

Representative Raul M. Grijalva and Members of the House Natural Resources Committee:

Thank you very much for the opportunity to comment on the recent and increasing threats to America's public lands most recently visible in the takeover of the Malheur National Wildlife Refuge near Burns, Oregon. My organization, founded in 1914 by Aldo Leopold, represents 89,000 licensed hunters and anglers in the State of New Mexico.

It is not hyperbole to state that actions like those taken in Oregon are not only threats to our public lands, but are threats to the very foundations of the Republic. The actors and supporters of public lands seizure are on the wrong side of the law, history, and economics. Let us not deceive ourselves, finding a management style for our public lands will undoubtedly disadvantage some people. But the very foundation of public lands is to provide a benefit for the many. While there may be room for disagreement in the way the federal government manages our lands, gun-point and intimidation is not the way to address concerns. The New Mexico Wildlife Federation believes that land transfers, and land seizures, only end conversations. Only through collaborative dialogue can we confront our issues with federal management and reach pragmatic solutions. A group of armed militants, and their big-money supporters have only clouded a very simple issue.

The proponents of extremism inhabit a world that relies on too many "ifs." They believe that state revenues MAY exceed management costs, IF large-scale land transfers occurred, IF the federal government were to yield all current and future revenues, IF the state maximally exploit the resources, IF petroleum, mineral, and timber prices are high, IF they can find markets, and IF they can compete in a global marketplace. Despite the "ifs" proponents have taken up arms to demonstrate their belief that state, or even local government is better suited to manage public land than the federal government.

First, land seizure and land transfer is illegal. The arguments being used by the militants, and those who support them, fly in the face of nearly 200 years of settled law. Choosing their limited interpretation of the U.S. Constitution, the proponents of land seizure thumb their noses at the very document they pretend to uphold by carrying it around in their pockets.

The argument of the Malheur militants and those like them is three-fold. First, they argue that the Property Clause (Art IV, Sec 3, Cl 2) limits the authority of the federal government to own land. Second, they argue that the Equal Footing Doctrine may be used to uphold state authority in the face of federal overreach. Third, they argue that the Enclave Clause (Art I, Sec 8, Cl 17) acts as a geographic limit to the amount of land the federal government may own (10 mi. sq.).

This interpretation of the Constitution is flight of fancy founded mostly on the Lost Cause myth propagated by the side that lost the Civil War. The Malheur militants' interpretation questions bedrock principles of the nation (i.e. the Supreme Court's authority to interpret the Constitution) and instead substitutes pure fiction couched in legal language to make them sound convincing. I am left to wonder if any of the militants, or these "lawyers" who speak for them have ever read a single case.

The militants' interpretation of the Constitution not only denies the long-settled interpretation of federal authority over public lands, but it seems to deny the principle of judicial review of the Constitution. Judicial review of statutes has been the foundation of federal law since the 1803 decision in *Marbury v. Madison*. Challenging this fundamental principle is akin to offering a challenge to the legitimacy of the very document the militants claim to uphold.

The challenge to federal authority based on a skewed reading of the Property Clause is inconsistent with nearly 200 years of settled legal interpretation. Since 1840, the Supreme Court has ruled that the federal government has nearly limitless authority over public lands under the Property Clause. In *U.S. v. Gratiot*, the Court ruled that the federal government was under no obligation to give away public lands. In 1890, the Court further ruled that the federal government had authority over adjacent nonfederal lands if activities on those lands would impact federal lands (*Camfield v. U.S.*). In 1911, the Court ruled that ranching on public lands without a permit was illegal despite the fact that such action was consistent with state law (*Light v. U.S.*). Six years later, the Court applied the same reasoning in deciding that a power company lacked authority to build a dam on federal lands (*Utah Power and Light v. U.S.*). Finally, in the 1976 decision in *Kleppe v. New Mexico*, the Court rejected New Mexico's claim that it could assert title to wild horses protected under a federal act. In all of the above cases, the Supreme Court described federal control of public lands and associated resources as "without limit" and rejected state claims to authorize private action inconsistent with federal rules. In short, federal authority under the Property Clause is as settled a principle as there is in the law.

Claims that the Equal Footing Doctrine may be relied upon as an exemption from federal authority are equally baseless. In 1963, the Supreme Court limited the use of the equal footing doctrine by stating definitively that the only way, post-statehood, for states to receive title to federal lands not submerged was through an express grant by the federal government (*Arizona v. California*).

The Enclave Clause of the Constitution is a favorite of land transfer militants. Supporters argue that the Clause limits the amount of land the federal government may own to the ten square miles of Washington D.C. As the Property Clause discussion clearly demonstrates, nothing could be further from the truth. The Enclave Clause is really more about governmental jurisdiction than ownership. The federal government can have an enclave in which much of the territory is titled to private parties—as is true of Washington, D.C. It's just that in an enclave, federal rather than state *jurisdiction* is supreme.

As should be clear, the Constitutional arguments of land transfer militants are more than just the product of a fevered imagination, they are dangerous to the very foundations of the nation.

Second, extremist claim that their actions will "take back" federal lands. This is historically inaccurate, as western states were created totally out of the federal domain acquired by the federal government via purchase (the 1803 Louisiana Purchase), conquest (Mexican War), or

treaty (Oregon Treaty of 1846 & numerous Indian treaties). Western states did not hold title to their lands prior to the federal government. The 13 original colonies surrendered land in order to bring the federal republic into being, the same cannot be said of Oregon, or Nevada, or my home state of New Mexico. Since western states did not hold title to their lands without the federal government, there are no claims of prior ownership valid in the western states. You cannot “take back” what was never yours.

Finally, states could not handle managements of millions of “new” acres of land. If large-scale land transfers took place, state Land Offices are the likely place where management decisions would land. Unless, as the American Lands Council (a supporter of extremists) argues, states took the costly step of establishing a new bureaucratic structure to manage transferred lands. State Land Offices are charged with maximizing revenues for beneficiaries, not managing for multiple uses as the federal government does currently.

Allow me to discuss what transfer would look like in my home state of New Mexico. Fire suppression cost the federal government \$279 million in New Mexico for the 2014 fire season. If the state were to spend that same amount in a fire season, such an expense would consume 2% of the entire state budget; the same amount New Mexico spends on roads and bridges.

Public lands in New Mexico generate millions of dollars in revenue and create nearly 2,000 jobs. Hunters and anglers alone generate \$610 million in state revenue. In New Mexico, 83% of all hunters and anglers utilize the state’s 22.9 million acres of public lands.

The addition of 22.9 million acres of state land would cripple New Mexico. In 2015, the New Mexico legislature appropriated \$500,000 from the game protection fund to help fund a “flat broke” State Parks Division. That half-million in transferred funds was in addition to a half-million dollars transferred from the Trail Safety Fund. If the State Park Division is funded by taking money from other sources, how will they manage an additional 180 campgrounds and picnic areas the United States Forest Service currently manages and the 40 recreation areas the Bureau of Land Management maintains? New Mexico’s State Parks division cannot afford what it currently manages and the legislature has clearly demonstrated that it will get the money to manage these areas from New Mexico taxpayers.

Those who favor transfers, and those who are willing to take up arms to effect such transfers argue that new lands do not necessarily mean statewide financial ruin. Proponents openly admit that states could make up for budget shortfalls by selling off transferred lands. Make no mistake, for every gun-toting militant there is a corporate backer just waiting to rob Americans of their national heritage. These sales would create a one-time windfall for states, but would destroy the long-term economic benefits for the states.

On January 11, 2016 I went to Malheur National Wildlife Refuge. I talked to the men, climbing out of cars and vans that were serving as sleeping quarters for those not lucky enough to be crashing in federal lodging. I was told about how “Obama and the BLM are all part of Agenda 21,” how the BLM had “kill teams in the area just waiting to take out patriots,” and how “the

occupiers were there on behalf of local ranchers and wanted to make sure that the land remained with the people.” The first two I could ignore as the rambling of conspiracy enthusiasts, the last one took me by surprise--I was there to make sure the land remained with the people!

After a few hours, a spokesman (Jason Patrick) tried to tell me about his interpretation of the United States Constitution. It became clear that Patrick was not a lawyer. Cold and angered, I continued to talk to the people at the refuge, heard a number of American Lands Council talking points, but it was clear no one there really understood what they were doing--once outside of the echo chamber, these people were entirely outmatched.

The American people, and New Mexico’s sportsmen and women, can no longer be bullied by an armed fringe group who fails to see that the value of our public lands is more than acres grazed or board-feet of timber. Once returned, my organization received cheering support and a healthy dose of hate on our social media channels. While the Facebook “likes” and Twitter “favorites” and retweets were heartening, they don’t ensure that the voices of American sportsmen and women are heard. We need to show up, stand up, and speak up against those who are determined to take away our American heritage.

Even though the armed takeover was happening thousands of miles away from New Mexico, Ammon Bundy and men like him represent land seizure movement in New Mexico. The issue came home in a very real way only a couple weeks later when a rancher near Silver City decided he was going to tear up his grazing contract. With that simple act it became clear - New Mexico was not immune from the way of thinking that produced the Bundys.

No one wants an overbearing federal government, but the key factor being overlooked by the militants is the word “public.” What is at stake is beyond any one person or the political interests of the day. The concept of public lands is distinctly American, born from men and women who came from places where hunting the “king’s deer” or entering the “king’s forest” resulted in death. Opponents will cry “federal land grab” but that does not bear out in history. Founders such as Alexander Hamilton and Thomas Jefferson created federal lands. James K. Polk, Abraham Lincoln, Theodore Roosevelt, and other leaders all added to the federal domain. And, from time to time, the federal lands were opened to settlement. What remains in federal hands are lands settlers rebuffed or empty parcels that needed management and regulation. Since the Malheur seizure, the call for the transfer of federal public lands have only grown louder. Texas Senator, Ted Cruz vowed to sell-off or give away Nevada’s national parks, national forests, national monuments, and other public lands when he was running for President. In a political ad Cruz stated, “If you trust me with your vote, I will fight day and night to return full control of Nevada’s lands to its rightful owners, its citizens.” Cruz’s ad echoes the beliefs of the Malheur militants, who believe that Western states should seize control of all national public lands within their borders. Cruz was not the only then-candidate in the Republican field who has vowed to divest the U.S. of its national parks and public lands. Ohio Governor John Kasich launched a radio ad that endorsed the transfer of national public lands to the state of Nevada.

The battle over who can best manage America's vast landscape dates back to John Wesley Powell and his Bear Flag Rebels in California who argued for local control. Powell's position lost the day when gold was discovered at Sutter's Mill and California entered the Union. But is the federal government the best land manager? Of course, there is room for improvement regarding the management of our public lands. Holding these lands hostage, or transferring them to the states, are not the answers. Public lands belong in public hands. The answer is to get involved at the local level and engage in a process that can make real change but still protect our American heritage.

Calls like that made by the Arizona legislature that the federal government must turn over all lands to the state "no later than December 31, 2019" encourage the kind of extremism visited on the Malheur National Wildlife Refuge. This is not the way Americans handle their differences. Strident calls and entrenched positions leave no room for the real work of negotiation and collaboration. This crusade to transfer American public lands to states or private interests must be seen for what it is: the latest outgrowth of an anti-federal agenda which seeks to undermine the very foundations of our great nation.

Thank you,

Todd E. Leahy, Conservation Director
New Mexico Wildlife Federation