

**JOINT RESOLUTION ON FEDERAL TRANSFER OF
PUBLIC LANDS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Roger E. Barrus

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This joint resolution of the Legislature demands that the federal government extinguish title to Utah's public lands and transfer title to those lands to the state of Utah.

Highlighted Provisions:

This resolution:

- ▶ demands that the federal government transfer title of the public lands within Utah's borders directly to the state of Utah;
- ▶ urges the United States Congress to engage in good faith communication, cooperation, coordination, and consultation with the state of Utah regarding the transfer of title of public lands directly to the state of Utah;
- ▶ declares that the Legislature, upon transfer of title of the public lands directly to the state of Utah, intends to affirmatively cede the national park lands to the federal government, under Article I, Section 8, Clause 17 of the United States Constitution, on condition that the lands permanently remain national park lands and that they not be sold, transferred, or conveyed to any party other than the state of Utah;
- ▶ declares that, upon transfer of the public lands directly to the state of Utah, the Legislature intends to affirmatively cede to the federal government all lands currently designated as part of the National Wilderness Preservation System pursuant to the Wilderness Act of 1964;



28 ▶ calls for the creation of a Utah Public Lands Commission to review and manage
 29 multiple use of the public lands, including access, open space, and sustainable yield
 30 of the abundant resources, and to determine, through a public process, the extent to
 31 which public land may be sold, if any; and

32 ▶ urges, to the extent that the Public Lands Commission determines through a public
 33 process that any such land should be sold to private owners, that 5% of the net
 34 proceeds should be paid to the Permanent Fund for public education and 95% of the
 35 net proceeds should be paid to the federal government to pay down the national
 36 debt.

37 **Special Clauses:**

38 None



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

41 WHEREAS, in 1780, the United States Congress resolved that "the unappropriated
 42 lands that may be ceded or relinquished to the United States, by any particular states, pursuant
 43 to the recommendation of Congress of the 6 day of September last, shall be granted and
 44 disposed of for the common benefit of all the United States that shall be members of the federal
 45 union, and be settled and formed into distinct republican states, which shall become members
 46 of the federal union, and have the same rights of sovereignty, freedom and independence, as the
 47 other states: . . . and that upon such cession being made by any State and approved and
 48 accepted by Congress, the United States shall guaranty the remaining territory of the said States
 49 respectively. (Resolution of Congress, October 10, 1780)";

50 WHEREAS, the territorial and public lands of the United States are dealt with in
 51 Article IV, section 3, clause 2 of the United States Constitution, referred to as the Property
 52 Clause, which states, "The Congress shall have Power to dispose of and make all needful Rules
 53 and Regulations respecting the Territory or other Property belonging to the United States.";

54 WHEREAS, with this clause, the Constitutional Convention agreed that the
 55 Constitution would maintain the "statu quo" that had been established with respect to the
 56 federal territorial lands being disposed of only to create new states with the same rights of
 57 sovereignty, freedom, and independence as the original states;

58 WHEREAS, under these express terms of trust, the land claiming states, over time,

59 ceded their western land to their confederated Union and retained their claims that the
60 confederated government dispose of such lands only to create new states "and for no other use
61 or purpose whatsoever" and apply the net proceeds of any sales of such lands only for the
62 purpose of paying down the public debt;

63 WHEREAS, with respect to the disposition of the federal territorial lands, the
64 Northwest Ordinance of July 13, 1787, provides, "The legislatures of those districts or new
65 States, shall never interfere with the primary disposal of the soil by the United States in
66 Congress assembled, nor with any regulations Congress may find necessary for securing the
67 title in such soil to the bona fide purchasers";

68 WHEREAS, by resolution in 1790, the United States Congress declared "That the
69 proceeds of sales which shall be made of lands in the Western territory, now belonging or that
70 may hereafter belong to the United States, shall be, and are hereby appropriated towards
71 sinking or discharging the debts for the payment whereof the United States now are, or by
72 virtue of this act may be holden, and shall be applied solely to that use, until the said debt shall
73 be fully satisfied";

74 WHEREAS, the intent of the founding fathers to eventually extinguish title to all public
75 lands was reaffirmed by President Andrew Jackson in a message to the United States Senate on
76 December 4, 1833, where he explained the reasons he vetoed a bill entitled "An act to
77 appropriate for a limited time the proceeds of the sales of the public lands of the United States
78 and for granting lands to certain States": "I do not doubt that it is the real interest of each and
79 all the States in the Union, and particularly of the new States, that the price of these lands shall
80 be reduced and graduated, and that after they have been offered for a certain number of years
81 the refuse remaining unsold shall be abandoned to the States and the machinery of our land
82 system entirely withdrawn. It can not be supposed the compacts intended that the United States
83 should retain forever a title to lands within the States which are of no value, and no doubt is
84 entertained that the general interest would be best promoted by surrendering such lands to the
85 States";

86 WHEREAS, in 1828, United States Supreme Court Chief Justice John Marshall, in
87 American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511 (1828), confirmed that no provision in
88 the Constitution authorized the federal government to indefinitely exercise control over western
89 public lands beyond the duty to manage these lands pending the disposal of the lands to create

90 new states when he said, "At the time the Constitution was formed, the limits of the territory
91 over which it was to operate were generally defined and recognised (sic). These limits
92 consisted in part, of organized states, and in part of territories, the absolute property and
93 dependencies of the United States. These states, this territory, and future states to be admitted
94 into the Union, are the sole objects of the Constitution; there is no express provision whatever
95 made in the Constitution for the acquisition or government of territories beyond those Limits.";

96 WHEREAS, in 1833, referring to these land cession compacts which arose from the
97 original 1780 congressional resolution, President Andrew Jackson stated, "These solemn
98 compacts, invited by Congress in a resolution declaring the purposes to which the proceeds of
99 these lands should be applied, originating before the constitution, and forming the basis on
100 which it was made, bound the United States to a particular course of policy in relation to them
101 by ties as strong as can be invented to secure the faith of nations" (Land bill veto, December 5,
102 1833);

103 WHEREAS, the United States Supreme Court, in *State of Texas v. White*, 74 U.S. 700
104 (1868), clarified that a state, by definition, includes a defined sovereign territory, stating that
105 "State", in the constitutional context, is "a political community of free citizens, occupying a
106 territory of defined boundaries, and organized under a government sanctioned and limited by a
107 written constitution, and established by the consent of the governed", and added, "This is
108 undoubtedly the fundamental idea upon which the republican institutions of our own country
109 are established";

110 WHEREAS, in *Shively v. Bowlby*, 152 U.S. 1 (1894), the United States Supreme Court
111 confirmed that all federal territories, regardless of how acquired, are held in trust to create new
112 states on an equal footing with the original states when it stated, "Upon the acquisition of a
113 Territory by the United States, whether by cession from one of the States, or by treaty with a
114 foreign country, or by discovery and settlement, the same title and dominion passed to the
115 United States, for the benefit of the whole people, and in trust for the several States to be
116 ultimately created out of the Territory.";

117 WHEREAS, the United States Supreme Court has affirmed that the federal government
118 must honor its trust obligation to extinguish title to the public lands for the sovereignty of the
119 new state to be complete, stating once "the United States shall have fully executed these trusts,
120 the municipal sovereignty of the new states will be complete, throughout their respective

121 borders, and they, and the original states, will be upon an equal footing, in all respects. . ."
122 (Polland v. Hagan, 44 U.S. 212 (1845));

123 WHEREAS, the enabling acts of the new states west of the original colonies established
124 the terms upon which all such states were admitted into the union, and contained the same
125 promise to all new states that the federal government would extinguish title to all public lands
126 lying within their respective borders;

127 WHEREAS, the United States Supreme Court looks upon the enabling acts which
128 create new states as "solemn compacts" and "bilateral (two-way) agreements" to be performed
129 "in a timely fashion";

130 WHEREAS, under Section 3 of Utah's Enabling Act, Utah agreed to the same solemn
131 compacts as states preceding in statehood, that until the title to unappropriated public lands
132 lying within the state's boundaries "shall have been extinguished by the United States, the same
133 shall be and remain subject to the disposition of the United States, and said Indian lands shall
134 remain under the absolute jurisdiction and control of the Congress of the United States; . . .
135 that no taxes shall be imposed by the State on lands or property therein belonging to or which
136 may hereafter be purchased by the United States or reserved for its use";

137 WHEREAS, the trust obligation of the federal government to timely extinguish title of
138 all public lands lying within the boundaries of the state of Utah is made even more clear in
139 Section 9 of Utah's Enabling Act as follows: "That five per centum of the proceeds of the sales
140 of public lands lying within said State, which shall be sold by the United States subsequent to
141 the admission of said State into the Union, after deducting all the expenses incident to the
142 same, shall be paid to the said State, to be used as a Permanent Fund, the interest of which only
143 shall be expended for the support of the common schools within said State";

144 WHEREAS, the federal government confirmed its trust obligation to timely extinguish
145 title to all public lands lying within the boundaries of the state of Utah by and through the 1934
146 Taylor Grazing Act which declared that the act was established "In order to promote the
147 highest use of the public lands pending its final disposal";

148 WHEREAS, in 1976, after nearly 200 years of trust history regarding the obligation of
149 Congress to extinguish title of western lands to create new states and use the proceeds to
150 discharge its public debts, the United States Congress purported to unilaterally change this
151 solemn promise by and through the Federal Land Policy Management Act (FLPMA), which

152 provides, in part, "The Congress declares that it is the policy of the United States that the
153 public lands be retained in Federal ownership, unless . . . it is determined that disposal of a
154 particular parcel will serve the federal interest";

155 WHEREAS, at the time of Utah's Enabling Act the course and practice of the United
156 States Congress with all prior states admitted to the Union had been to fully extinguish title,
157 within a reasonable time, to all lands within the boundaries of such states, except for those
158 Indian lands, or lands otherwise expressly reserved to the exclusive jurisdiction of the United
159 States;

160 WHEREAS, the state of Utah did not, and could not have, contemplated or bargained
161 for the United States failing or refusing to abide by its solemn promise to extinguish title to all
162 lands within its defined boundaries within a reasonable time such that the state of Utah and its
163 Permanent Fund for its Common Schools could never realize the bargained-for benefit of the
164 deployment, taxation, or economic benefit of all the lands within its defined boundaries;

165 WHEREAS, from 1780 forward the federal government only held bare legal title to the
166 western public lands in the nature of a trustee in trust with the solemn obligation to timely
167 extinguish title to such lands to create new states and to use the proceeds to pay the public debt;

168 WHEREAS, the federal government complied with its promise and solemn obligation
169 to imminently transfer title of public lands lying within the boundaries of all states to the
170 eastern edge of the state of Colorado and also with the state of Hawaii;

171 WHEREAS, by the terms of Utah's Enabling Act, Utah suspended its sovereign right to
172 eventually tax the public lands within its borders, pending final disposition of the public lands;

173 WHEREAS, the federal government has repeatedly and persistently failed to honor its
174 promises and has refused to abide by the terms of its preexisting solemn obligations to
175 imminently extinguish title to all public lands;

176 WHEREAS, had Congress honored its promise to Utah to timely extinguish title to all
177 public lands within Utah's boundaries, Utah would have had sovereign control over lands
178 within its borders;

179 WHEREAS, Congress, by and through FLPMA, unilaterally altered its duty in 1976 to
180 extinguish title to all public lands within Utah's borders by committing to a policy of retention
181 and a process of comprehensive land management and planning coordinated between the
182 federal government, the states, and local governing bodies for access, multiple use, and

183 sustained yield of the public lands;

184 WHEREAS, despite the fact that the federal government had not divested all public
185 lands within Utah's borders by 1976, this did not alleviate the federal government from its duty
186 to extinguish title and divest itself of federal ownership of remaining public land in Utah by
187 ceding such land directly to the state as it did with other states;

188 WHEREAS, since the passage of FLPMA, the federal government has engaged in a
189 persistent pattern and course of conduct in direct violation of the letter and spirit of FLPMA
190 through an abject disregard of local resource management plans, failure and refusal to
191 coordinate and cooperate with the state and local governments, unilateral and oppressive land
192 control edicts to the severe and extreme detriment of the state and its ability to adequately fund
193 education, provide essential government services, secure economic opportunities for wage
194 earners and Utah business, and ensure a stable prosperous future;

195 WHEREAS, under the United State Constitution, the American states reorganized to
196 form a more perfect union, yielding up certain portions of their sovereign powers to the elected
197 officers of the government of their union, yet retaining the residuum of sovereignty for the
198 purpose of independent internal self-governance;

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

203 WHEREAS, the federal trust respecting public lands obligates the United States,
204 through their agent, Congress, to extinguish both their government jurisdiction and their title
205 on the public lands that are held in trust by the United States for the states in which they are
206 located;

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

210 WHEREAS, federal land-management actions, even when applied exclusively to
211 federal lands, directly impact the ability of the state of Utah to manage its school trust lands in
212 accordance with the mandate of the Utah Enabling Act and to meet its obligation to the
213 beneficiaries of the trust;

214 WHEREAS, Utah has been substantially damaged in its ability to provide funding for
215 education and the common good of the state and to serve a sustainable, vibrant economy into
216 the future because the federal government has unduly retained control of nearly two-thirds of
217 the lands lying within Utah's borders;

218 WHEREAS, Utah consistently ranks highest among all the states in class size and
219 lowest in the nation in per pupil spending for education;

220 WHEREAS, had the federal government disposed of the land in or about 1896, Utah
221 would have, from that point forward, generated substantial tax revenues and revenues from the
222 sustainable managed use of its natural resources to the benefit of its public schools and to the
223 common good of the state and nation;

224 WHEREAS, the federal government gives Utah less than half of the net proceeds of
225 mineral lease revenues and severance taxes generated from the lands within Utah's borders;

226 WHEREAS, Utah has been substantially damaged in mineral lease revenues and
227 severance taxes in that, had the federal government extinguished title to all public lands, Utah
228 would realize 100% of the mineral lease revenues and severance taxes from the lands;

229 WHEREAS, the Bureau of Land Management's (BLM) failure to act affirmatively on
230 definitive allocation decisions of multiple use activities in resource management plans has
231 created uncertainty in the future of public land use in Utah and has caused capital to flee the
232 state;

233 WHEREAS, during the process of finalizing the most recent six Resource Management
234 Plans, the BLM refused to consider state and local government acknowledgments of R.S. 2477
235 rights-of-way or other evidence of the existence of R.S. 2477 rights-of-way in the Grand
236 Staircase Escalante National Monument;

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

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

242 WHEREAS, in 1996 the president of the United States abused the intent of the
243 Antiquities Act by the creation of the Grand Staircase Escalante National Monument without
244 any consultation with the state and local authorities or citizens;

245 WHEREAS, the United States Fish and Wildlife Service is making decisions
246 concerning various species on BLM lands under the provisions of the Endangered Species Act
247 without serious consideration of state wildlife management activities and protection designed
248 to prevent the need for a listing, or recognizing the ability to delist a species, thereby affecting
249 the economic vitality of the state and local region;

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

254 WHEREAS, Utah initially supported placing into reserve the six National Forests in
255 Utah -- Ashley, Fishlake, Manti La-Sal, Dixie, Uinta, and Wasatch-Cache, because Utah was
256 promised this action would preserve the forest lands as watersheds and for agricultural use --
257 namely timber and other wood products, and grazing;

258 WHEREAS, this vision and promise of agricultural production on the forest lands is the
259 reason that the United States Forest Service was made part of the United States Department of
260 Agriculture as opposed to the Department of the Interior;

261 WHEREAS, the promise of preservation for agricultural use has been broken by the
262 current and recent administrations;

263 WHEREAS, logging, timber, and wood products operations on Utah's National Forests
264 have come to a virtual standstill, resulting in forests that are choked with old growth
265 monocultures, loss of aspen diversity, loss of habitat, and a threat to community watersheds
266 due to insect infestation and catastrophic fire;

267 WHEREAS, these conditions are the result of a failure to properly manage the forest
268 lands for their intended use, which is responsible and sustained timber production, watersheds
269 and grazing;

270 WHEREAS, the only remedy for federal government breaches of Utah's Enabling Act
271 Compact and breaches to the spirit and letter of the promises of FLPMA is for the state of Utah
272 to take back title and management responsibility of federally-managed public lands, which
273 would restore the promises in the solemn compact made at statehood;

274 WHEREAS, under Article I, Section 8, Clause 17 of the United States Constitution, the
275 federal government is only constitutionally authorized to exercise jurisdiction over and above

276 bare right and title over lands that are "purchased by the Consent of the Legislature of the State
277 in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and
278 other needful Buildings";

279 WHEREAS, the United States Supreme Court affirmed that the federal government
280 only holds lands as a mere "ordinary proprietor" and cannot exert jurisdictional dominion and
281 control over public lands without the consent of the state Legislature, stating "Where lands are
282 acquired without such consent, the possession of the United States, unless political jurisdiction
283 be ceded to them in some other way, is simply that of an ordinary proprietor (emphasis added).
284 The property in that case, unless used as a means to carry out the purposes of the government,
285 is subject to the legislative authority and control of the states equally with the property of
286 private individuals."(Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525 (1885));

287 WHEREAS, in a unanimous 2009 decision, the United States Supreme Court, in
288 Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009), affirmed that Congress has no right
289 to change the promises it made to a state's Enabling Act, stating, ". . . [a subsequent act of
290 Congress] would raise grave constitutional concerns if it purported to 'cloud' Hawaii's title to
291 its sovereign lands more than three decades after the State's admission to the Union . . .
292 *'[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign*
293 *character of that event . . . to suggest that subsequent events somehow can diminish what has*
294 *already been bestowed'. And that proposition applies a fortiori [with even greater force]*
295 *where virtually all of the State's public lands . . . are at stake"* (emphasis added, citation
296 omitted);

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

299 WHEREAS, the state of Utah is willing to sponsor, evaluate, and advance the locally
300 driven efforts in a more efficient manner than the federal government, to the benefit of all
301 users, including recreation, conservation, and the responsible and sustainable management of
302 Utah's natural resources;

303 WHEREAS, the state of Utah has a proven regulatory structure to manage public lands
304 for multiple use and sustainable yield;

305 WHEREAS, the United States Congress disposed of lands within the boundaries of the
306 states of Tennessee and Hawaii directly to those states;

307 WHEREAS, because of the entanglements and rights arising over the 116 years that the
308 federal government has failed to honor its promise to timely extinguish title to public lands and
309 because of the federal government's breach of Utah's Enabling Act and breach of FLPMA,
310 among other promises made, and the damages resulting from such breaches, the United States
311 Congress should imminently transfer title to all public lands lying within the State of Utah
312 directly to the State of Utah, as it did with Hawaii and Tennessee;

313 WHEREAS, the Legislature of the state of Utah, upon transfer of title by the federal
314 government of the public lands directly to the state, intends to cede the national park land to the
315 federal government on condition that the lands permanently remain national park lands, that
316 they not be sold, transferred, left in disrepair, or conveyed to any party other than the state of
317 Utah;

318 WHEREAS, the Legislature of the state of Utah, upon transfer of title by the federal
319 government of the public lands directly to the state, intends to cede to the federal government
320 all lands currently designated as part of the National Wilderness Preservation System pursuant
321 to the Wilderness Act of 1964;

322 WHEREAS, in order to effectively address the accumulated entanglements and
323 expectations over Utah's public lands, including open space, access, multiple use, and the
324 management of sustainable yields of Utah's natural resources, a Utah Public Lands
325 Commission should be formed to review and manage multiple use of the public lands and to
326 determine, through a public process, the extent to which public land may be sold, if any; and

327 WHEREAS, to the extent that the Public Lands Commission determines through a
328 public process that any such land should be sold to private owners, that 5% of the net proceeds
329 should be paid to the Permanent Fund for Utah's public schools, and 95% of the net proceeds
330 should be paid to the federal government to pay down the federal debt:

331 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah
332 demands that the federal government imminently transfer title to all of the public lands within
333 Utah's borders directly to the state of Utah.

334 BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the
335 United States Congress in the most strenuous terms to engage in good faith communication,
336 cooperation, coordination, and consultation with the state of Utah regarding the transfer of
337 public lands directly to the state of Utah.

338 BE IT FURTHER RESOLVED that, upon transfer of the public lands directly to the
339 state of Utah, the Legislature intends to affirmatively cede the national park lands to the federal
340 government, under Article I, Section 8, Clause 17 of the United States Constitution, on
341 condition that the lands permanently remain national park lands, that they not be sold,
342 transferred, left in substantial disrepair, or conveyed to any party other than the state of Utah.

343 BE IT FURTHER RESOLVED that, upon transfer of the public lands directly to the
344 state of Utah, the Legislature intends to affirmatively cede to the federal government all lands
345 currently designated as part of the National Wilderness Preservation System pursuant to the
346 Wilderness Act of 1964.

347 BE IT FURTHER RESOLVED that the Legislature calls for the creation of a Utah
348 Public Lands Commission to review and manage access, open space, sustainable yields, and the
349 multiple use of the public lands and to determine, through a public process, the extent to which
350 public land may be sold.

351 BE IT FURTHER RESOLVED that, to the extent that the Public Lands Commission
352 determines through a public process that any such land should be sold to private owners, that
353 5% of the net proceeds should be paid to the Permanent Fund for the public schools, and 95%
354 should be paid to the Bureau of the Public Debt to pay down the federal debt.

355 BE IT FURTHER RESOLVED that copies of this resolution be sent to the United
356 States Department of the Interior, the Majority Leader of the United States Senate, the Speaker
357 of the United States House of Representatives, the members of Utah's congressional delegation,
358 and the Governors, Senate Presidents, and Speakers of the House of the 49 other states.

Legislative Review Note
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Office of Legislative Research and General Counsel