

1 **STATE JURISDICTION OF FEDERALLY MANAGED LANDS**

2 **JOINT RESOLUTION**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Roger E. Barrus**

6 Senate Sponsor: Ralph Okerlund

8 **LONG TITLE**

9 **General Description:**

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

13 **Highlighted Provisions:**

14 This resolution:

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

20 **Special Clauses:**

21 None

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

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



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

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

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

35 WHEREAS, by compact between the original states, territorial lands were divided into
36 "suitable extents of territory" and upon attaining a certain population, were to be admitted into
37 the union upon "an equal footing" as members possessing "the same rights of sovereignty,
38 freedom and independence" as the original states;

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

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

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

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

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

57 WHEREAS, "right and title" are elements of proprietorship, and "right and title" are
58 neither sovereignty nor jurisdiction;

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

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

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

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

72 WHEREAS, the BLM now has jurisdiction of over 22,600,000 acres of public land in
73 Utah, which is nearly twice as much land as the 11,512,000 acres of land in private ownership;

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

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

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

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

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

90 WHEREAS, federal land-management actions, even when applied exclusively to the
91 federal lands, directly impact the ability of the state of Utah to manage its trust lands in
92 accordance with the mandate of the Utah Enabling Act and to meet its obligation to the
93 beneficiaries of the trust;

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

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

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

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

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

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

116 WHEREAS, the United States Department of the Interior has arbitrarily created a new
117 category of lands, denominated "Wild Lands," and has superimposed these mandatory
118 protective management provisions upon BLM operations and planning decisions in violation of
119 the provisions of the Federal Land Policy and Management Act, the provisions of the
120 Administrative Procedures Act, and Presidential Executive Order 13563 concerning openness

121 in policymaking;

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

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

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

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

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

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

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

147 WHEREAS, the United States Army Corps of Engineers is proposing to extend its
148 jurisdiction to regulate the waters of the United States to areas traditionally dry, except during
149 severe weather events, in violation of the common definition of jurisdictional waters;

150 WHEREAS, in 1996, the President of the United States abused the intent of the
151 Antiquities Act by the creation of the Grand Staircase Escalante National Monument without

152 any consultation with state and local authorities or citizens;

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

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

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

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

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

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

174 WHEREAS, efforts in Washington County, Utah, the Owyhee region of Idaho, and the
175 Front Range region in Montana have involved many various stakeholders, including ranchers,
176 energy officials, environmental groups, and state and local government officials in an effort to
177 achieve agreement on proposals for wilderness and other congressionally established
178 conservation units, lands available for local privatization of lands, and areas available for
179 traditional multiple-use;

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

182 WHEREAS, the state is willing to sponsor, evaluate, and advance these locally driven

183 efforts in a more efficient manner than the federal government, to the benefit of all users,
184 including recreation, conservation, and the responsible development of energy, grazing, timber,
185 and other economic industries;

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

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

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

193 WHEREAS, by means provided under the Constitution, damaged states may assert their
194 rightful claim to the public lands within their borders and restore the constitutional design for
195 the benefit of present and future generations:

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

202 BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Secretary of
203 the United States Department of Interior, to the United States Director of the Federal Bureau of
204 Land Management, to the Majority Leader of the United States Senate, to the Speaker of the
205 United States House of Representatives, and to the members of Utah's Congressional
206 Delegation.

Legislative Review Note
as of 2-18-11 6:17 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.J.R. 39

SHORT TITLE: **State Jurisdiction of Federally Managed Lands Joint Resolution**

SPONSOR: **Barrus, R.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.