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Unlocking Our Public Lands

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Unlocking Public Lands

By: Elizabeth Goss, Notes Editor Vol. 110



"We have fallen heirs to the most glorious heritage a people have ever received, and each one must do his part if we wish to show that the nation is worthy of its good fortune." –Theodore Roosevelt [1]

The function and purpose of public land has evolved since its inception. Originally used as a tool for formation and administration of state and federal territory[2], public land is now principally used to advance conservation and preservation efforts.[3] Public lands also serve as educational and recreational sites for visitors across the nation; lands are utilized by hikers, backpackers, hunters, anglers, researchers, tourists, and others who appreciate and value the beauty of our natural landscape. The classification of state and federal land as "public" assures its protection, management, and preservation of access to our nation's lands to the many instead of the few. You, as a citizen of your state and of this country, are a public landowner. Access to that land, however, is an increasing problem for both state and federal lands.

History of Public Land Creation

From 1781 to 1867, the federal government acquired 1.8 billion acres of land.[4] Hoping to encourage westward expansion and settlement, Congress authorized the disposal of land in the public domain to citizens, states, and private companies.[5] After joining the Union, states received large swaths of land from the public domain by way of federal land grants.[6] State Land Departments administered and managed lands according to trust requirements.[7]

In the early 1900s, President Theodore Roosevelt initiated perhaps the greatest and most important public lands effort.[8] Chief among his accomplishments in conservation, Roosevelt established 230 million acres of public land during his presidency— 150 million acres of which were protected as national forest land.[9] He instituted the United States Forest Service to preserve and protect those forests for future generations, and he established and expanded new and existing national park sites and laid the foundation for what would later become the National Park Service.[10]

The Problem of Landlocked Public Land

"Landlocked" public land refers to sections of state or federal public lands that are surrounded by privately owned land, thereby rendering public lands nearly or completely inaccessible.[11] This inaccessibility poses significant ramifications. On principle, every American should be afforded access to public lands. These lands provide areas for active outdoor pursuits as well as opportunities for solitude and reflection, provide for protection and preservation of endangered plants and animals, as well as cultural, historical, and paleontological resources. Furthermore, the economic value of public lands is much more

than one might expect. In 2013, lands managed by the Bureau of Land Management (BLM) contributed \$107 billion to the U.S. Economy and supported nearly 450,000 jobs.[12] In 2013, Energy development on BLM managed lands contributed over \$99 billion, recreational use \$5.5 billion,[13] and agricultural and timber use \$2.16 billion.[14]

Recent studies indicate that approximately 16.3 million acres of public lands are landlocked in 22 states,[15] including:

- 9.52 million acres of *federal* Western land (lands in North Dakota, South Dakota, Arizona, Montana, Wyoming, Colorado, New Mexico, Utah, Nevada, Idaho, Washington, Oregon, and California);[16]
- 6.35 million acres of *Western state* land (lands in Arizona, Montana, Wyoming, Colorado, New Mexico, Utah, Nevada, Idaho, Washington, Oregon, and California);[17]
- 303,000 acres of federal, state, and local Upper Mid-Western land (lands in Minnesota and Wisconsin);[18]
- 80,000 acres of federal, state, and local Mid-Atlantic land (lands in New York, Pennsylvania, and New Jersey);[19] and
- 174,000 acres of federal, state, and local Southern land (lands in Florida, North Carolina, Arkansas, and Tennessee).[20]

These landlocked public lands make up an area over two times larger than Vermont.[21] All of these lands are **entirely** landlocked by private lands and have no permanent legal access.[22] Currently, there are no studies quantifying landlocked public land in the remaining 28 states.

Noteworthy Solutions

Some states, non-profit organizations, and other interest groups are working to improve public land access. Depending on each state's unique infrastructure, some strategies work better than others. This section provides a brief overview of tools that are either currently in-use or are proposed to increase access to landlocked public lands.

Land and Water Conservation Fund (LWCF):

Established in 1964, the LWCF preserves and protects our nation's natural lands, water resources, cultural heritage, and provides recreational opportunities to all Americans.[23] It is likely the most powerful tool available to states to fund initiatives and trusts to increase access to landlocked public lands. The Great American Outdoors Act permanently funded the LWCF using royalties from offshore oil and gas (approximately \$900 million annually) in August of 2020.[24] Each year, \$27 million is dedicated solely to increasing public land access.[25] These funds can be allocated to states through grants to further land access initiatives, including those discussed below.[26] Since its establishment, more than 40,000 individual grants and ~\$4.1 billion have been allocated to states.[27]

Land Acquisitions, Land Exchanges, & Easements:

Land acquisitions and exchanges are likely the most basic, market-friendly approach to solving land access problems. This vehicle allows states to purchase new or trade existing public lands with landowners for lands in a more desirable location.[28] States may also be able to obtain easements for road access, making landlocked lands more easily accessible for both management and recreation.[29]

State-Driven Targeted Staff and Programs:

Promising and effective solutions to this problem lie with focused state initiatives. Some states may fund exclusive positions and full state programs to address public land access.[30] One such program, the Montana Public Lands Access Network, is administered by the Montana Department of Natural Resources and Conservation.[31] Here, a Public Access Specialist oversees the Network and works primarily to award grants to groups that wish to acquire public land access easements across private lands.[32] Creating comprehensive programs with dedicated staff allows states to target land access restrictions directly and efficiently. These programs establish centralized efforts that pool and designate resources where they are most needed.[33] Each state's unique makeup of topography, natural features, and land divisions deserves individualized approaches. Other state programs may utilize state government-funded programs, statewide taskforces, non-profit organizations, trusts, etc.[34]

"Walk-in" Access Programs:

Some states have implemented programs administered through state-level Fish and Wildlife Agencies.[35] They contract directly with private landowners to allow *public* access to the landowner's *private* land.[36] These contracts are typically short-term lease agreements and generally used for hunting access. [37] While only for a limited period of time, these programs are useful and effective tools for opening the door to public land access. These programs are limited by virtue of the time-restricted nature of the contracts; however, they serve as positive incentive programs, proven to achieve more comprehensive access initiatives.[38]

In conclusion, a multitude of opportunities exist to solve public land access problems across the United States. Organizations and individuals work tirelessly gathering data and conducting research ensure our public lands are utilized to their greatest purpose. Our American lands must be preserved and managed, and the American people deserve to explore and discover all that they have to offer.

[1] *Theodore Roosevelt Quotes*, National Park Service (Apr. 10, 2015), <https://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-quotes.htm> (<https://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-quotes.htm>).

[2] See Public Lands Foundation, *America's Public Lands: Origin, History, Future* 4-6 (2014), https://publicland.org/wp-content/uploads/2016/08/150359_Public_Lands_Document_web.pdf (https://publicland.org/wp-content/uploads/2016/08/150359_Public_Lands_Document_web.pdf).

[3] See, e.g., *America's Public Lands Explained*, U.S. Dep't of the Interior Blog (June 13, 2016), <https://www.doi.gov/blog/americas-public-lands-explained> (<https://www.doi.gov/blog/americas-public-lands-explained>).

[4] Public Lands Foundation, *supra* note 2, at 4; see *National History*, U.S. Department of the Interior Bureau of Land Management, <https://www.blm.gov/about/history/timeline> (<https://www.blm.gov/about/history/timeline>) (last visited Nov. 7, 2010).

[5] Public Lands Foundation, *supra* note 2, at 4.

[6] *Id.*

[7] *Id.* at 5.

[8] *Theodore Roosevelt & Conservation*, National Park Service (Nov. 16, 2017) <https://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-and-conservation.htm> (<https://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-and-conservation.htm>).

[9] *Id.*

[10] *Id.*

[11] Theodore Roosevelt Conservation Partnership & onX, *Off Limits, But Within Reach: Unlocking the West's Inaccessible Public Lands 2* (2018), <https://www.trcp.org/wp-content/uploads/2019/02/TRCP-onX-Landlocked-Report-8-26-2018.pdf> (<https://www.trcp.org/wp-content/uploads/2019/02/TRCP-onX-Landlocked-Report-8-26-2018.pdf>).

[12] Public Lands Foundation, *supra* note 2, at 13.

[13] Public land also serves as a driving force behind the outdoor recreation industry which is responsible for more than \$887 billion in consumer spending. This industry includes hunting; nearly 75% of all western hunters rely on public land access to hunt. Theodore Roosevelt Conservation Partnership & onX, *Inaccessible State Lands in the West: The Extent of the Landlocked Problem and the Tools to Fix It 2* (2019), https://www.trcp.org/wp-content/uploads/2019/11/2019-onX-TRCP-Report_for_web.pdf (https://www.trcp.org/wp-content/uploads/2019/11/2019-onX-TRCP-Report_for_web.pdf) [hereinafter *Western State Report*].

[14] Public Lands Foundation, *supra* note 2, at 13.

[15] See *Off Limits* Theodore Roosevelt Conservation Partnership & onX, *supra* note 11, at 5; see also *Western State Report*, *supra* note 13 at 5-6; see also Theodore Roosevelt Conservation Partnership & onX, *The Upper Midwest's Landlocked Public Lands: Untapped Hunting and Fishing Opportunities in Minnesota & Wisconsin 1* (2020), https://www.trcp.org/wp-content/uploads/2020/08/080420_TRCP_Minnesota_Wisconsin_Report_R8-1.pdf (https://www.trcp.org/wp-content/uploads/2020/08/080420_TRCP_Minnesota_Wisconsin_Report_R8-1.pdf) [hereinafter *Mid-West Report*]; see also Theodore Roosevelt Conservation Partnership & onX, *The Mid-Atlantic's Landlocked Public Lands: Untapped Hunting and Fishing Opportunities in New York, Pennsylvania, and New Jersey 2* (2020), https://www.trcp.org/wp-content/uploads/2020/09/091620_TRCP_MidAtlantic_Report_Booklet-1.pdf (https://www.trcp.org/wp-content/uploads/2020/09/091620_TRCP_MidAtlantic_Report_Booklet-1.pdf) [hereinafter *Mid-Atlantic Report*]; see also Theodore Roosevelt Conservation Partnership & onX, *The South's Landlocked Public Lands: Untapped Hunting and Fishing Opportunities in Florida, North Carolina, Arkansas, and Tennessee 2* (2020), https://www.trcp.org/wp-content/uploads/2020/10/Final_TRCP_South_Report_Booklet.pdf (https://www.trcp.org/wp-content/uploads/2020/10/Final_TRCP_South_Report_Booklet.pdf) [hereinafter *South Report*].

[16] Theodore Roosevelt Conservation Partnership & onX *Off Limits*, *supra* note 11, at 5-6.

[17] *Western State Report*, *supra* note 13.

[18] *Mid-West Report*, *supra* note 15.

[19] Mid-Atlantic Report, *supra* note 15.

[20] South Report, *supra* note 15.

[21] U.S. Department of Agriculture, Forests of Vermont, 2016 2 (2017), https://www.fs.fed.us/nrs/pubs/ru/ru_fs119.pdf (https://www.fs.fed.us/nrs/pubs/ru/ru_fs119.pdf) (“Vermont’s total land area is 5.9 million acres....”).

[22] See Theodore Roosevelt Conservation Partnership & onX, *supra* note 11.

[23] *Land and Water Conservation Fund*, U.S. Department of the Interior, <https://www.doi.gov/lwcf> (<https://www.doi.gov/lwcf>) (last visited Nov. 7, 2020); see also *Protecting Lands and Giving Back to Communities*, National Park Service (Jan. 8, 2020), <https://www.nps.gov/subjects/lwcf/index.htm> (<https://www.nps.gov/subjects/lwcf/index.htm>); see also Theodore Roosevelt Conservation Partnership & onX, *supra* note 11 at 9 (suggesting the Land and Water Conservation Fund as a solution to landlocked public lands prior to the Great American Outdoors Act providing permanent funding).

[24] *Great American Outdoors Act*, National Park Service (Aug. 5, 2020), <https://www.nps.gov/subjects/legal/great-american-outdoors-act.htm> (<https://www.nps.gov/subjects/legal/great-american-outdoors-act.htm>); Land & Water Conservation Fund Coalition: Great American Outdoors Act Marks Historic Victory for Conservation LWCF Coalition Fulfills Decades Long Fight for Close to Home Recreation in Every Community in the U.S. 1 (2020), <https://static1.squarespace.com/static/58a60299ff7c508c3c05f2e1/t/5f297ed486d162501d56df59/1596554964337/LWCF+News+Release+-+GAOA+Signed.pdf> (<https://static1.squarespace.com/static/58a60299ff7c508c3c05f2e1/t/5f297ed486d162501d56df59/1596554964337/LWCF+News+Release+-+GAOA+Signed.pdf>).

[25] Mid-Atlantic Report, *supra* note 15 at 6.

[26] U.S. Department of the Interior, *supra* note 23; Western State Report, *supra* note 13 at 14.

[27] Western State Report, *supra* note 13 at 14.

[28] See *id.* at 11.

[29] See *id.*

[30] See *id.* at 12.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*


[35] See *id.* at 13.

[36] *Id.*

[37] *Id.*

[38] *Id.*

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