

**JOINT RESOLUTION ON STATE AND POLITICAL
SUBDIVISIONS JURISDICTION**

2013 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This joint resolution of the Legislature declares and asserts the jurisdictional right of the state of Utah and its political subdivisions to respond to and take action when conditions on federally managed land in the state adversely affect, or may adversely affect, the health, safety, or welfare of the people.

Highlighted Provisions:

This resolution:
▶ declares and asserts the jurisdictional right of the state of Utah and its political subdivisions to respond to and take action when conditions on federally managed land in the state adversely affect, or may adversely affect, the health, safety, or

28 welfare of the people without the intrusion and interference of the federal government on its
29 efforts to respond to the needs of its citizens; and

30 ▶ urges other states to declare and assert their rights, and the rights of their political
31 subdivisions, to respond to and take action when conditions on federally managed
32 land in the state adversely affect, or may adversely affect, the health, safety, or
33 welfare of the people without the intrusion and interference of the federal
34 government on the states' efforts to respond to the needs of their citizens.

35 **Special Clauses:**

36 None



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

39 WHEREAS, in its Patient Protection and Affordable Care Act decision, released June
40 2012, the United States Supreme Court reaffirmed the position of the states as "separate and
41 independent sovereigns";

42 WHEREAS, the court made it clear that the federal government "must show that a
43 constitutional grant of power authorizes each of its actions";

44 WHEREAS, in contrast, the Supreme Court further explained that "the same does not
45 apply to the States, because the Constitution is not the source of their power. . . . The States
46 thus can and do perform many of the vital functions of modern government . . . even though
47 the Constitution's text does not authorize any government to do so";

48 WHEREAS, the Supreme Court added, "Our cases refer to this general power of
49 governing, possessed by the States but not by the federal government, as the 'police power.' . . .
50 Because the police power is controlled by 50 different states instead of one national sovereign,
51 the facets of governing that touch on citizens' daily lives are normally administered by smaller
52 governments closer to the governed. The Framers thus ensured that powers which 'in the
53 ordinary course of affairs, concern the lives, liberties, and properties of the people' were held
54 by governments more local and more accountable than a distant bureaucracy";

55 WHEREAS, the Supreme Court also highlighted a vital role of states' authority in

56 relation to the federal government, stating, "The independent power of the States also serves as
57 a check on the power of the Federal Government: 'By denying any one government complete
58 jurisdiction over all the concerns of public life, federalism protects the liberty of the individual
59 from arbitrary power. . . . In the typical case we look to the States to defend their prerogatives
60 by adopting "the simple expedient of not yielding" to federal blandishments when they do not
61 want to embrace the federal policies as their own";

62 WHEREAS, the Supreme Court, concluding this line of logic, declared, "The States are
63 separate and independent sovereigns. Sometimes they have to act like it";

64 WHEREAS, in 1917, the Court, in *Utah Power and Light v. United States*, held that
65 "The power of the United States to protect its property by its own legislation from private
66 trespass and waste does not, and cannot, imply a general police power over the vacant public
67 lands within a State. The section in the Constitution relating to the admission of new States,
68 and the concomitant disposition of the public lands, excludes, by its express terms, any
69 construction by which the United States may claim any additional governmental or police
70 powers within the States in which such public land is situated";

71 WHEREAS, Article 1, Section 8, Clause 17, of the United States Constitution states
72 that the federal government will "exercise exclusive Legislation in all Cases whatsoever, over
73 such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the
74 Acceptance of Congress, become the Seat of the Government of the United States, and to
75 exercise like Authority over all Places purchased by the Consent of the Legislature of the State
76 in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and
77 other needful Buildings";

78 WHEREAS, the domain of exclusive jurisdiction by the federal government is limited
79 to the District of Columbia and other Places purchased by the Consent of the State Legislatures
80 for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings
81 incidental to the powers expressly granted within the Constitution;

82 WHEREAS, "other needful Buildings" did not include vast acres of undeveloped land;

83 WHEREAS, although Section 3 of the Utah Enabling Act states, in part, "That the

84 people inhabiting said proposed State do agree and declare that they forever disclaim all right
85 and title to the unappropriated public lands lying within the boundaries thereof," the state of
86 Utah did not disclaim its jurisdiction;

87 WHEREAS, during the Eisenhower Administration, the United States government
88 published a report entitled "Report of the Interdepartmental Committee for the Study of
89 Jurisdiction Over Federal Areas Within the States" in which four basic areas of federal
90 jurisdiction were identified:

91 1. Exclusive Legislative Jurisdiction: This term is applied when the federal government
92 possesses, by whichever method acquired, all of the authority of the State, and in which the
93 State concerned has not reserved to itself the right to exercise any of the authority concurrently
94 with the United States except to serve civil or criminal process in the area for activities that
95 occurred outside the area;

96 2. Concurrent Legislative Jurisdiction: This term is applied in those instances wherein
97 by granting to the United States authority -- which would otherwise amount to exclusive
98 legislative jurisdiction over an area -- the State concerned has reserved to itself the right to
99 exercise, concurrently with the United States, all of the same authority;

100 3. Partial Legislative Jurisdiction: This term is applied in those instances wherein a
101 state has granted authority to the federal government to legislate over an area of the state but
102 the State has reserved to itself the right to exercise, by itself or concurrently with the United
103 States, other authority constituting more than merely the right to serve civil or criminal process
104 in the area, or the right to tax private property;

105 4. Proprietorial Interest Only: This term is applied to those instances wherein the
106 federal government has acquired some right or title to an area in a state, but has not obtained
107 any measure of the State's authority over the area. In applying this definition, recognition
108 should be given to the fact that the United States, by virtue of its functions and authority under
109 various provisions of the Constitution, has many powers and immunities not possessed by
110 ordinary landholders with respect to areas in which it acquires an interest, and of the further
111 fact that all its properties and functions are held or performed in a governmental, rather than a

112 proprietary, capacity;

113 WHEREAS, the report also stated, "It scarcely needs to be said that unless there has
114 been a transfer of jurisdiction pursuant to clause 17 by a Federal acquisition of land with State
115 consent, or by cession from the State to the Federal Government, or unless the Federal
116 Government has reserved jurisdiction upon admission of the State, the Federal Government
117 possesses no legislative jurisdiction over any area within a State, such jurisdiction being for
118 exercise by the State, subject to non-interference by the State with Federal functions. . . . The
119 consent requirement of Article I, Section 8, Clause 17, was intended by the framers of the
120 Constitution to preserve the State's jurisdictional integrity against federal encroachment. The
121 Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over
122 any area within the exterior boundaries of a State";

123 WHEREAS, an Inventory Report On Jurisdictional Status of Federal Areas Within the
124 States, compiled by the United States General Services Administration, categorizes all United
125 States Forest Service (USFS) and Bureau of Land Management (BLM) land in the state of Utah
126 as #4, Proprietary Interest Only;

127 WHEREAS, the USFS and the BLM have caused a public nuisance and safety issue for
128 the people of the state of Utah and Utah's political subdivisions by not removing the condition,
129 persistently in the National Forest and BLM system lands, of imminent fire and not mitigating
130 the effects of recent fires;

131 WHEREAS, Utah's 2012 Shingle Creek Fire was human caused on USFS land;

132 WHEREAS, the fire was one-third contained by the operation of one bulldozer;

133 WHEREAS, four bulldozers were ready for use by 6 p.m. on the day of the fire, but
134 since the fire was on USFS land, only one bulldozer was allowed to operate until 10 p.m. and
135 was only allowed to operate one blade wide and to dig no deeper than two inches;

136 WHEREAS, as a result, the fire burned more than 8,000 acres, damaged and altered the
137 local watershed, created future risks of debris and mudslides, and will require costly repairs;

138 WHEREAS, Utah's 2012 Seeley Fire, which was started by lightning, eventually
139 destroyed over 48,000 acres, or 76 square miles;

140 WHEREAS, debris flow and sediment from the Seeley Fire will be a major issue in the
141 surrounding watershed for the next two to five years, impacting local municipalities, power
142 plants, local businesses, homes, roads, bridges, and farms;

143 WHEREAS, in one instance, the USFS chose to bulldoze a portion of private land,
144 claiming it was the best place to fight the wildfire;

145 WHEREAS, these are just two examples of conditions at the community level that have
146 been made worse by the federal government's mismanagement of federal lands;

147 WHEREAS, the jurisdictional right of states and their political subdivisions to mitigate
148 potential risks to the health, safety, or welfare of the state or a political subdivision should not
149 be fettered by the federal bureaucracy; and

150 WHEREAS, states should assert their rights to mitigate potential risks to the health,
151 safety, or welfare of the state or a political subdivision and not allow their authority to be
152 eroded by federal government claims of authority:

153 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah
154 declare and assert its jurisdictional right, and the right of its political subdivisions, to respond
155 to and take action when conditions on federally managed land in the state adversely affect, or
156 may adversely affect, the health, safety, or welfare of the people without the intrusion and
157 interference of the federal government on its efforts to respond to the needs of their citizens.

158 BE IT FURTHER RESOLVED that the Legislature urges the states to declare and
159 assert their jurisdictional rights, and the rights of their political subdivisions, to respond to and
160 take action when conditions on federally managed land in the states adversely affect, or may
161 adversely affect, the health, safety, or welfare of the people without the intrusion and
162 interference of the federal government on efforts to respond to the needs of their citizens.

163 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of
164 the United States, the Majority Leader of the United States Senate, the Speaker of the United
165 States House of Representatives, the United States Forest Service, the commissions of each
166 county in the state of Utah, the Council of State Governments, the National Conference of State
167 Legislatures, and the members of Utah's congressional delegation.

