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H.R. 4127: THE AMERICAN HERITAGE TRUST ACT

INTRODUCTION

The House of Representatives soon may be considering the American Heritage Trust Act of 1988, H.R. 4127, introduced by Representative Morris Udall, the Arizona Democrat.[1] A companion bill, S. 2199, has been introduced in the Senate. This legislation would combine the existing Land and Water Conservation Fund with the Historic Preservation Fund to create a new program called the American Heritage Trust. But far more than simply combining the existing funds, H.R. 4127 would increase annual total spending on these programs from about $200 million to at least $1 billion by 1993.

The aim of this legislation, according to its sponsors, is to preserve and manage the natural, historic, cultural, and outdoor recreational resources of the United States. It plans to do this by providing $1 billion per year for the federal, state, and local governments, as well as private, nonprofit organizations, to purchase private land and convert it to public property. The funds are to be derived from a complicated trust fund accounting system intended to be beyond the reach of federal deficit fighters.

Hiding True Costs. Although the creation of such a Trust in theory might seem attractive to many Americans, in practice it poses many concerns. For one thing, by resorting to a "trust fund" method of financing, it would hide the actual cost of the program from the taxpayer. For another, by enlarging a system of federal matching grants, it would encourage states and local governments to press for projects that cannot be justified by their potential benefits. Further, it would give enormous pork-barrel power to a few congressmen on key committees, who would have direct control over the choice of projects. And by giving nonprofit environmental organizations funds to take land away from private owners, essential and environmentally responsible economic development would be blocked.

1 This proposed Act has no connection or affiliation with The Heritage Foundation.

Rather than funding vast new purchases by the federal government, Congress should revise existing preservation programs to direct scarce federal dollars toward the improvement of the current inventory of public lands. Most of the nation's natural heritage already is held in public trust through the national parks, wilderness areas, forests, and wildlife preserves. The actual impact of H.R. 4127 will be to subsidize local projects of little or no national significance. The bill's goal would be better realized if existing tracts of public land were improved or if lands with few visitors or little environmental value were sold off to the private sector or traded for more desirable acreage.

THE CHANGING PATTERN OF FEDERAL LAND POLICY

Federal land policies have changed significantly since the days when pioneers were pushing the frontier westward. At that time, the thrust of federal policy was to transfer land to private owners so that it would be made productive. Typical was the Homestead Act of 1862, which offered free land to those willing to settle and work it. By 1868, all of the land that now comprises the "Lower 48" states had been acquired or annexed by the federal government and settling these lands was a national priority.

Over 320 million acres (an area almost twice the size of Texas) were distributed to new states and private citizens through grants and sales even before the Homestead Act was passed. Between 1860 and 1920, another 518 million acres were placed in state or private hands, while the U.S. population grew by over 70 million to 106 million. Thirteen western states were formed out of the federal lands by 1912. By 1920, some 58 percent of the U.S. population lived in states comprised of former federal lands. The economic vitality of the western states is a testament to the wisdom of these policies.[2]

A Third of the U.S. The federal government still holds an amount of land that would surprise most Americans. Approximately one-third of the nation, or 727 million acres, is in federal hands, most of it in the West. For example, over 95 percent of Alaska and over 86 percent of Nevada is held by federal agencies. By contrast, only 0.3 percent of Connecticut is. Even in forested, rural Maine, just 0.76 percent of the land is owned by the federal government.

Most of this public acreage has been reserved by federal law for specific uses, such as national forests, parks, and wilderness areas. But about 170 million acres in the lower 48 states and 94 million acres in Alaska are held by the federal government for what is known as multiple use. This land is not reserved for any specific purpose and thus is still available for lease to the private sector for such activities as mining or oil exploration. Despite the "multiple-use" designation, much of that land can be subject to restrictions on use by the private sector.

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2 16th Annual Report of the Council on Environmental Quality, 1985, Chapter 2.

THE REVERSAL OF FEDERAL POLICY

The government still owns these vast tracts because of a major change in federal land policy that began toward the end of the 19th century. At that time, much of the important work of "sod busting" and railroad building was viewed as complete, or nearly so. As such, the federal government turned its emphasis to managing the public land inventory.

This change in strategy has created tensions between those Americans who have an economic interest in local development and those who seek permanent withdrawal of land from private use or development. In recent years, the latter group has dominated policy. Congress now debates, and generally passes, legislation each year to add new wilderness and national park areas to the federal inventory. From 1978 to 1980, for example, over 47 million acres in Alaska were placed in the National Park System, absolutely prohibiting private use or development of these lands.

The problem is that while Congress is eager to acquire land, it generally fails to allocate sufficient resources to maintain it. The driving assumption is that buying more land for public ownership, even if it is not properly maintained and utilized, is better than allowing private citizens to maintain or develop it, or using the same money to improve the land and facilities already in public hands. This assumption has been proven flawed.

THE GROWING DEBATE OVER PUBLIC OWNERSHIP

Americans may assume that the best way to preserve land, or to develop it in the public interest, is to place it in federal ownership. But a growing number of environmentalists and land economists now challenge this assumption. These critics of public ownership, sometimes known as the "New Resource Economists," argue that land held by federal agencies has not necessarily been preserved in pristine condition, nor has it been always utilized in the most sensible or efficient economic manner.[3] They point to the recent fires that ravaged Yellowstone National Park as evidence of the poor management by the federal government of the resources it claims to hold in trust. Some 1.6 million acres burned because federal government policy continued to let nature take its course even as drought conditions made Yellowstone a tinderbox.

Land Management Dogma. The fact is that federal managers do not necessarily act in the public interest. In practice, they tend to pursue either dogmas of the land management profession or, worse still, bureaucratic incentives. Randal O'Toole, a forest economist with Cascade Holistic Economic Consultants, has documented carefully the perverse impact of current legislation on the Forest Service.[4] Because federal forest managers receive a portion of timber sale receipts for their budgets, they press aggressively for sales even in regions where they are not justified from an economic – or even environmental – standpoint. These managers, however, have little economic incentive similarly to promote

3 John Baden, "The Environment and Economic Progress," in Doug Bandow, ed. *Protecting the Environment: A Free Market Strategy* (Washington, D.C.: The Heritage Foundation, 1986). p. 29.

4 Randal O'Toole, *Reforming the Forest Service* (Covelo, California: Island Press, 1987).

hiking, camping, and other recreational activities on undeveloped public lands. O'Toole points out that the Forest Service can only charge visitors for the use of developed campsites; yet this covers a mere 2 percent of forest recreation.[5] The perverse result is that forest managers spend their budgets building logging roads to make timber sales more lucrative and ignore the potential for increased recreation. The forest managers are not necessarily to blame; they are responding in a predictable fashion to the current state of federal law.

By contrast, any manager of private land must balance the costs and benefits of a management decision. A poor decision results in a personal loss to the owner. This provides the incentive to ensure careful management of the land's resources. But in a federally owned tract, no one has a direct, personal interest in its management. As Terry L. Anderson, Senior Associate with the Montana-based Political Economy Research Center, notes in reference to federal ownership of land, this policy has led to a situation where "... neither economic efficiency nor environmental quality have been fostered by government control."[6]

THE UDALL BILL: H.R. 4127

H.R. 4127, introduced in the House by Arizona's Morris Udall, ignores this growing controversy about federal land ownership and instead would create a vast money machine for additional land purchases. The legislation would create the "American Heritage Trust," by combining the existing Land and Water Conservation Fund (LWCF) with the Historic Preservation Fund (HPF). Udall intends this new fund to be a vehicle by which the federal government can finance efforts to preserve what he calls the nation's heritage. As the legislation describes it, the American Heritage Trust "shall constitute a principal mechanism for funding the safeguarding of important elements of America's natural, historical, cultural, and outdoor recreational heritage, and providing for its use and enjoyment by the public." The new Trust would provide $1 billion per year for federal, state, local, and even private, nonprofit entities to remove land from private uses and convert it to public space. This is a five-fold increase over current spending. In an attempt to make this huge jump in outlays appear responsive to concerns for reducing the federal budget deficit, proponents of the bill stress its "trust fund" revenue mechanisms.

The Land and Water Conservation Fund (LWCF). The larger of the two existing funds, the Land and Water Conservation Fund was established in 1965 to provide money for the acquisition and development of federal and state outdoor recreational areas. Since then, the states have received over $3 billion in LWCF funds through matching grants, and have bought over 2.3 million acres under the program. In addition, federal expenditures for land and water purchases have exceeded $3.5 billion, with over 3.8 million acres acquired for the National Park Service, the Fish and Wildlife Service, the Forest Service, and the Bureau of Land Management.

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5 *Ibid.*

6 Terry L. Anderson, "The Market Alternative for Land and Wildlife," in Bandow, *op. cit.*

The Historic Preservation Fund (HPF). This fund was created in 1966 and currently caps expenditures at $150 million per year, all of which is to be derived from federal offshore oil and gas royalties and lease sales. Congress has never allocated this full amount to the HPF for actual expenditures. The average since 1982 is only $33 million annually. In fact, since it was established, only $490 million has been appropriated for the HPF. The money is used for two main programs. First, it funds the State Historic Preservation programs, which inventory state historic sites, such as those found on the National Register of Historic Places, and provide technical assistance in this field. And second, the National Trust for Historic Preservation receives 18 percent of its annual budget through the HPF. This program researches preservation techniques, provides educational materials, and administers loan and grant programs.

THE PHONY SURPLUSES OF H.R. 4127

H.R. 4127 would combine the LWCF and HPF to take advantage of the supposed large "unappropriated balances" attributed to each fund. The LWCF is credited with about $6 billion in spare funds, while the HPF is credited with about $1 billion. These apparent surpluses, however, come from the creative accounting procedures used for federal trust funds. For example, the LWCF is set up to receive potential federal funding – its "authorization" level – of $900 million annually. This is derived mostly from federal offshore oil and gas revenues but also from the sale of surplus federal properties and revenues from motorboat fuel taxes. The HPF is authorized to receive $150 million each year, solely from offshore oil and gas receipts. The authorized amount is then credited to each fund in its Treasury account. If Congress fails to "appropriate," or spend, the full amount authorized for expenditure from each trust fund, the difference is added to the "unappropriated balance."

Congress consistently has kept LWCF funding well below the $900 million maximum annual level. Even under the Carter Administration's aggressive spending program, the average annual funding was only $647 million. This has generated the "unappropriated balance" targeted by the Udall bill.

Most Americans probably would conclude that this means money is available on demand in these trust funds, like the balance available in a family's checking account. But in fact the Treasury spends whatever money it receives as it comes in, whether the source is personal income taxes, Social Security receipts, or offshore oil production royalties. The Treasury must do this because the government legally must pay all obligations as they come due. When it is running a deficit, as it has since 1969, the federal Treasury spends every revenue dollar available, whatever its source and purpose, and borrows the rest. Thus any "surplus" attributed to the trust funds is a surplus on paper only. It is already spent. All it indicates is that there is a liability against the federal government which can only be discharged by future taxes and borrowing.

How the "Self-Financing" Fund Hits the Taxpayer

H.R. 4127 calls for $1 billion as a minimum annual appropriation for the new American Heritage Trust. Yet congressional appropriations to the LWCF for the past seven years

have only averaged $177 million annually while the HPF has averaged $33 million, or an average annual total of $210 million for the two programs. The additional $800 million in annual spending is disguised because of the way H.R. 4127 relies upon the trust fund fiction. Since the bill assumes that a large unappropriated balance actually exists, it also assumes this amount can be "invested" in public debt securities and collect interest. But since there actually is no money in the unappropriated balance, there can be no income to the Trust unless the Treasury borrows it or takes it from tax receipts. Either way there will be a net increase in the federal budget deficit. A portion of federal offshore oil and gas revenues will continue to be credited to the American Heritage Trust account until it has accumulated approximately $26 billion in interest bearing federal securities. The huge interest payment from this "investment" is to be the source of the $1 billion in spending by the American Heritage Trust.

The scheme devised by Udall is supposed to seem fiscally painless in the long-term. The truth is that the interest income on this "trust fund" can be paid only in one of two ways: by using current tax revenues, or by further borrowing and obligating the federal government to paying interest on that borrowed money. Like the Latin American debtor nations, the Treasury would borrow money to pay interest on already borrowed money. Since the Treasury spends all federal revenues as they are received, there is no actual trust fund to generate the needed interest payments in any other way. The Treasury simply calculates what the interest would have been and borrows or taxes an equivalent amount when the interest is due.

"Fiscally Irresponsible." The phony H.R. 4127 financing arrangements do not stop there. Since any amounts credited to a trust fund, but not immediately spent, are counted against the federal deficit, any spending from these trust funds creates an equal increase in the deficit. If the Treasury "invests" the funds earmarked for the American Heritage Trust, the funds are no longer available to offset current deficit spending. Thus, $1 billion in spending from the "self-financing" American Heritage Trust must actually result in $1 billion of increased federal taxes or borrowing. The Office of Management and Budget, in its analysis of the bill, therefore concludes that it is "fiscally irresponsible in the extreme."[7]

WHERE THE MONEY WILL GO

As currently drafted, the Udall bill would reserve 30 percent of annual Trust spending for federal land acquisition, 30 percent for grants to the state and local governments, and 10 percent for distribution under the Urban Park and Recreation Recovery Act, which acquires and manages "national" parks in local, urban areas. For the decade of the 1990s, an additional 10 percent would be reserved for state trust funds that would mirror the American Heritage Trust. The remaining 20 percent is free to be used for any of these purposes.

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7 Office of Management and Budget, "Budget Impact of the American Heritage Trust Act of 1988 (H.R. 4127)," September 26, 1988.

State Projects

To become eligible for a state or local grant under H.R. 4127, a state government must provide an inventory of all potential projects to the Secretary of the Interior. At least 50 percent of each state's grant from the new program must be passed through to local government projects. It will not be difficult for states to find a nearly unlimited number of potential projects. Because listed projects are to be identified by county of location along with total expenditures requested for each county, each congressman easily will be able to calculate precisely how much money will go into his or her district. The Secretary of the Interior then must send the various state recommendations to the appropriate congressional committees which will make the actual determination of where the money is to be spent. This, of course, is a recipe for an enormous pork barrel program.

Since H.R. 4127 specifies that the interest accruing to the fund in any year is available for all projects "without further appropriation," it is unclear just what budgetary role the committees are meant to play. In practice, the effect of the legislation is simply to give certain congressional committees an enormous pot of "off-budget" money to spend on their favorite projects and favored constituencies. Even further strengthening Congress in allocating federal dollars for local projects, H.R. 4127 requires that the states submit lists for projects containing requests equal to at least 150 percent of that state's potential allotment of funds. The states are barred from indicating any priority among the listed projects. The result: Congressmen will make that determination. H.R. 4127 does call for the states to provide "ample opportunity for public participation" in generating the list of potential projects. But if the states are forbidden from indicating relative priorities they attach to potential projects, the public debate will be a charade.

Local Projects

H.R. 4127 provides matching funds to any county or other qualified local political subdivision for the development of a local land acquisition plan. This money is available for five years following enactment of H.R. 4127. From the time of adoption of the state or local plan through September 30, 1996, the federal government will pay 60 percent of the cost of carrying out the plan.

Federal Projects

Federal agencies seeking a portion of American Heritage Trust expenditures also must compile a list of potential projects similar to the state lists. Again, no priorities can be indicated. Thus the bill strips away the traditional role of the executive branch to recommend particular projects for funding.

Nonprofit Groups

The Udall bill permits the transfer of funds from states and local governments to private, nonprofit organizations[8] which include in their corporate statement of purpose the

8 Defined as organizations qualifying for 501(C)(3) tax-exempt status under the IRS Code.

conservation of open space, or enhancement or protection of outdoor recreation opportunities. The funds may be used by these groups for land acquisition, facilities development, or planning and coordination activities. No funds may be spent for administrative costs; funds received through a grant, of course, will "free up" funds for administrative purposes.

FUNDAMENTAL QUESTIONS RAISED BY H.R. 4127

A massive new federal land buying Trust raises fundamental questions about the wisdom of public ownership of more land, particularly when the land is taken against the wishes of its current owners. Rather than increasing land acquisitions, Congress should be examining the arguments marshalled by critics of bureaucratic land ownership. Among them:

1) Available funds should improve existing land, not fund purchases. According to the Council on Environmental Quality (CEQ), the current inventory of federal lands is underutilized for recreational purposes. In 1985, there was an average of 586 acres of forest land dedicated to wilderness activity available for each daily visitor. This figure is derived by assuming that only 150 days of accessibility exist since little wilderness use occurs in the colder months; if it is assumed that wilderness is used in the cooler half of the year, the average acreage available would be even greater. For all other recreation uses, including fishing, hunting, and motorized visits, there is an average of 118 acres for each visitor day. Concludes the CEQ, "[t]he capacity for additional recreation use, thus, is very large for most types of recreation."[9]

Given this enormous and underused capacity, federal funds should be used to improve and maintain federal lands for visitors. Yet H.R. 4127 expressly blocks the use of Trust funds for improving existing federal lands. All federal expenditures under H.R. 4127 must be used to acquire additional land, even though a recent General Accounting Office report indicates that $2 billion is needed for the backlog of repairs and rehabilitation of existing recreational facilities.[10] H.R. 4127 also unwisely preserves the statutory limitations on charging user fees on federal lands.

2) Nonprofit environmental organizations will become federally funded real estate businesses. Private, nonprofit organizations are eligible for land acquisition grants under H.R. 4127. These nonprofit organizations either are to hold the land in perpetuity for public benefit or "convey" the land to an appropriate recipient as determined by the entity making the grant. This leaves open the possibility that "nonprofit" entities may buy land with federal assistance, sell the land after it has appreciated in value, and keep the profit. If this happens, then the officers of these groups will pay less attention to rank-and-file memberships and more attention to the grantors as they become a primary funding source. Not only will these groups pay no taxes, they will be receiving federal tax dollars to fund their activities.

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9 Council on Environmental Quality, *op. cit.*, p. 117.

10 General Accounting Office, "Park Service Managers Report Shortfalls in Maintenance Funding," RCED-88-91BR, 1988.

3) The legislation invites wasteful projects. The matching grant levels are so high that they are bound to induce wasteful expenditures. For example, grants to states for the acquisition of "lands, waters, and interests therein" can be as high as 75 percent of the costs. Even a federal matching grant of 50 percent prompts recipients to pursue unnecessary projects. This indeed is the history of funding wasteful projects in programs as diverse as federal highway grants to grants for wastewater treatment facilities. Because the state or local government receives "free" federal money, it compares the potential benefits of a project to artificially low costs to its taxpayers. The same will hold true for American Heritage Trust grants. With the federal government picking up most of the tab, states and local governments will have a powerful incentive to go ahead with costly projects that yield only few benefits to the public.

4) The new Trust will infringe on the rights of private landowners. Seller reluctance will be no hindrance to an overly ambitious project. Eminent domain condemnations surely will increase as state plans for outdoor recreation and public use begin to target privately held farms and ranches.

CONCLUSION

Disasters such as this summer's forest fires in America's West highlight the serious problems with federal land ownership. Sixteen years ago, a policy was adopted to treat a forest fire as a natural occurrence that should be allowed to run its course. This policy eventually resulted in the destruction of 1.6 million acres of forests and the expenditure of over $100 million in Yellowstone National Park alone, when it finally was decided to fight the fire.

In considering the American Heritage Trust Act, Congress should reexamine many of the longstanding assumptions that underlie continued federal ownership of one-third of America. One is the false assumption that the private sector is unable or unwilling to protect the environment. No private manager of land would ever risk a "let it burn" policy. A private landowner who can receive income from hunters, hikers, and campers on his land will seek to maintain it for them. The same would be true of federal land managers if their budgets came from visitors instead of taxpayers. A second assumption is that more federal dollars are needed to preserve and improve U.S. public lands. The American Heritage Trust draws together several federal programs of limited effectiveness and greatly increases their funding.

Too Good To Be True. The American Heritage Trust reads like a patriotic program to preserve endangered land. And once it is fully funded, its sponsors imply, it will be a self-financing Trust that imposes no cost on the taxpayer. As with almost everything that sounds too good to be true — it is. In practice, it will be a giant land buying machine, with the true cost to the taxpayer hidden by phony trust fund accounting tricks. For this reason, the Office of Management and Budget calls the bill "fiscally irresponsible in the extreme."

The most likely results of this bill will be to add at least $800 million each year to the federal deficit, increase pork barrel opportunities for lawmakers, and subsidize

environmental organizations that want to take land away from private owners, at the taxpayer's expense, to halt economic development of America's natural resources.

Rather than spend $1 billion a year that it does not have, Congress should institute a visitor fee system that permits federal agencies, in effect, to ration the use of popular areas and protect them from damage through overcrowding. The income from these fees should go to the agencies managing those public lands to create an incentive for them to provide more recreational and wilderness activities in underutilized parks and forests. And it should sell or trade surplus federal lands that have few visitors or environmental values. The last thing Congress should be doing is buying land or giving others the money to do so.

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