

UTAH STATE LEGISLATURE

STATE CAPITOL • SALT LAKE CITY, UTAH 84114
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August 04, 2017

To Legislative leaders of the sovereign States; and
Chairs of the legislative committees established to review actions by the federal government:

As chairs of Utah's Commission on Federalism, we are writing to brief you on the work of the Commission and to invite you to join with us in response to the federal action, enumerated below, which we have found to exceed the powers delegated, or otherwise encroach upon the powers reserved to the States and the people, under the Constitution of the United States.

In an effort to restore our structural governing balance of federalism, the State of Utah created the Commission on Federalism in 2013. The Commission consists of seven members from both parties and both houses of the Utah State Legislature. Utah Code Section 63C-4a-303 charges the Commission to review and evaluate federal laws, rules, rulings, and regulations (hereafter referred to as "federal law"), to determine whether those actions violate the principles of federalism.

Upon determining that a federal law violates the principles of federalism, the Commission is tasked with engaging the corresponding federal branch or agency in a measured dispute resolution process, requesting the assistance of our congressional delegation, and inviting other states to join in our petition.

During our work, the commission has studied and determined that the State of Utah has jurisdiction over, and a duty to protect, the health, safety, and welfare of its residents. This governing power, possessed by the states, but not the federal government, is known as the police power.¹ Federal laws, rules, regulations, and past policies, directing federal forest management have infringed upon and undermined the jurisdiction and duty of our state to protect the health, safety, and welfare of our residents.

On July 17, 2017, a massive catastrophic wildfire burned 72,000 acres near Brian Head, Utah, much of which was federally managed forest. This fire, and others like it, have had a direct impact on the health, safety, and welfare of the local communities, the State at-large, and the surrounding States.

Specifically, several municipal water sheds in Garfield and Iron Counties, were consumed, along with 21 structures (including 13 residences), and wildlife in the hundreds of thousands, including deer, elk, cougar, bear, and moose were killed or displaced. Many tons of pollutants were released into the air as this forest burned. The contaminants in the runoff pose an imminent threat to dozens of lakes, rivers, and streams. The economic loss to the region and the state as a consequence of this fire is not only substantial but it will be felt for years to come.

We have already sent letters to our federal delegation and the US Forest Service, the US Department of Agriculture, the Department of the Interior, and the Bureau of Land Management regarding this issue. We have included those letters for your review.

We invite your appropriate legislative committee to formally join in our petition. We also invite you to request the assistance of your federal delegation in restoring clear limits and divisions of governmental

¹ *National Fed'n of Indep. Bus. v. Seblius*, 567 U.S. 519, 536 (2012).

responsibility in this structural federalism issue presented by our Commission. Materials and audio from prior Commission meetings can be accessed on our website at:
<https://le.utah.gov/asp/interim/Commit.asp?Year=2017&Com=SPECOF>

If you have any questions about this issue or the broader work of the Commission on Federalism, please contact either Jerry Howe, Nathan Brady, or Bob Rees at (801) 538-1032.

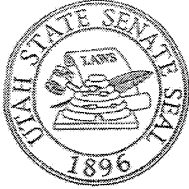
Respectfully,

Handwritten signature of Allen Christensen in black ink.

Senator Allen Christensen
Utah State Senate
Co-Chair, Commission on Federalism

Handwritten signature of Ken Ivory in black ink.

Representative Ken Ivory
Utah House of Representatives
Co-Chair, Commission on Federalism



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To Sonny Perdue, Secretary, US Department of Agriculture;
Thomas L. Tidwell, Chief, United States Forest Service;
Ryan Zinke, Secretary, Department of Interior; and
Michael D. Nedd, Acting Director, Bureau of Land Management:

As chairs of Utah's Commission on Federalism, we are writing to inform you of the Commission's review of the federal laws, rules, and regulations (hereafter referred to as "federal laws") that violate the principles of federalism as described in Utah Code Subsection 63C-4a-304(2).

Utah Code Section 63C-4a-303 authorizes the Commission on Federalism to evaluate whether a federal law is authorized by the United State Constitution or if the law violates the principles of federalism by:

- affecting the distribution of power and responsibility between the state and national government;
- limiting the policymaking discretion of the state;
- impacting a power or right that is reserved to the state or its citizens; or
- impacting the sovereignty, rights, and interest of the state or a political subdivision to provide for the health, safety, and welfare of, and promote the prosperity of, the state's inhabitants.

The State of Utah has jurisdiction over, and a duty to protect, the health, safety, and welfare of its residents. This governing power, possessed by the states, but not the federal government, is known as the police power.¹ Federal laws, rules, regulations, and past policies, directing federal forest management have infringed upon and undermined the jurisdiction and duty of our state to protect the health, safety, and welfare of our residents.

As you are aware, on July 17, 2017, a massive catastrophic wildfire burned 72,000 acres near Brian Head, Utah, much of which was federally managed forest. This fire, and others like it, have had a direct impact on the health, safety, and welfare of the local communities, the State at-large, and the surrounding States.

Specifically, several municipal water sheds in Garfield and Iron Counties, were consumed, along with 21 structures (including 13 residences), and wildlife in the hundreds of thousands, including deer, elk, cougar, bear, and moose were killed or displaced. Many tons of pollutants were released into the air as this forest burned. The contaminants in the runoff pose an imminent threat to dozens of lakes, rivers, and streams. The economic loss to the region and the state as a consequence of this fire is not only substantial but it will be felt for years to come.

In August 2015, as authorized by Utah Code, Section 11-51a-103, Declaration of catastrophic public nuisance, the chief executive officer of Garfield county notified the Director of the Dixie National Forest Service that the federally managed forests in the county constituted a catastrophic public nuisance.

"The subject lands have been managed and neglected to result in tree stand density, basal area, and/or ground fuel load greater than USFS land health standards. The Panguitch municipal water shed is threatened by disease that could result in mortality of greater than 20% of the trees and both areas threaten the health, safety and welfare of Garfield County's citizens and visitors.

¹ *National Fed'n of Indep. Bus. v. Seblius*, 567 U.S. 519, 536 (2012).

In view of [these conditions] . . . we have made the determination that a catastrophic public nuisance exists severally and collectively on the subject lands within our county's borders. For each of the subject lands, we call upon the forest service to formulate and produce a plan within thirty (30) days after receipt of this notice, to mitigate and abate the catastrophic public nuisance. ²"

In addition, the chief executive officers from Iron and Kane counties also sent similar notices declaring the federally managed forests within these counties to be a catastrophic public nuisance. Despite receiving three separate notices of these public nuisances, there has been no noticeable action taken by the federal government to abate these existing nuisances from the threat of future fires, and the forest and watersheds burned. Moreover, federal policies and practices purport to prevent Utah officials from protecting the health, safety, welfare of the residents of these counties and the State.

Federal forest management policies have given rise to the same over grown, tinder box conditions on an estimated eighty percent of the federally managed forests in our State. Because we are the second driest state in the nation, these forest conditions are a substantial threat to the entire statewide watershed and the health, safety, welfare and the livelihood of our residents.


We respectfully request a written response on or before September 15, 2017 regarding the failure on the part your respective agency to manage public lands within our State in a manner that reduces and prevents such catastrophic public nuisance conditions. We request an explanation of the legal and constitutional basis for your agency's source and scope of jurisdiction over these lands in our State. We further request an explanation regarding how any claim to such jurisdiction reconciles with the principles of federalism -- specifically, the state's jurisdiction and duty to protect the health, safety, and welfare, from known catastrophic public nuisances.

If you have any questions or would like to schedule a time to meet with the chairs of the Commission on Federalism to address these issues, please contact Jerry Howe, Nathan Brady, or Bob Rees at (801) 538-1032.

Respectfully,



Senator Allen Christensen
Utah State Senate
Co-Chair, Commission on Federalism

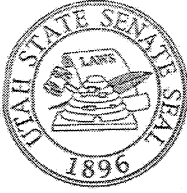


Representative Ken Ivory
Utah House of Representatives
Co-Chair, Commission on Federalism

CC:

Speaker Greg Hughes
President Wayne Niederhauser
Senator Orrin Hatch
Senator Mike Lee
Congressman Chris Stewart
Congressman Rob Bishop
Congresswoman Mia Love
Attorney General Sean Reyes
Governor Gary Herbert

² Letter from Garfield County to the Director of the Dixie National Forest, dated August 21, 2015



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August 04, 2017

To the honorable Congresswoman Mia Love,

As chairs of Utah's Commission on Federalism, we are writing to request your input into our review of the federal laws, rules, and regulations (hereafter referred to as "federal laws") that violate the principles of federalism as described in Utah Code Subsection 63C-4a-304(2).

Utah Code Section 63C-4a-303 authorizes the Commission on Federalism to evaluate whether a federal law is authorized by the United State Constitution or if the law violates the principles of federalism by:

- affecting the distribution of power and responsibility among the state and national government;
- limiting the policymaking discretion of the state;
- impacting a power or right that is reserved to the state or its citizens; or
- impacting the sovereignty, rights, and interest of the state or a political subdivision to provide for the health, safety, and welfare of, and promote the prosperity of, the state's inhabitants.

Upon finding that a federal law is not authorized by the United States Constitution, or that the law violates the principles of federalism, Utah Code Subsection 63C-4a-303(3) authorizes the commission to engage with a United States Senator or Representative who is elected from Utah, to request information about specific federal laws and assistance in communicating with a federal governmental entity regarding the federal law.

The commission has studied and determined that the federal law referred to below violates the provisions of federalism:

The State of Utah has jurisdiction over, and a duty to protect, the health, safety, and welfare of its residents. This governing power, possessed by the states, but not the federal government, is known as the police power.¹ Federal laws, rules, regulations, and past policies, directing federal forest management have infringed upon and undermined the jurisdiction and duty of our state to protect the health, safety, and welfare of our residents.

On July 17, 2017, a massive catastrophic wildfire burned 72,000 acres near Brian Head, Utah, much of which was federally managed forest. This fire, and others like it, have had a direct impact on the health, safety, and welfare of the local communities, the State at-large, and the surrounding States.

Specifically, several municipal water sheds in Garfield and Iron Counties, were consumed, along with 21 structures (including 13 residences), and wildlife in the hundreds of thousands, including deer, elk, cougar, bear, and moose were killed or displaced. Many tons of pollutants were released into the air as this forest burned. The contaminants in the runoff pose an imminent threat to dozens of lakes, rivers, and streams. The economic loss to the region and the state as a consequence of this fire is not only substantial but it will be felt for years to come.

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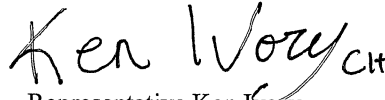
We request your assistance in facilitating communication with the above referenced federal agencies in an effort to resolve this critical jurisdictional matter.

If you have any questions about the work of the Commission on Federalism, please contact Jerry Howe, Nathan Brady, or Bob Rees at (801)538-1032.

Respectfully,

Handwritten signature of Allen Christensen in black ink, with the initials "CH" written below the signature.

Senator Allen Christensen
Utah State Senate
Co-Chair, Commission on Federalism

Handwritten signature of Ken Ivory in black ink, with the initials "KI" written below the signature.

Representative Ken Ivory
Utah House of Representatives
Co-Chair, Commission on Federalism