation, enhanced use of grants and

agreements, and enhanced authority to use National Forest System funds on and adjacent to national forests in cooperation with State, Tribal, and local governments. This concept may combine several national forests under a unified annual budget” (p.1-10).

Trust Model Applications—The “Local Trust Entity”

Establishing a local trust entity with oversight functions for a Charter Forest could be approached two ways. One is through adaptation of the state trust land model, the other would be modeled after the federal government entities set up to manage the Baca Ranch (Valles Caldera) and the Presidio of San Francisco as “trusts.”

First, the collaborative trust model (Figure 4) in the Idaho effort would provide a structure capable of accommodating the desired functional objectives of a Charter Forest. This adaptation of the state trust land management concept is derived from trust law, whereby “A trust is a fiduciary relationship in which the trustee holds and manages property for the benefit of a specific beneficiary. The major obligation of the trustee is to act with ‘undivided loyalty’ to the beneficiary” (Souder & Fairfax, *State Trust Lands*, 1996). Trust land management is our nation’s oldest and most durable land management model. It is used on more than 15 million acres of private lands, and 45 million acres of state lands outside Alaska. Many of the Idaho Federal Lands Task Force and Working Group members recognize that the trust land management model is perhaps the most desirable alternative model.

Public involvement is a potential weakness of the trust land management model. It may be desirable to augment the trust model (Figure 3) with a “local advisory council” to assist the manager with public involvement, offer “fix-it” advice, and perhaps co-manage the NEPA process (Figure 4). The relationship of this council to the resource manager is crucial. On the one hand, problems would arise if and when the manager ignores the council’s advice. On the other hand, problems would arise if the manager’s authority is subordinate to the council. In either case, the dissension could be appealed to the board of trustees for a final decision. The five years of experiences of BLM Resource Advisory Councils, and the newly established Forest Service Resource Advisory Councils may offer some guidance on how the council could be structured to avoid such problems.

The trust model is flexible, and accounts could be established to direct management resources to protect biological diversity, as desired by the fish and wildlife beneficiary, and cultural values, as desired by the park and recreation beneficiary (Figures 3 and 4).

The second approach could be modeled after the two existing “trusts” for federal lands—Presidio and Valles Caldera. Both these entities were created as wholly-owned government corporations, established by law as executive agencies of the U.S. government. Unlike the application of trust law in the state land trust model, specific beneficiaries were not designated. However, the fiduciary concerns of a trust are evident, as goals for both entities include financial self-sufficiency within 15 years. The Presidio Trust was established in 1996. It is governed by a 7-member board of directors that oversees administration of the Presidio of San Francisco, a 1,480 acre unit of the Golden Gate Recreation Area of the National Park Service. The Valles Caldera Trust, established in 2000, is governed by a 9-member board of trustees that manages and administers the Valles Caldera National Preserve—an 89,000 acre working ranch formerly

known as the Baca Ranch— as a unit of the National Forest System.

Concerns about Charter Forests

One concern about Charter Forests is how they might advantageously use an experimental or adaptive approach to land management. Adequate monitoring and reevaluation need some consideration. Initially I had the same concerns about Charter Forests that I had about the Idaho Federal Lands Task Force. In 1997 my reservations were satisfied when the Task Force adopted three principles: 1) the ownership of federal lands will not be transferred to the states; 2) a variety of uses will continue on lands currently managed for multiple use; and 3) the public will be involved in the decision-making process. These principles are evident in the description of functional objectives for Charter Forests provided in the federal budget documents quoted above.

Another concern is that these Charter Forests could, by many, be considered a “silver bullet” to “fix” the Forest Service. While Charter Forests certainly may provide lessons and a basis for comprehensive reform they will not be applied everywhere on the national forests and may still get caught up in unforeseen delays. One need look no further than the Quincy Library Group to see an example of congressionally sanctioned management that has yet to be implemented on the ground. Charter Forests will require that all interests in Washington, DC, as well as at the local level, have a voice in describing how these might work. Hopefully this will lead to scrutiny and probing questions rather than litigation and roadblocks.

Conclusion

The letter of invitation stated, “testimony will help [the committee] better understand the challenges and successes of on-the-ground forest management as well as *innovative approaches* to community-based land management” (emphasis added).

In closing, the words of former BLM director and Resources for the Future president Dr. Marion Clawson seem appropriate. He said, “I reject any idea that we today are less imaginative and resourceful than men and women who pressed for the establishment of the national forests, national parks, and grazing districts. We too can innovate; let us try.”



