

**STATE JURISDICTION OF FEDERALLY MANAGED LANDS**

**JOINT RESOLUTION**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Roger E. Barrus**

**Senate Sponsor: Ralph Okerlund**

|    |                      |                       |                      |
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| 16 | Brad L. Dee          | Todd E. Kiser         | Kenneth W. Sumsion   |
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| 21 | Steve Eliason        | Michael T. Morley     | Ryan D. Wilcox       |
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| 25 | Francis D. Gibson    | Curtis Oda            | Bill Wright          |
| 26 | Richard A. Greenwood | Patrick Painter       |                      |

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28 **LONG TITLE**

29 **General Description:**

30 This joint resolution of the Legislature urges Congress to relinquish all right and title of  
31 public lands in the state of Utah that are currently managed by the Bureau of Land  
32 Management and transfer title and jurisdiction to the state of Utah.

33 **Highlighted Provisions:**

34 This resolution:

- 35 ▶ calls on the United States, through their agent, Congress, to relinquish to the state of
- 36 Utah all right and title in those lands which were committed to the purposes of the
- 37 state by terms of its enabling act compact with them and which now reside within
- 38 the state as public or federal lands managed by the Bureau of Land Management
- 39 which were reserved by Congress after the date of Utah statehood.

40 **Special Clauses:**

41 None



43 *Be it resolved by the Legislature of the state of Utah:*

44 WHEREAS, under the United States Constitution, the American states reorganized to  
45 form a more perfect union, yielding up certain portions of their sovereign powers to the elected  
46 officers of the government of their union, yet retaining the residuum of sovereignty for the  
47 purpose of independent internal self-governance;

48 WHEREAS, the aims of the Constitutional Convention provided that state governments  
49 would clearly retain all the rights of sovereignty and independence which they before had and  
50 which were not exclusively delegated to the United States Congress;

51 WHEREAS, among the rights of sovereignty held most jealously by the states was the  
52 right of sovereignty over the land within their respective borders;

53 WHEREAS, in due time, the American states came to own vast tracts of land as federal  
54 territories;

55 WHEREAS, by compact between the original states, territorial lands were divided into  
56 "suitable extents of territory" and upon attaining a certain population, were to be admitted into

57 the union upon "an equal footing" as members possessing "the same rights of sovereignty,  
58 freedom and independence" as the original states;

59 WHEREAS, the federal trust respecting public lands was established eight years before  
60 the Constitution by the Continental Congress and by the states which accepted the terms of the  
61 trust;

62 WHEREAS, the federal trust respecting public lands was subsequently codified within  
63 the text of at least five clauses of the Constitution and is the foundation upon which the  
64 Constitution and the American union of states were erected for the benefit of every state  
65 without prejudice;

66 WHEREAS, the federal trust respecting public lands obligates the United States,  
67 through their agent, Congress, to extinguish both their governmental jurisdiction and their title  
68 on the public lands that are held in trust by the United States for the states in which they are  
69 located;

70 WHEREAS, for as long as the United States retains title in and jurisdiction over federal  
71 public lands in the state of Utah, the state is denied the same complete and independent  
72 sovereignty and jurisdiction that was expressly retained by the original states, and its citizens  
73 are denied the political right to establish or administer their own republican self-governance as  
74 is their right under the Equal Footing Clause;

75 WHEREAS, Utah, by terms of its enabling act compact, disclaimed all right and title in  
76 the public lands within its borders;

77 WHEREAS, "right and title" are elements of proprietorship, and "right and title" are  
78 neither sovereignty nor jurisdiction;

79 WHEREAS, Utah is entitled, under the Equal Footing Doctrine, to the same rights of  
80 sovereignty, freedom, and independence as the original states;

81 WHEREAS, Section 3 of Utah's Enabling Act, with respect to disposition of public  
82 lands, reads: "And said Convention shall provide by ordinance irrevocable with the consent of  
83 the United States and the people of said State . . . that until the title (to the unappropriated  
84 public lands) have been extinguished by the United States, the same shall be and remain

85 subject to the disposition of the United States";

86 WHEREAS, by these words the United States may only shelter public lands from the  
87 obligation of disposal by the consent of the state of Utah;

88 WHEREAS, with the passage of the Federal Land Policy and Management Act  
89 (FLPMA) of 1976, the United States shifted from a policy of disposal of public lands and  
90 extinguishment of the Federal title to one of retention of public lands and their management in  
91 perpetuity through the United States Bureau of Land Management (BLM);

92 WHEREAS, the BLM now claims jurisdiction of over 22,600,000 acres of public land  
93 in Utah, which is nearly twice as much land as the 11,512,000 acres of land in private  
94 ownership;

95 WHEREAS, the BLM was directed to manage the public lands for multiple use and  
96 sustained yield and to afford Utah and other Western States a share of the revenues from the  
97 production of the natural resources on public lands, including revenues from timbering, oil and  
98 gas production, and mining;

99 WHEREAS, the state and federal partnership of public lands management has been  
100 eroded by an oppressive and over-reaching federal management agenda that has adversely  
101 impacted the sovereignty and the economies of the state of Utah and local governments;

102 WHEREAS, Sections 6, 7, 8, and 12 of Utah's Enabling Act provided for land grants to  
103 fund critical public functions such as primary and secondary education, public buildings, and  
104 water development;

105 WHEREAS, federal courts, including the United States Supreme Court, have  
106 recognized this land grant as the establishment of a trust, even a "solemn contract" between the  
107 United States and the state of Utah, with the United States in the role as settlor of the trust and  
108 the state of Utah in the role of trustee;

109 WHEREAS, as settlor of the trust, the United States has an obligation to pursue actions  
110 and policies that support the trustee in its efforts to fulfill the purposes of the trust;

111 WHEREAS, federal land-management actions, even when applied exclusively to the  
112 federal lands, directly impact the ability of the state of Utah to manage its trust lands in

113 accordance with the mandate of the Utah Enabling Act and to meet its obligation to the  
114 beneficiaries of the trust;

115 WHEREAS, the United States Department of the Interior has arbitrarily and illegally  
116 affected private contracts by cancelling duly awarded oil and gas leases at the time of public  
117 auction, the validity of which were subsequently upheld by a federal court of competent  
118 jurisdiction;

119 WHEREAS, in October of 2008, the BLM completed six of its fundamental documents  
120 for the allocation of resource use and conservation on BLM lands, called Resource  
121 Management Plans, after up to eight years of study, public participation, and the expenditure of  
122 millions of dollars;

123 WHEREAS, the BLM evaluated the allocation of all multiple-use activities in these  
124 plans, including the primary multiple-uses of grazing, timber, minerals, recreation, and  
125 conservation, and made definitive allocation decisions at the conclusion of the process;

126 WHEREAS, the BLM's failure to act affirmatively on these definitive allocation  
127 decisions has created uncertainty in the future of public land use in Utah and has caused capital  
128 to flee the state;

129 WHEREAS, during the process of finalizing the six Resource Management Plans, the  
130 BLM refused to consider state and local government acknowledgments of R.S. 2477  
131 rights-of-way, or other evidence of the existence of R.S. 2477 rights-of-way, which led to the  
132 closure of many R.S. 2477 rights-of-way in the Grand Staircase Escalante National Monument;

133 WHEREAS, the Congress of the United States recently passed the Omnibus Public  
134 Land Management Act of 2009, which included the designation of lands as wilderness and  
135 national conservation areas in Washington County, Utah, and released all other lands to the  
136 general multiple-use mandate of the BLM;

137 WHEREAS, the United States Department of the Interior has arbitrarily created a new  
138 category of lands, denominated "Wild Lands," and has superimposed these mandatory  
139 protective management provisions upon BLM operations and planning decisions in violation of  
140 the provisions of the Federal Land Policy and Management Act, the provisions of the

141 Administrative Procedures Act, and Presidential Executive Order 13563 concerning openness  
142 in policymaking;

143 WHEREAS, the new Wild Lands provisions threaten to reopen the issue of wilderness  
144 in Washington County, in violation of the resolution of the issue through Congressional action;

145 WHEREAS, the creation of a new Wild Lands category, and the immediate effect of its  
146 mandatory restrictive provisions, has arbitrarily undermined the effectiveness of the six  
147 recently completed Resource Management Plans of the BLM in eastern and southern Utah, is  
148 contrary to the multiple-use mandate outlined by FLPMA and other federal law, and threatens  
149 to derail efforts underway locally to seek certainty in land use allocation decisions through  
150 Congressional actions, such as that recently completed in Washington County;

151 WHEREAS, other proposals to make use of the important natural resources of the state,  
152 such as phosphate and beneficial range improvement proposals, are now under threat from  
153 these ill-conceived Wild Lands provisions;

154 WHEREAS, the United States Department of the Interior has failed to enunciate a valid  
155 source of statutory or constitutional authority for the imposition of the restrictive Wild Lands  
156 provisions;

157 WHEREAS, the cumulative effect of the Wild Lands provisions, the illegal decision to  
158 withdraw validly granted oil and gas leases, the duplicative Master Leasing Plan process, and  
159 the United States Department of Interior's disdain for the use of public review processes, has  
160 lead to the demise of a robust and viable oil and gas leasing program in Utah, which negates an  
161 important revenue source to the state, and eventually jobs for the citizens of Utah;

162 WHEREAS, the BLM has demonstrated a chronic inability to handle the proliferation  
163 of wild horses and burros on the public lands, to the detriment of the rangeland resource;

164 WHEREAS, the United States Department of Agriculture has repeatedly tried to  
165 impose severe restrictive management provisions on lands defined as inventoried roadless  
166 areas, in violation of Congressional authorities, as reviewed by a federal court of competent  
167 jurisdiction;

168 WHEREAS, the United States Army Corps of Engineers is proposing to extend its

169 jurisdiction to regulate the waters of the United States to areas traditionally dry, except during  
170 severe weather events, in violation of the common definition of jurisdictional waters;

171 WHEREAS, in 1996, the President of the United States abused the intent of the  
172 Antiquities Act by the creation of the Grand Staircase Escalante National Monument without  
173 any consultation with state and local authorities or citizens;

174 WHEREAS, the BLM's Resource Management Plan for the Kanab Field Office  
175 eliminated the filming of movies and filming for commercial purposes within the Grand  
176 Staircase-Escalante National Monument, thereby eliminating a source of economic opportunity  
177 for Kane County through the loss of use of its iconic "Little Hollywood" film site and other  
178 locations;

179 WHEREAS, bureaucrats within the United States Department of the Interior are  
180 assembling information to prepare for further designations without consultation;

181 WHEREAS, the United States Fish and Wildlife Service is making decisions  
182 concerning various species on BLM lands under the provisions of the Endangered Species Act  
183 without serious consideration of state wildlife management activities and protections designed  
184 to prevent the need for a listing, or recognizing the ability to delist a species, thereby affecting  
185 the economic vitality of the state and local regions;

186 WHEREAS, the BLM has not authorized all necessary rangeland improvement projects  
187 involving the removal of pinyon-juniper and other climax vegetation, thereby reducing the  
188 biological diversity of the range, reducing riparian viability and water quality, and reducing the  
189 availability of forage for both livestock and wildlife;

190 WHEREAS, differences of opinion about the appropriate use of the public lands has  
191 created a massive logjam in the advancement of any proposal for use of the public lands,  
192 whether for energy production, recreation, conservation, timber production, or similar uses;

193 WHEREAS, the states have been instrumental in convening groups of stakeholders to  
194 consider protection for and responsible use of federal lands;

195 WHEREAS, efforts in Washington County, Utah, the Owyhee region of Idaho, and the  
196 Front Range region in Montana have involved many various stakeholders, including ranchers,

197 energy officials, environmental groups, and state and local government officials in an effort to  
198 achieve agreement on proposals for wilderness and other congressionally established  
199 conservation units, lands available for local privatization of lands, and areas available for  
200 traditional multiple-use;

201 WHEREAS, these efforts led to congressional approval of a jointly prepared proposal  
202 in Washington County, Utah, and to other proposals currently pending before Congress;

203 WHEREAS, the state is willing to sponsor, evaluate, and advance these locally driven  
204 efforts in a more efficient manner than the federal government, to the benefit of all users,  
205 including recreation, conservation, and the responsible development of energy, grazing, timber,  
206 and other economic industries;

207 WHEREAS, citizens of the state of Utah have a love of the land and have demonstrated  
208 responsible stewardship of lands within state jurisdiction;

209 WHEREAS, the state of Utah has a proven regulatory structure to manage public lands  
210 for multiple use and sustained yield;

211 WHEREAS, federal land management policies are eroding the fundamental pillars of  
212 sovereignty, freedom, and independence upon which all states and the state of Utah are  
213 founded under the Equal Footing clause;

214 WHEREAS, by means provided under the Constitution, damaged states may assert their  
215 rightful claim to the public lands within their borders and restore the constitutional design for  
216 the benefit of present and future generations; and

217 WHEREAS, Utah fully reserves and asserts all sovereign and constitutional claims to  
218 its public lands:

219 NOW, THEREFORE, BE IT RESOLVED, that the Legislature of the state of Utah calls  
220 on the United States, through their agent, Congress, to relinquish to the state of Utah all right,  
221 title, and jurisdiction in those lands that were committed to the purposes of this state by terms  
222 of its enabling act compact with them and that now reside within the state as public lands  
223 managed by the Bureau of Land Management that were reserved by Congress after the date of  
224 Utah statehood.

225           BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Secretary of  
226 the United States Department of Interior, to the United States Director of the Federal Bureau of  
227 Land Management, to the Majority Leader of the United States Senate, to the Speaker of the  
228 United States House of Representatives, and to the members of Utah's Congressional  
229 Delegation.