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Mr. Chairman, Ranking Member, and members, thank you for the opportunity to testify here today.

My name is John Leshy. I have devoted most of my professional career, stretching over more than a half century as a public servant and law professor, to promote sound management of America's public lands. My recently published book, *Our Common Ground*, is the first comprehensive political history of these lands in a very long time.

The US government manages more than 600 million acres of public forests, plains, mountains, wetlands, deserts, and shorelines, holds them generally open to all, and manages them primarily for conservation, recreation, and education.

My book makes the case that the public lands[1] are one of America's outstanding political success stories. What I mean is that the Congress and the executive branch have, since the 1890s, collaborated to produce a result that today is widely supported by the vast majority of Americans everywhere, regardless of their political party.

My testimony focuses on policy issues involved in the management of BLM and USFS lands (244 and 193 million acres, respectively), which account for nearly 3/4s of all the public lands.[2]

[1] While the term "public lands" is sometimes used to refer only to lands managed by the Bureau of Land Management (BLM), I use it here to refer to lands managed by all of the four major agencies; besides the BLM, these are the U.S. Forest Service (USFS), the National Park Service (NPS), and the U.S. Fish & Wildlife Service (USFWS).

[2] Most of the remainder are managed by the USFWS and the NPS (89 and 80 million acres, respectively). https://sgp.fas.org/crs/misc/R42346.pdf.

First, I will discuss the terms "Conservation," "Preservation," and "Multiple Use" that are often used in describing public land policy. None has a fixed, well-defined meaning in the public land context. Each is sometimes used in ways that impede, rather than enlighten, discussions of public land policy.

Conservation

This was the label often attached to the movement that began to flower in the 1890s to hold significant amounts of land in national ownership and manage them for broad public purposes. The conservation movement led to the creation of the national forest system.

Because minerals, timber and grasses on national forest lands could be, and sometimes were, extracted or exploited, the label "conservation" has sometimes been used to describe a policy that not merely allows, but prioritizes, mining, logging and similar intensive uses.

The events described in detail in my book make clear that this is not an accurate description. The overriding purpose of the "conservation movement" *was not to promote logging and mining*. Rather, it was to hold onto land the U.S. already owned—and to buy even more land—primarily to foster healthy watershed conditions, to safeguard water supplies for downstream uses. (That's why most of the national forests in the nation are found in the upper reaches of watersheds.)

The national forest system was established by a combination of congressional and executive action between 1891 and 1940. The vast majority of the lands included within this system were put there because people from the areas most affected sought that result.

My book illustrates this with many examples. Here is one. Congress gave the president authority to establish what came to be known as forest reserves in 1891. Around this time, a memorial from the Colorado State Forestry Association, endorsed by state officials, the chambers of commerce of Denver[3] and Colorado Springs, and 500 leading citizens, recommending reserving "all public lands" along six miles either side of the crests of mountain ranges across the entire state. Republican President Benjamin Harrison promptly used the authority Congress had given him to establish what is now called the White River National Forest on more than a million acres west of Denver. (Today it attracts more visitors than any other national forest in the nation.) In 1892, Harrison established three other reserves in Colorado, including one around Pikes Peak. Following a visit to that reserve the following year, Katharine Lee Bates was inspired to write of "purple mountain majesties" in her stirring composition "America the Beautiful."[4]

[3] Denver's population had grown from 5000 in 1860 to more than 100,000 in 1890. Even back then, the arid West was the nation's most urban region.
[4] *Our Common Ground*, pp. 177-80.

Because most of the land in the western states were then still owned by the U.S. government—even though some of it had already been logged or mined---the lands put in the national forests were "reserved"—that is, put off limits from laws like the Homestead Act, the railroad land grant acts, and other laws that aimed to transfer ownership out of federal hands.

In 1897, Congress enacted legislation that established the purposes of this young national forest system. It remained the basic governing authority for the next 80 years. It provided that national forests were established to "improve and protect" the forest, secure "favorable conditions of water flows," and "furnish a continuous supply of timber for the use and necessities of citizens of the United States." The legislation allowed mineral activity on these lands, but only a relatively small portion of national forest land has been subject to oil and gas development and other mineral activity.[5] The 1897 legislation was silent on livestock grazing, even though it was then occurring on many of these lands.[6]

In 1911, with strong bipartisan support, Congress enacted the so-called Weeks Act. It launched a major program to buy back into national ownership, and manage as part of the national forest system, lands located mostly in the upper reaches of watersheds in the East, South and Midwest. Many of these lands had been severely logged over, exacerbating erosion and contributing to damaging floods. Restoring such lands to health was a primary purpose of the legislation, making it the first major environmental restoration program in the nation's history. These lands were acquired from willing-seller private owners, with the consent of the pertinent state.[7]

In the early decades, the amount of national forest land commercially logged remained low. At the beginning of World War II the logging rate increased substantially and remained high for a few decades. Starting in the 1980s it began to decline back to its pre-WWII level, where it has generally remained, as the wood products industry looked elsewhere for supplies, the technology of wood use changed substantially, and substitutes for wood grew more popular.

Multiple Use

Although national forests (as well as lands now managed by the Bureau of Land Management) had long been subject to many different uses, including recreation, it was not until the 1930s that the term "multiple use" first began to be used informally in describing national forest lands. Congress did not put the idea into law until 1960, when it enacted the so-called Multiple-Use Sustained-Yield Act (MUSY).[8] It identified five

[5] *Our Common Ground,* at 241-42, 446-48, 503-08. 598-99.
[6] Id. at 192-99.
[7] Id. at 306-14; 342-43; 428-29.
[8] Id. at 346-47; 429-30, 446-49; 16 U.S.C. §§ 528-531.

"multiple uses"—"outdoor recreation, range, timber, watershed, and wildlife and fish purposes." (Minerals were not identified as one of the uses, but the Congress had previously specified that the mining and mineral leasing laws could apply on national forest land.)

In the MUSY Act, Congress directed the Forest Service to use the "various renewable surface resources of the national forests … in the combination that will best meet the needs of the American people," recognizing that "some land will be used for less than all of the resources." It also called for the agency to achieve "harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

Preservation

This term is used in public land law primarily in the so-called Wilderness Act that Congress enacted in 1964.[9] It established the National Wilderness Preservation System (NWPS). Congress had deliberated over that legislation for eight years, and had anticipated its enactment in 1960 by providing in the MUSY Act that the "establishment and maintenance of areas of wilderness are consistent with" the multiple use idea.[10]

Congress also, at the insistence of Cong. Wayne Aspinall (D-CO), made itself the gatekeeper of the NWPS. That is, the only way lands can be put into the System is through an act of Congress. This enhanced the influence of the individual Senators and House members because a powerful, long-standing custom in the Congress gives members a power approaching a veto over legislation that applies particularly to their states or districts. It is, in other words, difficult to put public lands into the NWPS without the approval or at least acquiescence of the most directly affected members of Congress.

While the Wilderness Act contemplated that lands put in the system would generally remain free from roads, motorized vehicles, and extractive activities like logging and mining, the Act did not require "preservation" of wilderness lands in the strict sense of the word. Congress allowed mineral leasing and location of mining claims to continue in national forest Wilderness areas until 1984. It also allowed logging and authorized the president to approve the building of water projects in national forest Wilderness areas under certain conditions.[11]

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[9] 16 U.S.C. §§ 1131-1134.

[10] *Our Common Ground*, pp. 461-76; 16 U.S.C. § 529.

[11] 16 U.S.C. §1133(d)(1), (3) and (4). Subsection (d)(1), for example, allows the Agriculture Secretary to take "such measures … as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable."

Aspinall was not enthusiastic about limiting intensive industrial uses of public lands, and expected that making Congress the gatekeeper would sharply limit the size of this new NWPS. He was wrong. He seriously underestimated the support that would develop at the grassroots for limiting such intensive uses of public lands. In fact, since 1964, Congress has enacted many dozens of individual pieces of legislation cumulatively putting more than 100 million acres of public land in the NWPS.

The wilderness movement has had strong bipartisan support. For example, in the early 1980s, President Ronald Reagan's first Interior Secretary, James Watt, proposed to issue oil and gas leases on millions of acres of national forest land in the NWPS before the window Congress enacted in 1964 closed. A strong bipartisan coalition in the affected states and in Congress thwarted him. Reagan, an astute politician, then moved swiftly to the middle on public lands issues, working with Congress to follow the well-worn path to protect more public lands. In 1984, with the Senate in Republican control, Reagan signed legislation adding more than 8 million acres to the NWPS. It proved to be the largest addition in any single year since the Wilderness Act was enacted in 1964 (except for the special case of Alaska). Indeed, before he left office, Reagan signed legislation putting more acreage in the lower 48 states in the NWPS than any president before or since.[12]

The Modern Era of Congressional Zoning of Public Lands

The Wilderness Act ushered in a new era of Congress spelling out in particular laws what uses can and cannot take place on particular areas of public lands. Since 1964, Congress has enacted many dozens of such laws giving areas managed by the Forest Service and the BLM labels like national recreation area, conservation area, scenic area, preserve and so forth. Each sets out management specifications that make conservation and recreation the primary objectives of management. Each limits agency discretion by ruling out or strongly discouraging roadbuilding, mining, timber harvesting and the like. Each label brings more visibility to areas' natural and cultural qualities, attracting more recreational uses and stimulating tourism and recreation-based economic activity.[13]

Congress established the first national recreation area in 1964. There are now more than three dozen across the country. Beginning in the 1960s Congress established nearly a dozen national seashores and lakeshores. In 1968 Congress enacted the Wild & Scenic Rivers Act, which operates much like Wilderness Act in establishing a national system of designated rivers. Congress established the first national conservation area in 1970; there are now seventeen. Congress established the first two national preserves in 1974; there are now nearly two dozen. Congress has established national scenic areas and sometimes fashioned unique labels.[14]

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[12] *Our Common Ground*, pp. 470-72; 577-78.
[13] Id., pp. 477-83; 509-12.
[14] Id., pp. 353, 393, 434-35, 478-82, 489, 493, 501, 542, 580.

In doing all this, Congress has rarely discriminated among the four principal land management agencies. Thus, today, the BLM and the Forest Service (as well as the USFWS and the NPS) each looks after millions of acres in the NWPS, numerous wild and scenic river segments, national recreation areas and other similar areas.

Congress also asserted its authority in a more generic way, by enacting new management charters, or "organic acts," as they are known, for all four agencies—BLM and Forest Service in 1976, FWS in 1997, and NPS in 1998. In each Congress gave clear marching orders to pay close attention to science and the environment in all agency decisions.

The Bureau of Land Management "Organic Act"

Enacted by Congress in 1976, BLM's managing charter is called the Federal Land Policy and Management Act (FLPMA, commonly if inelegantly pronounced "flip-ma"). It put into law nearly all of the recommendations of the Public Land Law Review Commission—a bipartisan body dominated by westerners—that Congress had established several years earlier. The congressional conference committee that crafted the bill was dominated by western members of the House and the Senate. Republican President Gerald Ford signed it into law in October 1976, a few weeks before he was defeated by Jimmy Carter.[15]

FLPMA's broad thrust was a call for greener management of BLM-managed public lands. Congress declared that the BLM lands should be managed for "multiple use and sustained yield," in a manner that will, among other things, "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use."[16] Congress defined "multiple use" in FLPMA similar to how it did in the 1960 MUSY Act, but even more expansively, adding "natural scenic, scientific and historical values" to the list of uses. 43 USC §1702(c). "One of the most important developments in public land policy in the last half century," as my book puts it, is how the BLM, which was long derided as the "bureau of livestock and mining," has—with the strong, bipartisan encouragement of the U.S. Congress—made conservation, protection of cultural resources and recreation a major focus of its management. This had been neatly captured in the change in the BLM's logo—from depicting a miner, logger, rancher, engineer and surveyor looking out on an industrial landscape to a sketch of mountains, meadows, a river and a tree.

Congress and the executive took another step in this direction by establishing a category of what Congress in 2009 labeled "National Conservation Lands" when it gave this system

[15] *Our Common Ground*, pp. 449, 473-74, 490-98.
[16] 43 U.S.C. §§1701(a)(7) and (8).

a statutory underpinning. On these lands, most nonrecreational uses are either excluded or sharply limited, and the system includes tens of millions of acres across the eleven western states and Alaska.[17]

Summing Up Congressional Guidance to the Forest Service and the BLM

As the BLM metamorphosis illustrates, over recent decades Congress has directed it and the Forest Service to emphasize conservation and recreation on the public lands they manage. Thus today, both agencies (as well as the USFWS and the NPS) look after many millions of acres that carry labels that emphasize protection and conservation. All this has substantially blurred distinctions among the four agencies. The net effect is that, regardless of which agency is in charge, America's public lands are generally managed more for open space conservation and recreation than anything else.[18]

This increased congressional activism in "zoning" public land areas has also enhanced the durability of these protections, because it is almost unheard of for Congress to reverse itself on these matters. In short, the arc of public lands management has consistently bent toward protecting more and more land.[19]

"Withdrawals" of Public Lands from Mining and Mineral Leasing.

A substantial amount of BLM and national forest public land has been formally "withdrawn," that is, put off limits from industrial uses, especially mineral development under the Mining Law of 1872 and the mineral leasing acts. Withdrawals can be made in three primary ways—by Congress by legislation, by the president using the authority Congress provided in various laws, primarily the Antiquities Act (discussed in the next section), and by the Interior Secretary.

Although a comprehensive compilation of withdrawals has not, to my knowledge, been done for many decades, I believe that Congress itself has been responsible for more withdrawn acreage than either the president or the Interior Department. Most of these have been done in laws that add land to the National Wilderness Preservation System, or that give particular areas labels like national recreation areas and the others discussed earlier. In almost every case each of these laws making withdrawals had support from the congressional delegation of the pertinent state. It seems highly unlikely, then, that there would be a groundswell of interest in undoing such withdrawals.

Some have suggested that too many of the public lands have been withdrawn from mineral development. Such complaints have had a long history. In 1976, Congress addressed the

[17] *Our Common Ground*, pp. 500-01, 580.
[18] Id., pp. 585-95.
[19] Id., 509-12.

issue in FLPMA.[20] It directed that, before the end of 1991, the Interior Secretary review all existing withdrawals on BLM and national forest land in the eleven contiguous western states, other than lands in the NWPS or national recreation areas where Congress had made the withdrawals. The review was to determine whether each withdrawal was "consistent with the statutory objectives" governing the lands. The Secretary was to make recommendations to the president, and the president to the Congress, and the relevant congressional committees, as to whether to terminate withdrawals. To the best of my knowledge, that review did not result in many withdrawals being rescinded.

Also in FLPMA, Congress regularized the process for the Interior Secretary to make new withdrawals of public land from mining and mineral leasing laws. It also put a twenty-year time limit on such withdrawals, although they can be renewed.[21] Relatively few withdrawals have been made by the Interior Department since FLPMA was enacted.

While the president has withdrawn substantial amounts of public land using the Antiquities Act (as described in the next section), many tens of millions of acres of public land remain open to the mining and mineral leasing laws. Currently, oil and gas leases cover more than 26 million acres of BLM and national forest land, or about 6% of the total acres they manage. About half of that leased area is currently producing oil and gas. The BLM has issued several thousand (currently unused) permits to drill on leases that are not now in production.[22]

Presidential Use of the Antiquities Act Has Been an Effective and Popular Tool for Protecting Public Lands.[23]

Congress enacted the Antiquities Act in 1906. It authorizes the president to protect "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on the public lands. (The law dubbed these areas national "monuments" because Congress reserved for itself the right to label a protected area of public lands a national "park.")

President Theodore Roosevelt, who signed the Act into law, wasted no time in vigorously using the authority. In early 1908, frustrated by Congress's failure to protect the Grand Canyon as a national park, Roosevelt used the act to protect more than 800,000 acres as the Grand Canyon National Monument.

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[20] *Our Common Ground*, pp. 495-97.
[21] 43 U.S.C. § 1714.
[22] See generally https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf
[23] This section draws heavily on my guest opinion essay published in the March 5, 2023 New York Times. https://www.nytimes.com/2023/03/05/opinion/national-parks-bears-ears-monuments.html.

His example was followed by almost all of his successors, both Republican and Democrat. Altogether, presidents have collectively established well over 150 national monuments that have safeguarded more than 100 million acres of wild and historic places onshore, and many more offshore.

Almost without exception, Congress has endorsed or refused to disturb these presidential actions. Eleven years after Roosevelt used the Act at Grand Canyon, Congress enlarged that protected area and made it a National Park. In fact, nearly half of the 63 national parks established by Congress—including such other crown jewels as Arches, Bryce, Capitol Reef and Zion in Utah, Acadia in Maine, Olympic in Washington, and Death Valley in California—were first protected by presidents using the Antiquities Act.

Only twice in 116 years has Congress limited a president's power under the Antiquities Act. The first time was in 1950, when Congress added Franklin Roosevelt's Jackson Hole National Monument to the Grand Teton National Park it had earlier established, but at the same time forbade future use of the act in Wyoming. Congress did something similar in 1980. It curbed future presidential use of the Act in Alaska at the same time it was safeguarding 104 million acres of public land in that state, including 56 million acres in national monuments Jimmy Carter had established two years previously.

Both the U.S. Supreme Court and lower federal courts have consistently rejected claims that presidents abused their Antiquities Act authority. In 1920, for example, the Supreme Court unanimously upheld Roosevelt's Grand Canyon National Monument. Similarly, a federal judge in Utah ruled that President Clinton's decision to protect nearly two million acres of public land in southern Utah in the Grand Staircase-Escalante National Monument (GSENM) was within the "broad grant of discretion" Congress made in the Antiquities Act, leaving the courts "no authority to determine whether the President abused his discretion." (The principal plaintiff in that case, an association of Utah counties, did not seek review in higher courts.)[24]

The GSENM, along with the nearby Bears Ears National Monument (which had been established, after a persuasive campaign by an inter-Tribal coalition, by President Barack Obama in 2016) protect magnificent Utah landscapes stretching across more than three million acres of public lands. Now these two have become legal battlegrounds.

In 2017, President Donald Trump reduced by more than half the size of the Grand Staircase-Escalante and Bears Ears. Four years later, President Biden restored them. Last August, the state of Utah filed a lawsuit in Federal District Court in Utah challenging Mr. Biden's action. Utah's complaint explicitly seeks to have the federal courts all but eviscerate the power Congress gave the president in the Antiquities Act.

[24] *Cameron v. United States*, 252 U.S. 450 (1920); *Utah Association of Counties v. Bush*, 316 F. Supp. 2d 1172 (D. Utah 2004).

There is irony here, because Utah's complaint also explicitly acknowledges how successful these two protected areas have been in attracting visitors. Utah argues this is a bad thing because visitors are damaging the resources and getting lost, taxing local search and rescue teams. But rather than working with Congress to provide more funds to manage visitors, Utah is asking unelected judges to intervene to strip protections from these areas—as if that would make them less attractive to visit.

In fact, Utah, like many western states, has benefited enormously from the long history of Congress and the executive branch working together to protect public lands. For years, its Office of Tourism has touted what it calls the state's "Mighty Five" national parks—four of which were first protected by presidents using the Antiquities Act.

Congress has also been responsive to some concerns Utah has raised. It has acceded to the state's request to make modest adjustments in the boundaries of Grand Staircase-Escalante. It has also enacted three laws that gave Utah hundreds of thousands of acres of federal lands with mineral and other development potential in exchange for hundreds of thousands of state lands scattered inside the Grand Staircase-Escalante and other protected areas. (A similar plan is being developed for state lands inside the Bears Ears National Monument.) And in 2019, President Trump signed into law a bill supported by the Utah congressional delegation that added protections to about a million acres of public lands not far from these two contested monuments.

Protecting More of our Public Lands Should Be a Key Element of National Climate Policy and of Meeting the Target—Embraced by Nearly All Nations—of Protecting 30% of the Planet's Land by 2030.

The Nation's public lands offer many opportunities for tackling the challenge of limiting carbon emissions. These lands can be managed to promote sequestration of carbon and mitigation of greenhouse gas emissions, at the same time they help protect biodiversity and serve other goals like stimulating the economy.

The Biden Administration's "America the Beautiful" initiative is a laudable effort in that direction. Recent congressional initiatives, especially the bipartisan Infrastructure Law and the Inflation Reduction Act, are also promoting powerful steps down that path.

Conclusion

Practically every opinion poll taken for many years in the West, as well in the rest of the nation, shows large majorities of Americans from both political parties revere and want more and better protected public lands.[25] Because they show the political process working

[25] See, e.g., the poll results recently released by Colorado College's State of the Rockies Project, which has for several years surveyed Republicans and Democrats in every state in the intermountain West on a range

as it is supposed to work, where Congress and the executive branch respond to and accurately reflect public opinion, today's public lands should be celebrated. Bringing more attention to success stories is particularly important in our polarized era, where many are skeptical that anything good can come out of the Nation's capital. (It is a major reason I wrote *Our Common Ground*.)

As President Richard Nixon put it in 1971, the public lands give the nation "breathing space," a vast public asset that nurtures national pride, physical and mental health, a spirit of community in an increasingly diverse nation, and offers countless millions of people life-changing encounters with nature, at the same time public-lands-related tourism has become the economic anchor of many communities.

That last point deserves emphasis. The story of America's public lands is not one of creeping socialism. All who live in areas with abundant public lands know that they provide many opportunities for private enterprise. The continuing emphasis on protecting public lands illustrates how tourism and recreation-dependent businesses have become a major economic driver in many smaller communities in the West as well as elsewhere, making the economic contributions of traditional activities like mining, logging, and livestock grazing pale by comparison.[26]

Public land policy has also begun, admittedly tardily, to better reflect societal diversity and to acknowledge past injustices. Although Native Americans, women, and people of color were largely excluded from participating in many key decisions of public land policy, that is happily no longer the case. Because these lands remain subject to the will of the electorate—a group defined more broadly than ever before—they can help redress past injustices and again demonstrate our ability as a people to work together and find common ground.

In his seminal work *The Wealth of Nations*, published the same year as the Declaration of Independence, the Scottish philosopher Adam Smith, the champion of free-market capitalism, made a strong case for private ownership of land, but for a single exception. A "great and civilized" nation, he wrote, ought to own and hold lands "for the purposes of pleasure and magnificence" for everyone's benefit. All Americans should be thankful that our national government, responding to public opinion, has heeded Smith's advice.

Thank you for the opportunity to testify here today.

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of public land issues. https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2023.html

[26] *Our Common Ground*, pp.561-62; 598-601.