

Report on Utah's Transfer of Public Lands Act | H.B.148

Presented to

Utah State Legislature Interim Committees

Natural Resources, Agriculture and Environment, and Education

November 14, 2012

Submitted by the Constitutional Defense Council

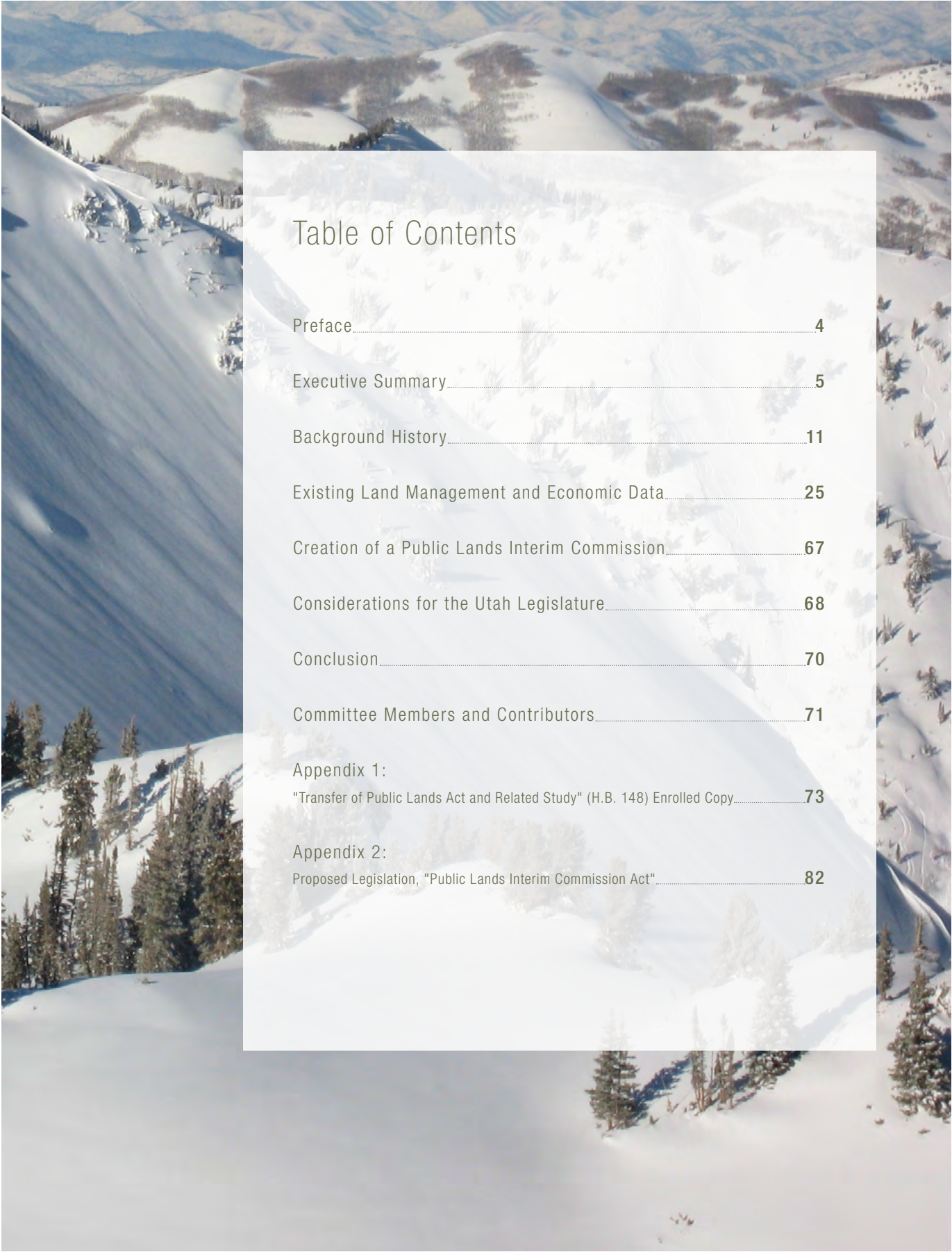


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PREFACE

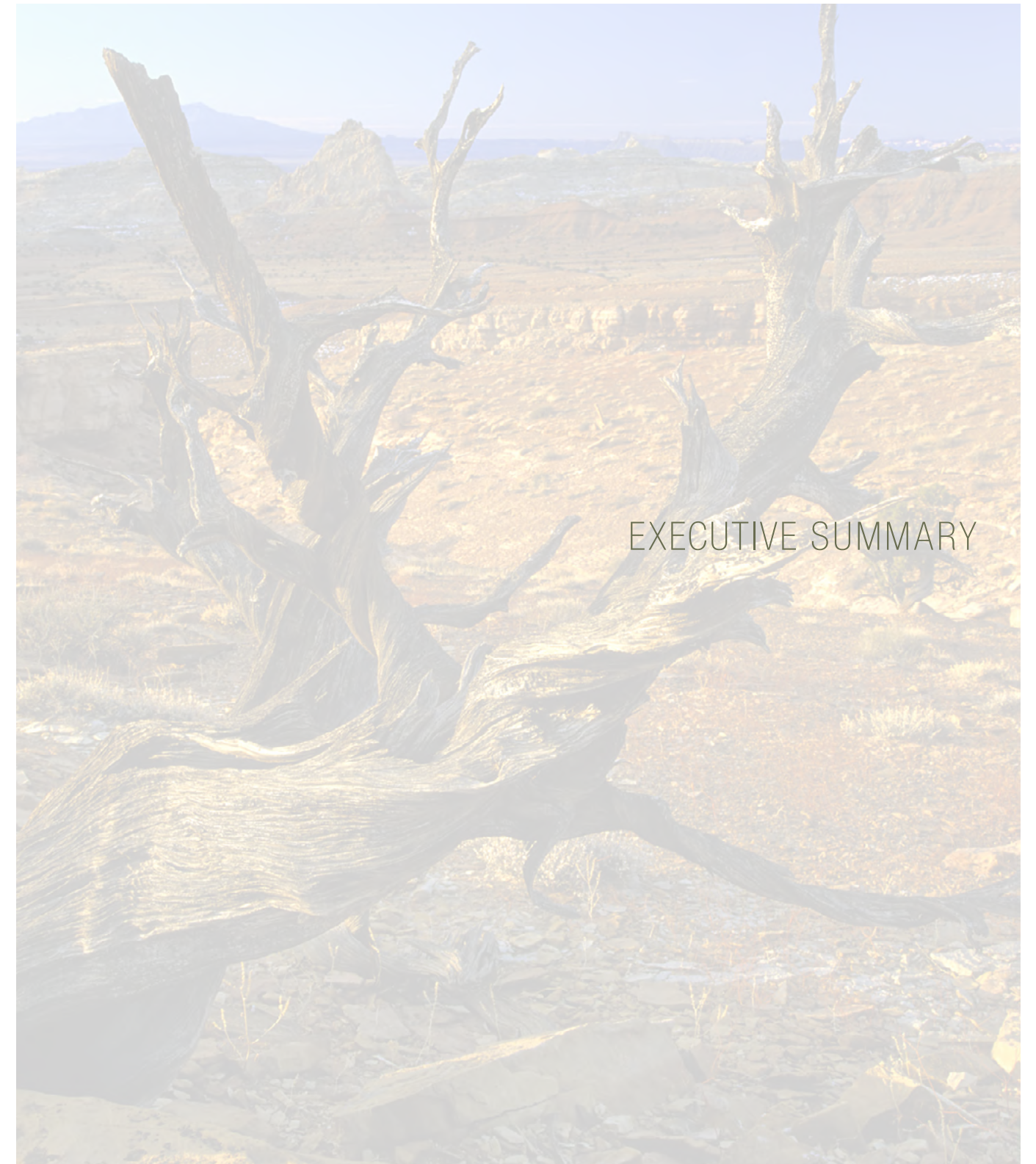
H.B. 148, The Transfer of Public Lands Act and Related Study, assigned the Constitutional Defense Council ("CDC") and the staff of the Public Lands Policy Coordination Office ("PLPCO") numerous tasks to be performed in the interim period between the 2012 and 2013 general sessions of the Legislature. H.B. 148 further required that the CDC, *"report on its findings, recommendations and proposed legislation to the Natural Resources, Agriculture, and Environment Interim Committee and the Education Interim Committee on or before the November 2012 interim meeting."* A copy of H.B. 148 (enrolled) is attached to this Report as Appendix 1.

Early on the CDC and PLPCO realized the enormity of these tasks. Nothing on this scale has been seriously attempted in the 116 years since Utah's statehood. During that period, a multitude of interests have developed with respect to the millions of acres that comprise over 60% of Utah's land mass. Each of these many interests involve independent yet interrelated characteristics which impact the daily lives of the people who work, travel and recreate on the public lands. Governments on all levels are both benefited and burdened by these lands. Gaining a full understanding of the many complexities that exist on the public lands is a difficult, but necessary, task.

The scope of work envisioned and necessitated by H.B. 148, therefore, is greater than can be accomplished in the brief period originally contemplated. Accordingly, this report addresses the findings and recommendations made by the CDC and PLPCO which seek a process deemed prudent in moving this land transfer initiative forward. This report includes the following:

- 1) Executive Summary including the purposes and goals of the report;
- 2) Historical Background detailing past actions which led to the public lands' ownership patterns, and Utah's historical efforts to reshape the structure;
- 3) An examination of the various management characteristics and economic drivers that presently dictate activities on and the economics of the public lands;
- 4) Proposed legislation creating a Public Lands Interim Commission to oversee a study and economic analysis of the transfer of lands, and report its findings and recommendations to the Governor and to the Legislature; and
- 5) A statement of certain considerations that should be addressed by the Legislature.

Utah has always had, and will always have, public lands. H.B. 148 speaks to the proposition that those closest to, and whose lives are most directly impacted by, these public lands are better situated to make decisions regarding the use and enjoyment of these lands. The CDC recognizes the many complexities that the transfer of these lands into State ownership will entail. Accordingly, the CDC recommends that this public lands transfer initiative proceed to ensure that it is fully informed of the rights and the responsibilities, the revenues and expenses and the sometimes conflicting desires and needs associated with the multiple uses of these lands. The CDC believes that an orderly, fully informed process for, and structure of, the transfer of the public lands can redound to the benefit of all levels of government, federal, state, and local, and to the needs and desires of both public and private interests. This report is submitted in furtherance of this process.



EXECUTIVE SUMMARY

Executive Summary

H.B. 148 required the CDC and PLPCO to report to the Natural Resources, Agriculture and Environment and the Education Interim Committee (*collectively the "Interim Committees"*) their findings and recommendations pertaining to the transfer of the public lands. The scope of work envisioned by H.B. 148 is greater than what could be performed in the allotted time. The issues involved are too complex and the implications of large scale land transfers are too far reaching for rapid or hasty examination. Accordingly, this report is intended to be a first step in a process that will move forward the initiatives pressed by H.B. 148 by 1) laying out the justification and need for a re-examination of public land policy; 2) identifying the many issues that need to be addressed; 3) recommending legislation to create a new State agency or commission to conduct the requisite studies; and 4) identifying certain considerations that the legislature should address in future actions.

The history of the public land policy in this country, from the birth of the Union until the enactment of Federal Land Policy and Management Act ("FLPMA") in 1976, officially, was one of disposal. Retirement of the federal debt and the encouragement of western settlement acted together to dictate federal disposal of the western, "public lands." This was clearly the policy in 1896 at the time of Utah's statehood which informed the land-related provisions of Utah's Enabling Act. While Utah did "disclaim" title to the public lands and agreed not to tax them, it did so only until the federal government disposed of them within a reasonable time.

When the federal government began to move more toward policies of reservation and conservation in the early 1900's, Utah registered its objections by urging the return to active disposal. At various points throughout the 20th century, Utah restated these objections, particularly upon the passage of FLPMA, wherein the policy shift to one of land retention and preservation became express federal law.

For various reasons, mostly political, these prior Utah efforts to restore the benefits contemplated by the Enabling Act have been unsuccessful. The result is that nearly two-thirds of the land within Utah's borders is owned and controlled by the federal government, and remains beyond the reach of State or local taxing authority.

While this loss of revenue is partially offset by federal revenue sharing programs, State revenues are adversely impacted, which has a pronounced effect upon Utah's education funding. Even though two-thirds of Utah's annual budget goes toward education funding, Utah's per pupil expenditure is the lowest in the country.

While the information included in the report provides certain insight into the very complex issues that would be involved in a transfer of public lands to the State, it is clear that a great deal more study and economic analysis must be conducted in order to facilitate well-informed decision making while this process moves forward.



H.B. 148 has again raised the issue of federal land ownership by insisting that the "public lands" (*excluding specific categories of public land that will be unaffected by the Act and will remain under federal management, including national parks, certain national monuments and wilderness areas, Department of Defense lands and tribal lands*) be transferred to the state. The specific national parks unaffected by H.B. 148 and that will remain under federal management are:

Arches National Park
Bryce Canyon National Park
Canyonlands National Park
Capitol Reef National Park; and
Zion National Park.

National Recreation Areas located in the State, *Flaming Gorge National Recreation Area and Glen Canyon National Recreation Area (Lake Powell)* are included in the "public lands" to be transferred to the State.

The specific national monuments unaffected by H.B. 148 and that will remain under federal management are:

Cedar Breaks National Monument
Dinosaur National Monument
Hovenweep National Monument
Natural Bridges National Monument
Rainbow Bridge National Monument; and
Timpanogos Cave National Monument.

Golden Spike National Historic Site will be unaffected by H.B. 148 and will remain under federal management.

The specific wilderness areas designated as part of the National Wilderness Preservation System under

the Wilderness Act of 1964, 16 U.S.C. 1131 *et. seq.* unaffected by H.B. 148 and that will remain under federal management are:

- Ashdown Gorge Wilderness
- Beartrap Canyon Wilderness
- Beaver Dam Mountains Wilderness
- Black Ridge Canyons Wilderness
- Blackridge Wilderness
- Box-Death Hollow Wilderness
- Canaan Mountain Wilderness
- Cedar Mountain Wilderness
- Cottonwood Canyon Wilderness
- Cottonwood Forest Wilderness
- Cougar Canyon Wilderness
- Dark Canyon Wilderness
- Deep Creek Wilderness
- Deep Creek North Wilderness
- Deseret Peak Wilderness
- Doc's Pass Wilderness
- Goose Creek Wilderness
- High Uintas Wildernes
- LaVerkin Creek Wilderness
- Lone Peak Wilderness
- Mount Naomi Wilderness
- Mount Nebo Wilderness
- Mount Olympus Wilderness
- Mount Timpanogos Wilderness
- Paria Canyon-Vermillion Cliffs Wilderness
- Pine Valley Mountain Wilderness
- Red Butte Wilderness
- Red Mountain Wilderness
- Slaughter Creek Wilderness
- Taylor Creek Wilderness
- Twin Peaks Wilderness
- Wellsville Mountain Wilderness; and
- Zion Wilderness.

(See text of H.B. 148, Appendix 1)

The Public Lands Commission should undertake a full study identifying both the direct and indirect costs of land management in addition to the revenue expectations that can be derived from the public lands within Utah.

In addition, it directed the CDC to examine various issues that pertain to those public lands were they to be transferred, and to report its finding and recommendations to the legislature. In the time allotted, the CDC and PLPCO were able to gather a good deal of information pertaining to the status of existing land management in Utah, as well as certain economic data.

Federal agencies with land management authority have been identified, together with their current appropriations and expenditures. Similarly, existing State agencies having land-related and environmental jurisdiction are identified, and their areas of expertise are described as a way of making initial assessments of State capabilities in the event of land transfers. Federal environmental and planning processes are discussed, including NEPA review, as are related State and local programs which may provide greater efficiencies. Federal revenue sharing mechanisms that presently provide public land related revenues to State and county governments are described and the need to ensure the continuation of these revenues is emphasized. Lastly, several sources and reports which may provide additional pertinent information are identified and briefly described.

While the information included in the report provides certain insight into the very complex issues that would be involved in a transfer of public lands to the State, it is clear that considerably more study and economic analysis must be conducted in order to facilitate well-informed decision making by the State of Utah and its residents while this process moves forward. The CDC recommends that this responsibility be assigned to a Public Lands Interim Commission. A draft of legislation creating such a commission is appended to this Report as Appendix 2.

The proposed legislation would create a nine member citizen commission to be appointed by the Governor. Eight of the members would be representative of eight interest groups, i.e. mineral extraction, ranching, environment, outdoor recreation, water, education, tourism, and county government. The ninth member would be selected at large and would serve as the chair. The commission would hire a full-time director who would manage the day to day operations. The director could hire staff as needed, and could enter into contracts if approved by the commission.

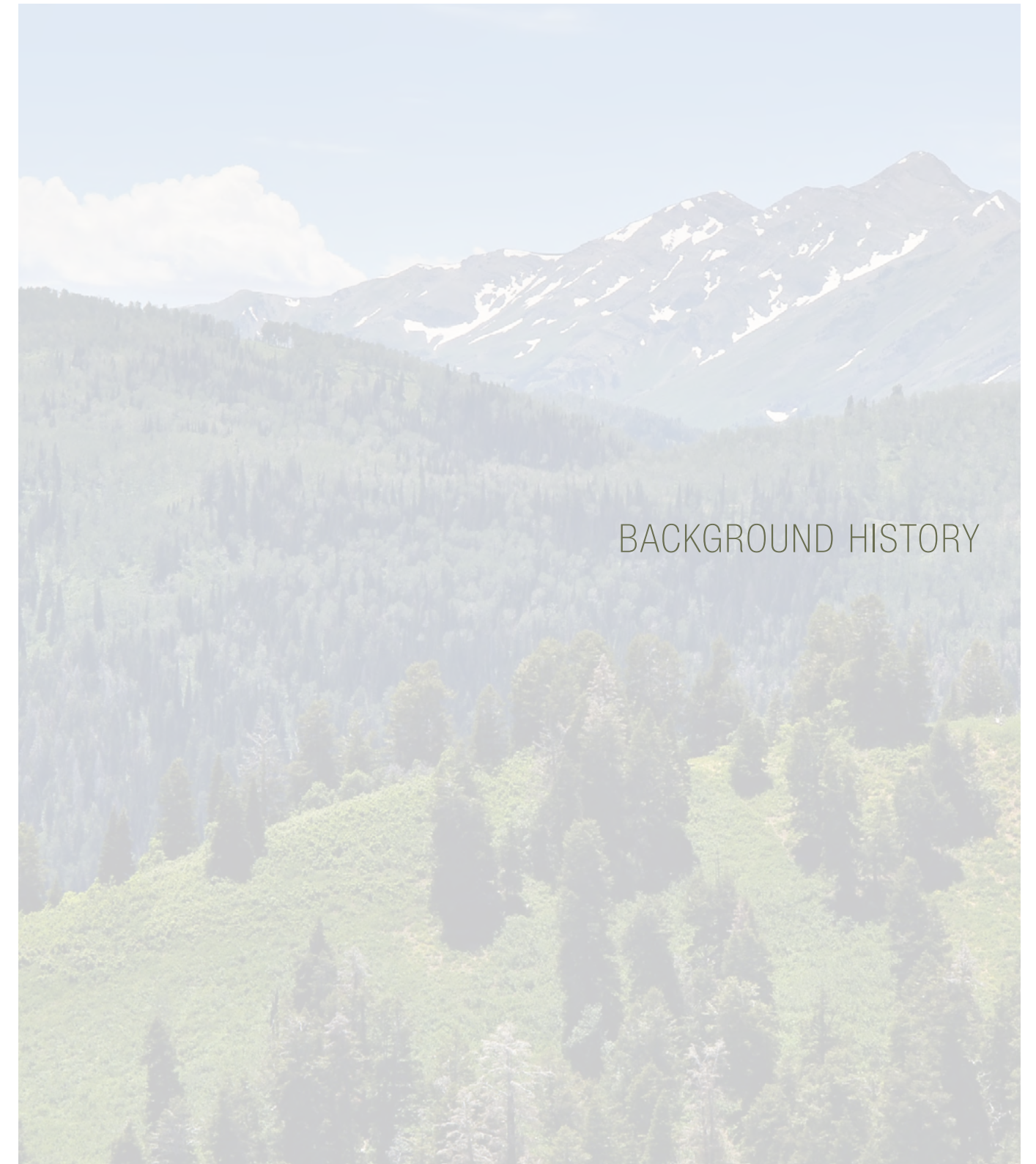
The commission would be charged with the duty of conducting and overseeing the aforementioned study and economic analysis. The study would take into account the various existing interests that presently use or derive revenues from the public lands. Following completion of the study, the commission would prepare a report and recommendations to be submitted to the Governor and Legislature. The recommendations would include proposed legislation in accordance with the dictates of H.B. 148, as well as legislation that would create a permanent public lands commission.

The CDC also recommends that the following matters be considered by the Legislature:

- Create a county indemnification fund to guarantee that counties experience no net-loss of revenue as a result of a transfer of lands.
- Review and modify existing State park designations, clearly distinguishing between historic and cultural parks, outdoor recreation-focused parks, and sport-related parks (*golf courses*).
- Increase funding for existing State parks to further demonstrate Utah's commitment to conserving and protecting its natural landscapes.
- Significantly increase funding for the LeRay McAllister Critical Land Conservation Fund to provide resources for State-led conservation efforts to protect agricultural lands, wildlife habitat, watershed protection, and other culturally or historically unique landscapes.
- Consider proposing mechanisms to guarantee that all or a portion of new revenues that may be obtained after taking ownership of the lands are dedicated to fund education or other priorities as established by the Utah Legislature.
- Create a Utah State Wilderness Act that guides the way high-conservation value lands would be managed under state control.
- Create a Utah State public lands management policy act that outlines an open and public process for land management decisions in Utah that demonstrates a continued commitment to keeping public lands open.
- Prior to any transfer of lands, pre-designate wilderness or other conservation areas through State law so that when any lands are transferred to the State, the public knows the preservation management regime under which the new State lands will be managed.

The commission would be charged with the duty of conducting and overseeing the aforementioned study and economic analysis. The study would take into account the various existing interests that presently use or derive revenues from the public lands.

- Clarify and strengthen the Utah Energy Zones legislation passed in the 2012 session to ensure that areas ripe with energy resources are managed in a way that will prioritize responsible development of Utah's energy resources.
- Study and consider key conservation areas or ecosystems within Utah that may be transferred to non-profit environmental organizations for management under a long-term lease.
- Actively publicize and reiterate Article 18 of the Utah State Constitution which states: *"The Legislature shall enact laws to prevent the destruction of and to preserve the Forests on the lands of the State, and upon any part of the public domain, the control of which may be conferred by Congress upon the State."* This provision not only clearly contemplates that it was anticipated that lands were to be transferred to the State, but it also demonstrates that Utahns have always recognized the importance of preserving and caring for forest lands.
- Study and consider adopting a highest or best-use (*preferential-use*) management regime for areas instead of the current multiple-use model.
- Organize with other Western States to pursue a regional agenda for western management of western public lands.
- Undertake, through the Public Lands Commission to be created, a full study identifying both the direct and indirect costs of land management in addition to the revenue expectations that can be derived from the public lands within Utah.
- Instigate an active and robust coordination effort with western Governors and members of congressional delegations from the West to facilitate a process that would allow for and expedite large-scale land exchanges and re-designations.
- Explore the option of utilizing the Interstate Compact Clause of the United States Constitution to enter into a congressionally approved regional compact under which that Bureau of Land Management and Forest Service lands in the West are transferred to the Western States under a public trust. States agreeing to the compact and trust agreement would pledge to keep the vast majority of lands open to public access and to manage for sustainable prosperity and conservation.
- Urge the United States Congress to create a twenty-first century public land law review commission to begin to systematically address the basic structural problems that plague current public land management.
- Statutorily limit the sale of any lands transferred to Utah from the federal government to a private entity without legislative approval.
- Identify areas that may be managed most effectively by the Utah School Institutional Trust Lands Administration (SITLA).



BACKGROUND HISTORY

Background History

From the creation of the Union in the 1780s, the federal government debated and adopted policies for the disposal of western, unsettled lands. This policy was driven by two different and often competing forces:

- **First** - *The new nation emerged from the Revolutionary War deeply in debt.¹ Alexander Hamilton urged that the new nation sell its only assets, the western lands that had been ceded to the federal government in the Treaty of Paris with Great Britain, and by the original colonies upon their admission as states into the Union, in order to generate revenues to pay its debts.*
- **Second** - *It also was seen as important to the retention of control of the western lands that they be settled as quickly as possible. Thomas Jefferson, accordingly, advocated the outright granting, or at least inexpensive sale, of the western lands to potential settlers.*

Both positions contemplated the disposal of the "public lands."²

Education had been an area of particular emphasis during the colonial period. The colonists set aside land to support the "common" schools with the objective that these lands would produce revenues for education purposes. This school grant concept was carried over to the Confederation. The Land Ordinance of 1785 and the Northwest Ordinances of the 1780s provided that Section 16 in every township should be granted to the states for the support of schools.³ The school land grant of Section 16 continued with the admission of each new state after the ratification of the Constitution.⁵ Beginning in the year 1848, with the admission of Oregon to the Union, Congress added Section 36 to the grant to the states for the support of common schools. Congress further provided for the granting of indemnity land in lieu of the reserved sections where Section 16 or 36 had already been occupied or otherwise reserved by the federal government.⁴

Over the next several decades the acreage of western lands grew enormously through purchase, cession and treaty until, by 1850, "public lands" stretched from the Atlantic to the Pacific. During this period, Congress enacted various mechanisms by which the public lands would be disposed in order to bring settled lands as new states into the nation. Debates in Congress dealt with military bounties, cash sales, credit sales, preemption sales, grants for varying purposes with the underlying objective being



disposal of the public lands. After the initial revolutionary war debt was retired, Congressional debates focused on amounts to be charged, if any, for sale or disposal of the public lands and who would share in these revenues.⁵

The Graduation Act of 1854 gradually reduced the price of lands that remained unsold.⁶ Passage of the Homestead Acts⁷ and the Swamp Lands Act⁸ followed in succeeding years. However, as the frontier moved further west, the public lands became more arid, harsher in climate and more difficult to settle successfully. The demand for these lands correspondingly dwindled. Efforts to enhance the attraction of these arid lands led to increases in homestead acreage and to measures that addressed the real problem in the west: water. The Desert Land Acts of the 1890's included grants of land in exchange for the irrigation and reclamation of those lands.⁹ The Carey Act, passed in 1894,¹⁰ constituted a Congressional recognition of the fact that individual settlers alone would not be able to reclaim the desert lands. Accordingly, Congress made available to the desert lands states large acreages to be reclaimed and ultimately sold to private companies.

Always an integral part of the public land policy was the continuing use of school grants to fund public education. As the western territories became more settled, western advocates began to press for more control over the public lands and/or the actual transfer of lands into state ownership upon statehood. Westerners chafed at the fact that eastern states with little public land controlled by the federal government reaped the benefits of resource development and private taxable ownership. Various proposals for disposal of the public lands were considered by Congress, including large land transfers. Utah, with Arizona and New Mexico before her, received grants of two additional sections, Sections, 2 and 32 for the support of common schools.¹¹ This was the historical context of Utah's Enabling Act, and of Utah's admission into the Union in 1896.

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¹ BENJAMIN HORACE HIBBARD, A HISTORY OF THE PUBLIC LAND POLICIES, 33 (MOML Legal Treatises 1924). ² HIBBARD, *supra*, note 1, at 2. ³ HIBBARD, *supra*, note 1, at 310. ⁴ HIBBARD, *supra*, note 1 at 312.

⁵ PAUL W. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 186-188 (Arno Press 1979)(1968). ⁶ Act of August 4, 1854, Ch. 244, 10 Stat. 574 (Aug. 4, 1854); GATES, *supra*, note 2 at 186-188. ⁷ Act of May 20, 1862, Public Law 37-64; GATES, *supra*, note 2 at 393-399. ⁸ Act of Congress of September 28, 1850, Ch. 84, 9 U.S. Stats. 519; GATES, *supra*, note 2 at 321-324. ⁹ Act of March 3, 1877, Ch. 107, 19 Stat. 377, added to by the Act of March 3, 1891, Ch. 561, 26 Stat. 1096; GATES, *supra*, note 2 at 638-643. ¹⁰ Act of August 18, 1894, 28 Stat. 422, (43 U.S.C. 641 et seq.); GATES, *supra*, note 2 at 650-651. ¹¹ HIBBARD, *supra*, note 1, at 322.

UTAH'S ENABLING ACT

In 1894, after a number of prior attempts to achieve statehood, Congress passed the Utah Enabling Act, authorizing the Territory of Utah to be admitted as a State and instructing the territorial government to assemble a constitutional convention and adopt a constitution for the State of Utah in accordance with the provisions of the Enabling Act.¹²

The Enabling Act provided in part, in Section 3:

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use...

The Enabling Act further provided:

SEC. 6. That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the Legislature may provide, with the approval of the secretary of the interior; provided, that the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

¹² Act of July 16, 1894, ch. 138, 28 Stat.107.

Sections 9 and 10 relating to the disposal of public lands provided:

SEC. 9. That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

SEC. 10. That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

In Section 12 of the Enabling Act, the Congress made certain grants of land to the State of Utah in lieu of...

the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand by the State of Utah under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant, it is hereby declared, is not extended to said State of Utah...

Section 12 concluded with the provision:

The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the Legislature of the State may provide.

Utah held its constitutional convention commencing March 5, 1895. A constitution adopting all the provisions of the Enabling Act was ratified on November 5, 1895.¹³ Following the ratification of its constitution, Utah became the 45th state admitted to the Union on January 4, 1896.¹⁴



The Enabling Act provided that upon the admission of said State into the Union, sections... are granted to said State for the support of common schools... five per centum of the proceeds of the sales of public lands lying within said State.

¹³ <http://www.archives.state.ut.us/research/exhibits/Statehood/conintro.htm> ¹⁴ Proclamation 382, Grover Cleveland, January 4, 1896.

FEDERAL POLICY SWING

The issue of federal ownership of public lands is one that has been raised previously in U.S. history in various forms by other States. In 1828, shortly after Illinois had been admitted to the Union, its then Governor Edwards claimed that the federal government had no constitutional power over public lands in a state after the state had been admitted to the Union.¹⁵ Petitions were sent to Congress during the period of 1828-1833 by other new “Western States,” including Alabama, Indiana, Louisiana and Missouri, asking that sales of public land not be limited by the federal government and making the same argument made by Governor Edwards.¹⁶

Shortly following Utah's statehood, federal land policy began to move away from disposal. While there had been reservations of some public land for Native Americans and timber reserves, and Yellowstone National Park had been set aside in 1872,¹⁷ at the turn of the century, the public lands were still generally open to settlement.

In 1900, however, with the advent of the Conservation Era, politicians, prominent scientists and the press became awakened to the fact that the nation's natural resources were finite. Older, eastern states that had permitted their resources to be exploited by private interests now desired that the public lands in the western states be preserved and retained.¹⁸ In 1905, the National Forest Service was created by combining the General Land Office (the agency created for the purpose of disposing of the public land) and the Division of Forestry.¹⁹ Federal agencies, e.g. the Forest Service and Bureau of Reclamation, were established for the purposes of scientifically managing vast tracts of federal land and western water resources which were to be put to use for constructive for such purposes. Land disposal policies began to be replaced with policies that retained the public lands in federal ownership. In a short span of time, some 234,000,000 acres of federal land, or nearly an eighth of the entire United States, were withdrawn from private entry.²⁰ Following a century of a policy of "disposal" of the public lands, the federal government began to shift to a policy of "retention."²¹

Shortly following Utah's statehood, federal land policy had begun to move away from disposal. With the advent of the Conservation Era, politicians, prominent scientists and the press became awakened to the fact that the nation's natural resources were finite and could no longer be uncontrollably exploited.

¹⁵ John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and the Federal Lands*, 14 U.S. Davis L. Rev. 317, 320 (1980-81). ¹⁶ Id. ¹⁷ Act of March 1, 1872, 17 Stat. 32 “*An Act to set apart a certain Tract of Land lying near the Head-waters of the Yellowstone River as a public Park*” ¹⁸ GATES, *supra*, note 2 at 28. ¹⁹ Transfer Act of February 1, 1905 (16 U.S.C. 472). ²⁰ HIBBARD, *supra*, note 1, at 472-75. ²¹ Robert H. Nelson, *Our Languishing Public Lands*, Hoover Institution, Policy Review No. 171 (February 1, 2012).

UTAH FIGHTS FOR SOVEREIGNTY OVER ITS PUBLIC LANDS

In 1915, Utah Governor William Spry and the Utah Legislature became concerned about the inaction of the federal government in disposing of Utah's public lands. As a result, the Utah Senate passed Senate Joint Memorial Number 4.²² The Memorial was directed to the President, the Senate and the House of Representatives of the United States and stated:

Rejoicing in the growth and development, the power and prestige of the older states of the union, and recognizing that their advancement was made possible through the beneficent [sic] operation of a wise and most generous public land policy on the part of the government, the people of Utah view with alarm and apprehension the national tendency toward the curtailment of the former liberal policies in handling the public domain and disposing of the natural resources, as evidenced in the vast land withdrawals and the pending legislation, calculated to make our coal, our mineral and our water power resources chattels for government exploitation through a system of leasing.

In harmony with the spirit and letter of the land grants to the national government, in perpetuation of a policy that has done more to promote the general welfare than any other policy in our national life and in conformity with the terms of our Enabling Act, we, the members of the Legislature of the State of Utah, memorialize the President and the Congress of the United States for the speedy return to the former liberal National attitude toward the public domain, and we call attention to the fact that the burden of State and local government in Utah is borne by the taxation of less than one-third the lands of the State, which alone is vested in private or corporate ownership, and we hereby earnestly urge a policy that will afford an opportunity to settle our lands and make use of our resources on terms of equality with the older states, to the benefit and upbuilding [sic] of the State and to the strength of the nation.

The federal government made no response to the Memorial. Federal management of public lands continued unchanged.

In February of 1932, Governor George Dern, then governor of the State of Utah, appeared before the U.S. House Committee on the Public Lands to testify regarding legislation that proposed "to grant vacant, unreserved, unappropriated, nonmineral lands to accepting States."²³ The legislation would allow the States a ten (10) year period within which to determine whether to accept or reject the transfer of these unproductive surface lands.

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²² S.J.M. No. 4, "A Memorial Asking for a More Liberal Policy in the Disposition of the Public Domain and Urging that the Natural Resources of the State of Utah be Made Available for Development" (Utah, March 15, 1915). ²³ S. 2272, 72nd Cong, 1st Sess.

Governor Dern noted "The Western States appreciate the compliment of being assured that they are now man grown and that they can be trusted to administer the proposed new heritage more wisely than it can be done from offices in the National Capital, but they can not [sic] help wondering why they should be deemed wise enough to administer the surface rights but not wise enough to administer the minerals contained in the public lands."

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Governor Dern further noted that the surface of the land without an accompanying grant of the underlying mineral estate of the remaining arid sections of public lands "as typified by Utah" could not produce income and stated:

*If this proposed gift included all the public lands except the national parks and if it carried with it all the minerals therein contained, I am sure we would all rise up and rejoice over an act of justice long deferred. Leaving legalistic technicalities out of consideration, the States of the West have always felt that every State that is admitted into the Union on an equal footing with the original thirteen States is the rightful sovereign over all the lands within its borders, including everything above and beneath the surface.*²⁵

Mr. Fuller questioned Governor Dern: "It is not correct is it, that simply because States have been admitted into the Union that the Government gives up all rights it has to the land?" Governor Dern responded, "It is not legally true, but it is equitably true."

Governor Dern continued:

*The original thirteen States received all their lands, and we feel if we were admitted on an equal footing we should have all our lands. Of course that is not the law. It has been the western conception that the United States holds title to these lands as trustee for the States. The West has stood steadfast for this principle, and it has been written into all public-land legislation enacted by Congress, as I shall presently explain. If now the United States proposes to relinquish its trusteeship, and turn over to the States the property that equitably belongs to them, I have no doubt that it would be accepted by a unanimous vote of the public-land States. But here we have a quite different proposition...*²⁶

In advocating for a rejection of the proposed legislation, Governor Dern stated that the fact that the surface lands held little "promise to become sources of much needed State revenue" was not the only factor to be taken into consideration. Another item in the "bid price" for the public lands was the "possible sacrifice of Federal reclamation." A second item in the "price" for the public lands listed by Governor Dern was "a reduction in the basis of participation by the Government in the construction costs of

²⁴ Hearings, S. 17, 2272 and S. 4060, "Bills Proposing to Grant Vacant Unreserved Unappropriated Lands to Accepting States and for Other Purposes," p. 30. ²⁵ Id. at 31. ²⁶ Id.

Federal-aid highways" or federal aid projects. The third item in the "price" was the "possible discontinuance of the work of the Biological Survey in the eradication of predatory animals." Governor Dern also commented on the issues of livestock grazing fees, property taxes, the interstate implications that might arise and the need for the Government to rehabilitate the ranges that had become "depleted and deteriorated." He expressed concern about the cost of a "new administrative machinery that would need to be set up by the States and the benefit of the expert knowledge acquired by years of training and experience evidenced in the tenure of office in the Government service." State governments, on the other hand, he stated, were still "bedeviled" by the changes in land departments that came with every change in administration.²⁷

After a series of questions about various costs and revenues, the question was posed to Governor Dern:

Mr. Yon. ...If this Congress should pass a bill turning over to the States...all of the unappropriated lands with their resources, on the surface and under the surface, and if those lands were given to the States would that be a satisfactory gift under these provisions?

Governor Dern. I think so; I think most of the States would be satisfied if that were done.

I am not sure that it would be an advantageous proposition for the State of Utah, even on that basis, at the present time, because the Government is not collecting very much in mineral royalties in Utah. But still, as a matter of general policy, we would be glad to accept them on that basis.

*There has been much agitation for regulation and control of the public domain; and, furthermore, there has been much contention between the Federal Government and the public-lands States with respect to public lands matters for all these years, and a lot of disharmony that ought to be straightened out, and moreover there has been much complaint about bureaucratic management. I think all those things may have induced the President [President Herbert Hoover] to feel that he would like to relieve the States of some of this bureaucratic management and give them a chance to run their own affairs a little more.*²⁸

Governor Dern reiterated that Utah did not want the lands with "everything else taken out that is worth anything at all so that we will have nothing but the skin of a squeezed lemon."²⁹ Governor Dern firmly stated "[I]f we cannot get immediate control and rehabilitation of our public domain, we are against this whole proposition."³⁰ Ultimately the proposed legislation did not pass.



²⁷ Id. at 37-39. ²⁸ Id. at 37. ²⁹ Id. at 39. ³⁰ Id. at 40.



Governor Dern stated that Utah did not want the lands on the proposed basis with "everything else taken out that is worth anything at all so that we will have nothing but the skin of a squeezed lemon."

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In 1934, Congress passed the Taylor Grazing Act and lands previously open for disposal were committed to management by the U.S. Grazing Service.³¹ The Taylor Grazing Act expressly provided that it was to promote the highest use of the public land *pending its final disposal*, however, new controls were imposed on users of the public lands and a system of grazing fees and permits was extended, signaling the end of the last vestige of open lands policy.

On March 8, 1945, again concerned about the withdrawal of public lands for purposes of National Parks and Monuments, the Utah Senate and House of Representatives, with Governor Herbert Maw concurring, passed a joint memorial asking Congress to repeal part of the Antiquities Act and other laws or withdrawal acts which made it possible to create national monuments or other recreational areas or to withdraw lands or resources by proclamation or executive order.³² The Memorial specifically requested *"That a sound public land policy be promptly developed by the congress for the public land states which will recognize the rights of the people and the need for conservative use and proper development of all resources."*³³

SHIFT IN FEDERAL POLICY & THE SAGEBRUSH REBELLION

In the 1960s and 1970s, environmental groups increasingly objected to aspects of federal management of public lands in the West and challenged the financial support extended to Western states and local governments by the federal government and the use of public lands for traditional activities such as grazing, mining, oil and gas exploration and production and timber harvesting. Environmentalists were joined by some eastern representatives in Congress who sought to protect eastern industry from the threat of growing Western economies and those favoring federal budget cuts.³⁴

The environmentalists also challenged federal support for water and transportation projects. They further called for legislation for the protection and conservation of public resources.³⁵ In 1964, the Wilderness Act was passed.³⁶ The National

31 P.L. 73-482; 43 U.S.C. 315 et. seq. 32 S.C.M. No. 2 " A Memorial to the Congress of the United States of America to Take Action to Repeal a portion of the Antiquities Act, to Repeal the General Withdrawal Act or Portions Thereof, to Repeal All Other Laws or Acts Authorizing withdrawals of Lands or Resources Except in War Emergency, to Amend the Antiquities Act, the General Withdrawal Act and Other Acts or Laws so as to Provide for Recapture of Authority by the Congress of the United States, to Provide for Withdrawals Only After approval by congress and After sufficient Hearings and With Approval and Affirmative Recommendations by the legislature and Affirmative Recommendations by the Legislature and the Governor; to Request the Public Lands Committee of Congress to Hold Public Hearings on Extension or Creation of National Parks, etc., and Requesting Congress to Develop a Sound Public Land Policy." (Utah, March 8, 1945). 33 Id. 34 Robert H. Nelson, *Why the Sagebrush Revolt Burned Out*, Regulation, 27, 28 (May/June 1984)

Historic Preservation Act followed in 1966.³⁷ The Wild and Scenic Rivers Act³⁸ and the National Trails System Act³⁹ were enacted in 1968. The Endangered Species Conservation Act of 1969,⁴⁰ the Wild and Free-roaming Horse and Burro Act⁴¹ in 1971 and the Endangered Species Act⁴² in 1973 provided for protections to certain endangered species and the promulgation of new regulations with which to comply. The National Environmental Policy Act ("NEPA"),⁴³ enacted in 1969 required the study of environmental impacts resulting from major federal actions and the receipt and consideration of public comment on such actions. These legislative enactments culminated with the enactment by Congress of the Federal Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976 of the Federal Lands Policy and Management Act of 1976 ("FLPMA").⁴⁴ For those public lands managed by the BLM, FLPMA formally terminated the historic federal public lands policy of disposal in favor of a new formal federal land retention policy recognizing that "the public lands be retained in Federal ownership."⁴⁵

The response of the Western States to the passage of FLPMA was a developing antagonism to federal actions, further fueled by the growing view of the federal government that Western needs had shifted away from traditional public land uses to recreation and environmental activities. In what became known as the *"Sagebrush Rebellion,"* the sentiment against federal control culminated in the passage by several Western States of legislation proclaiming state ownership of all public lands within the boundaries of the said states. Nevada passed the first such *"Sagebrush Rebellion"* act in 1979. The Nevada Act asserted that the claimed ownership by the federal government of land holdings within the State of Nevada was unconstitutional.⁴⁶

Utah's legislation was set forth in S.B. 5, passed in the 1980 Budget Session.⁴⁷ The Act provided that *"subject to rights existing on the effective date (July 1, 1980), fee title to all public land not previously appropriated is vested in the state from and after the effective date of this act."* Title was to be held *"in trust for the benefit of the people of the state"* by the division of state lands/forestry, [created by then Section 65-1-2.1] which was given the authority to administer and manage the public lands:

*[I]n such a way as to conserve and preserve the state's natural resources, wildlife habitat, wilderness areas, and historical sites and artifacts while allowing the development of compatible uses of such land for recreation purposes, mining and timber production, agricultural and ranching pursuits, and for the development, production and transmission of energy and other public utility services under the principles of multiple use which provide the greatest benefit to the citizens of this state.*⁴⁸

35 ROBERT H. NELSON, PUBLIC LANDS AND PRIVATE RIGHTS, 169-171 (Rowman and Littlefield Publishers, Inc., 1995). 36 Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890 (16 U.S.C. 1131 et seq.) 37 Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915 (16 U.S.C. 470 et seq.) 38 Pub. L. 90-542, Oct. 2, 1968, 82 Stat. 906 (16 U.S.C. 1271 et seq.) 39 Pub. L. 90-543, Oct. 2, 1968, 82 Stat. 919 (16 U.S.C. 1241 et seq.) 40 Pub. L. 89-669, Sec.Sec. 1-3, Oct. 15, 1966, 80 Stat. 926, 927, and Pub. L. 91-135, Sec.Sec. 1-5, Dec. 5, 1969, 83 Stat. 275-278 (16 U.S.C. 668aa et seq.) 41 Pub. L. 92-195, Dec. 15, 1971, 85 Stat. 649 (16 U.S.C. 1331 et seq.) 42 Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884 (16 U.S.C. 1531 et seq.) 43 Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852 (42 U.S.C. 4321 et seq.) 44 Pub. L. 94-579; 43 U.S.C. 1701 et. seq. 45 43 U.S.C. 1701(a)(1). 46 Assembly Bill 413, (Nev. 1979) 47 Act of Feb. 14, 1980, "An Act Relating to State Land; Providing for State Control of Public Land Within the Boundaries of Utah; Providing Authority in the Division of State Lands to Administer Public Land, Providing For Creation of the State Public Land Committee, Its Composition and Duties; Providing a Penalty and Providing an Effective Date."(Utah); Utah Code Ann. 65-11-1 et. seq.; repealed by Law 1988, ch.121 §19. 48 Utah Code Ann. §65-11-1 (repealed)

Utah's legislation ...passed in the 1980 Budget Session ... provided that ...fee title to all public land not previously appropriated is vested in the state ...to conserve and preserve the state's natural resources, wildlife habitat, wilderness areas, and historical sites and artifacts while allowing the development of compatible uses of such land for recreation purposes, mining and timber production, agricultural and ranching pursuits, and for the development production and transmission of energy and other public utility services under the principles of multiple use...

The Act created a State public land committee to conduct a study of the public land to determine what land should be *"made available to local governments for public works and recreation, for public sale to private individuals or entities and for retention as habitats for wildlife, state parks, recreation sites, and other public uses."*⁴⁹ A written report, with attendant recommendations for the disposition of the public lands, was to be submitted to the governor and the legislature no later than January 1, 1982 [two years after passage of the law]. The Act further made it a criminal offense for any person to attempt *"to exercise jurisdiction over the public land contrary to the laws of the state."*⁵⁰ No overt challenges were made by the State to federal management under the terms of the Act. The Act was amended in 1988;⁵¹ however, the amendments were not given effect as the result of the repeal during the same session of Title 65, State Lands, in its entirety effective July 1988.⁵² Arizona,⁵³ New Mexico,⁵⁴ Wyoming⁵⁵ and Washington⁵⁶ passed similar legislation in 1980.

WESTERN STATES CONGRESSIONAL REPRESENTATIVES PUSH BACK

In the United States Congress, Western Congressional Representatives also introduced federal public lands legislation. Utah Senator Jake Garn introduced a bill in 1978 authorizing the Secretary of Interior to convey public lands to the states; in 1979, Utah Senator Orrin Hatch, in cooperation with New Mexico Representative, Jim Santini, introduced bills providing for the transfer of title to federal lands to the states. In May 1981, Hatch and Santini again proposed land transfer legislation requiring that public lands be managed pursuant to multiple-use principles.⁵⁷ The proposed bills did not pass.

However, by November 1980, a new administration had been elected and President Reagan appointed James Watt, a westerner from Wyoming, as the Secretary of Interior. Watt pursued a policy designed to address the needs and concerns of the Western States. That policy, combined with the disparate and sometimes conflicting needs of the various public user interests, served to blunt the momentum of the Sagebrush Rebellion.⁵⁸ Federal grazing fees, for example, were significantly lower than rates charged on state owned lands. Ranchers voiced concerns that their rights as established under federal leases would not be honored by the states. Mining interests expressed concerns over access rights and royalty issues. Hunters, fishermen and recreationists opposed state ownership based on access rights that were currently guaranteed under federal management. State budgetary issues also became a concern.⁵⁹ A study commissioned by Governor Scott Matheson in 1981 concluded that the initial fiscal impact on Utah would be negative.⁶⁰

49 Utah Code Ann. §65-11-7(3)(repealed 1988). 50 Utah Code Ann. §65-11-9 (1980)(repealed 1988) 51 Laws 1988, ch. 169. 52 Laws 1988 ch.121 Section 19 (Utah). 53 S.B. 1012 (Az. 1980). 54 H.B. 79 (N.M. 3/5/1980). 55 H.B. 6 (Wyo. 3/10/1980). 56 S.B. 3593 (Wa. 3/10/1980). 57 Nelson, *supra*, note 33 at 33. 58 *Id.* 59 *Id.* 60 An Economic Evaluation of the Transfer of Federal Lands in Utah to State Ownership, Utah Agricultural Experiment Station Personnel, May 1980

In the early 1980s, Governor Matheson and other Utah officials turned their attention to another proposal affecting the public lands, Project BOLD. Project BOLD proposed land exchanges of certain of the scattered school trust sections, Sections 2, 16, 32 and 36 in each township granted to the State under the Enabling Act, and not sold or otherwise disposed of by Congress, with similar parcels of federal land in order to form and consolidate economically usable blocks of land.⁶¹ Project BOLD was supported by Representative James Hansen and Senator Jake Garn in Congress; however, some county officials objected to the plan, fearing that the counties would lose federal mineral income and payments in lieu of taxes. Project BOLD was also supported by Interior Secretary Watt, but his successor, William Clark, was only lukewarm to the proposal.⁶² Neither the State nor the federal government could agree on valuation of proposed parcels to be exchanged. Governor Matheson left office in 1985 and Project BOLD legislation was not pursued by his successor, Governor Norman Bangerter.

GRAND STAIRCASE ESCALANTE NATIONAL MONUMENT LAND EXCHANGE

Years later, in 1998, Governor Michael Leavitt pursued and accomplished the National Parks/Grand Staircase Escalante National Monument Land Exchange. Prior to the exchange, the designation of the Grand Staircase Escalante National Monument had isolated and landlocked thousands of acres of Utah school trust sections within the boundaries of the monument, rendering the parcels economically nonviable. The State and the federal government entered into negotiations regarding a land exchange and bills were introduced in the House of Representatives and the Senate by Representative James Hansen and Senator Orrin Hatch, respectively. Pursuant to the legislation and the negotiated agreement, the federal government obtained the surface land and subsurface rights to the State-owned sections located in the Grand Staircase Escalante National Monument. The State, in return, received other federal land, mineral rights, and cash of \$50 million to reach an agreed comparable value for the landlocked State sections. Other sections of State-owned land located elsewhere in Utah, national parks, forests, and Indian reservations were included in the exchange. The bill was an agreement negotiated between Interior Secretary Bruce Babbitt and Utah Governor Mike Leavitt (R) and was signed into law on October 31, 1998.⁶³



61 See Utah Natural Resources, Project BOLD: Proposal for Utah Land Consolidation and Exchange 12-13 (1985). 62 (Deseret News, 4/28/1984). 63 PL 105-335.

Pursuant to ...URLEA, the Bureau of Land Management and the State have agreed to exchange lands in Uintah, Grand and San Juan Counties so that viable blocks of land ownership can be consolidated under the ownership of both the State and the federal government.

The federal government obtains title to lands for conservation and recreation purposes, as well as some lands with mineral interests. The State would acquire lands and mineral interests with higher development potential for the benefit of the public schools in the State of Utah.

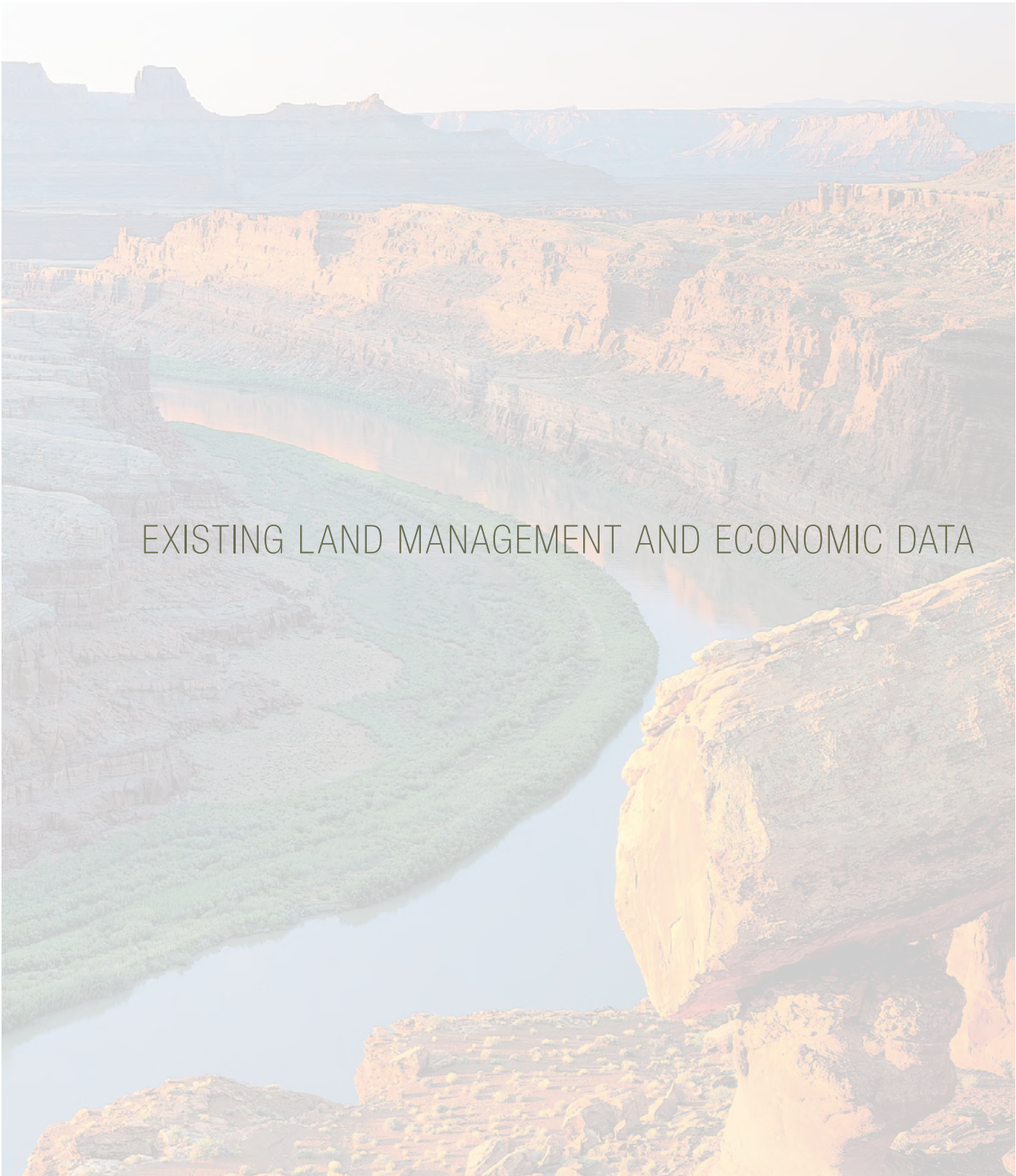
UTAH RECREATIONAL LAND EXCHANGE ACT

In 2009, the Utah Recreational Land Exchange Act (URLEA) was passed.⁶⁴ Pursuant to the provisions of the URLEA, the Bureau of Land Management and the State have agreed to exchange lands in Uintah, Grand and San Juan Counties so that viable blocks of land ownership can be consolidated under the ownership of both the State and the federal government. The federal government would obtain title to lands for conservation and recreation purposes, as well as some lands with mineral interests. The State would acquire lands and mineral interests with higher development potential for the benefit of the public schools in the State of Utah. The lands received by the State are to be managed by the School and Institutional Trust Lands Administration. The URLEA directs the transfer of approximately 36,000 acres of Federal lands and interests in land in exchange for approximately 46,000 acres of State (or non-Federal) lands or interests in land. The affected lands and interests are described in a Notice of Exchange and are depicted on the Uintah and Grand County maps that accompanied the legislation. Land exchanges continue to be proposed and negotiated between the State, State entities and the federal government. (See, e.g. *Daggett County, Linwood Development Proposal*).⁶⁵

FEDERAL OWNERSHIP OF ITS PUBLIC LANDS LEAVES UTAH LAST IN PER PUPIL SPENDING

As a result of the federal ownership of the majority of public land in Utah, the impacts on Utah's public education system have been both predictable and pronounced. Public education in Utah is funded generally by the state income tax and local property taxes.⁶⁶ Those taxes are sensitive to and diminished by federal ownership of property and federal restrictions on the use and development of this federally owned property. The Enabling Act prohibits taxation of federal property. According to statistics recently published by the National Education Association, Utah ranks 50th in the nation in per pupil spending,⁶⁷ and 2nd in students per teacher (21.9).⁶⁸ Articles, commentaries and discussions in various “think tanks,” and policy organizations, and in numerous conferences regarding the deficiencies of the existing public land management system and the possibilities of devolving authority to state and local levels have proliferated. Federal financial resources for the management of public lands are overburdened or depleted. However, since the Sagebrush Rebellion, no further legislation has been introduced or enacted to require the transfer of title to all public lands in the State until H.B. 148.

⁶⁴ PL 111-53). ⁶⁵ <http://www.daggettcountry.org/index.aspx?nid=413>. ⁶⁶ Utah Const. Article X, Section 5; Utah Code Ann. §53A-16-101; <http://www.schools.utah.gov/finance/Property-Tax.aspx>. ⁶⁷ *Rankings & Estimates, Rankings of the States 2011 and Estimates of School Statistics 2012*, NEA Research, (December 2011); http://www.nea.org/assets/docs/NEA_Rankings_And_Estimates_FINAL_20120209.pdf, Table H-11. ⁶⁸ Id., Table C-6



EXISTING LAND MANAGEMENT AND ECONOMIC DATA

Existing Land Management & Economic Data

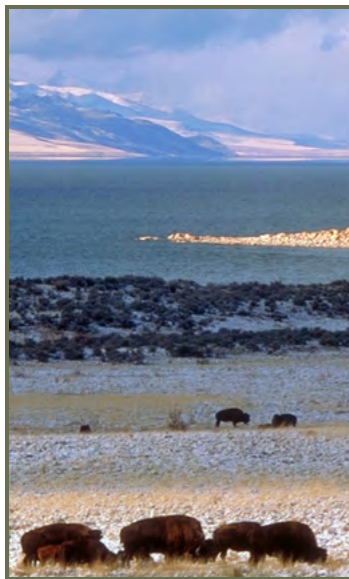
As stated in the Preface to this Report, the Utah Legislature, through the enactment of H.B. 148, has assigned to the CDC the responsibility of studying processes and procedures and making recommendations regarding the actual transfer of title to public lands from the federal government to the State of Utah. However, the legislation also recognizes that achieving ownership of the lands is only one of many factors to consider. The inflow of additional revenues from industry must be weighed against costs inherent to the ownership and management of such lands. In addition to marketable goods and services that are produced by public lands, public lands also generate so-called "intangible benefits," goods and services that are not traded in the market place. Over the past 50 years, a variety of techniques have been developed to place a value on such benefits so that one can account for the inherent trade-offs between market and non-market goods and services.

Transfer of Title to Public Lands

Following additional study and economic analysis, lands identified as appropriate for transfer to State ownership should be transferred by patent to the State of Utah. The transfer of lands now held by the federal government would bring with it both opportunities and responsibilities. Ownership would require that the State become responsible for the protection and orderly development of the many natural resources located on the lands. All outstanding obligations and liabilities should be identified, acknowledged and recognized, and all outstanding vested interests must be honored. Leases and permits must continue unaffected by the transfer of title.

The State presently has great expertise in natural resource management, expertise which could be expanded to supply the same services on additional lands. The State is the recognized leader in the analysis and approval of permits for oil and gas wells, forestry practices, grazing practices, weed and invasive species control, wildlife management, and water allocation. The State has assumed primacy from the federal government for the permitting of air and water quality, and surface mining. Utah manages recreational assets such as State parks and wildlife protection areas for the benefit of all. Local, State and federal agencies cooperate fully in the suppression of wildfires throughout the State.

In accordance with the directives of H.B. 148, legislation has been drafted which proposes that the State further study these issues, including the management of outstanding leases, permits and other obligations as necessary, including the potentiality of contracting services with existing State agencies.



State Agencies with Responsibilities Related to Public Land

Existing agencies in State government with expertise in management issues relating to public land include the following:

The Division of Oil, Gas and Mining ("DOGM")

regulates the orderly development of oil and gas resources so none is wasted by inefficient production processes, and the environment is protected from pollution by the drilling and production operations.⁶⁹

The Department of Agriculture and Food ("UDAF")

advocates for environmentally responsible and economic grazing practices which enhance the forage resources on the land, and to maintain the ranching lifestyle so vital in rural Utah. The Department also strives to stem the invasion of the rangelands by non-native plants which significantly alter the ecology of vast areas.⁷⁰

The Utah Geological Survey ("UGS") provides expertise to local government related to earthquake and landslide hazards, and is a repository of scientific information related to oil and gas deposits, geothermal prospects.⁷¹

The Division of State History ("DSH") identifies and assists locals in the protection of the archeological and historical treasures located throughout the State.⁷²

The Department of Environmental Quality ("DEQ")

administers the nationwide standards for the protection of air and water quality.⁷³

The Division of Forestry, Fire and State Lands ("FFSL")

manages State sovereign lands, encourages progressive forestry practices for all lands of the State, and administers fuel load reduction projects for the protection of human lives, structures, and the maintenance of healthy watersheds.⁷⁴

The Division of Parks and Recreation ("SPR")

administers State parks which provide camping, golf, scenic enjoyment and historical perspectives, and administers boating and OHV programs for the recreational pleasure of all.⁷⁵

The School and Institutional Trust Lands

Administration ("SITLA") owns and manages land for the benefit of the schoolchildren of Utah. The agency works with developers to lease and develop all of the resources found on State lands – mineral, forage, and business opportunities alike.⁷⁶

Local government, counties and cities provide a great deal of the infrastructure for development, management and organization of the resources. Law enforcement is based primarily at the local level, as is planning and zoning.

The Governor's Office of Economic Development

works with all types of industries to induce economic activity within the State.⁷⁷

With the addition of more lands to be managed by these State agencies, more employees and additional funding may be required, but these agencies and others to be created could be tasked with the new management responsibilities and opportunities offered by the transition of title.

⁶⁹ Utah Code Ann. §§40-6-1 et. seq. ⁷⁰ Utah Code Ann. Titles 3 and 4. ⁷¹ Utah Code Ann. §§79-3-101 et. seq. ⁷² Utah Code Ann. §§9-8-102 et. seq. ⁷³ Utah Code Ann. Title 19 ⁷⁴ Utah Code Ann. Title 65A. ⁷⁵ Utah Code Ann. §§79-4-101 et. seq. ⁷⁶ Utah Code Ann. Title 53C. ⁷⁷ Utah Code Ann. §§63M-1-1-1 et. seq.

Federal Agencies with Land Management Responsibilities in Utah

The major federal land management agencies tasked with managing federal public lands located within the State of Utah are the Bureau of Land Management (the “BLM”), the United States Forest Service (the “Forest Service”), the National Park Service (the “NPS”), the United States Fish and Wildlife Service (the "FWS"), and the Department of Defense ("DoD").

These federal agencies, other than the DoD, perform many of the same or similar functions performed by the State agencies listed above on federally owned lands. For example, the NPS and the Utah Division of State Parks and Recreation both operate areas for protection of the resource and enjoyment of the visitors. Both manage scenic vista parks, such as Dead Horse Point State Park (*State owned*)⁷⁸ and Canyonlands National Park (*federally owned*)⁷⁹ and historical themed parks, such as Territorial Statehouse State Park Museum (*State owned*)⁸⁰ and the Golden Spike National Historic Site (*federally owned*).⁸¹ Both operate parks keyed to water recreation, such as Jordanelle State Park (*State owned*)⁸² and Glen Canyon National Recreation Area (*federally owned*).⁸³ In addition, the Division of State Parks and Recreation operates parks dedicated to golf.⁸⁴ The FWS and the Utah Division of Wildlife Resources (DWR) both operate refuges dedicated primarily to the protection of wildlife. The Utah DWR manages all species not on the endangered species list,⁸⁵ while the FWS concentrates on listed species and species subject to international treaty.⁸⁶

The Forest Service manages the forest reserves in Utah not only for commodity production, including timber, oil and gas, grazing, but also recreational pursuits and the preservation of wild landscapes.⁸⁷ Ski resorts based upon private lands within the forests make use of forest service lands for inclusion in the ski areas.⁸⁸ Planning for activities - or non-activities - on Forest Service lands is increasingly becoming focused on value comparisons between the production of saleable products and the associated generation of revenue, and the value attached to the experiences contributed to human needs by intact ecosystems.⁸⁹ In addition, the Forest Service plays a large role in the teamwork necessary to combat wildfires, and the rehabilitative efforts that follow.⁹⁰ The Utah Division of Forestry, Fire and State Lands advises private landowners about proper forestry techniques, works to reduce fuel load in areas subject to wildfire in conjunction with the Forest Service, and manages the sovereign lands of Utah.⁹¹

78 <http://stateparks.utah.gov/parks/dead-horse>. 79 <http://www.nps.gov/cany/index.htm>. 80 <http://stateparks.utah.gov/parks/territorial-statehouse>. 81 <http://www.nps.gov/gosp/index.htm>. 82 <http://stateparks.utah.gov/parks/jordanelle>. 83 <http://www.nps.gov/glca/index.htm>. 84 Utah Code Ann. §79-4-403. 85 <http://wildlife.utah.gov/dwr/>. 86 National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd-668ee. 87 Forest Service Organic Administration Act, 16 U.S.C. §§ 473-478, 479-482 and 551, as amended. 88 National Forest Ski Area Permit Act of 1986, 16 U.S.C. 497b, as amended by the Ski Area Recreational Opportunity Enhancement Act of 2011, Pub. L. 112-46, Nov. 7, 2011, 125 Stat. 538. 89 <http://www.fs.fed.us/ecosystems/services>. 90 <http://www.forestsandangelands.gov/strategy/index.shtml>. 91 <http://naturalresources.utah.gov/divisions/forestry-fire-state-lands.html> "Services and Functions"

The BLM manages the land and resources not only for commodity production, including grazing, timber, oil, gas and other leasable minerals, but also for protection of habitat necessary for wildlife, recreational activities, scenic vistas, and conservation of natural lands.⁹² The federal government shifted in the 1990s from its traditional philosophy of multiple use management to increasingly following a philosophy of ecosystem management, the latter emphasizing the use of lands for biodiversity and other ecological purposes. The BLM is increasingly emphasizing landscape conservation, with the National Landscape Conservation System growing in importance in BLM planning efforts.⁹³ BLM is also comparing the value of ecosystem services against the value of the production of commodities and the associated revenues which result.⁹⁴ The State agencies listed above provide these same or similar services for or on State and private lands. A comparison of services is shown in the following Summary Table:

SUMMARY TABLE

Function/Responsibility	Responsible Federal Agency	Responsible State Agency
Management of parks and recreation	NPS, BLM, USFS	SPR
Wildlife management	FWS	DWR
Timber production	USFS	FFSL
Wildfire management and restoration	USFS, BLM	FFSL, UDAF, DNR
Grazing/Agricultural production	USFS, BLM	UDAF
Energy development	USFS, BLM	DOGM, SITLA, UGS
Non-market goods/ecosystem services	BLM, NPS, USFS, FWS	SPR, DWR, FFSL UDAF, DEQ, DSH

92 Federal Land Policy and Management Act, 43 U.S.C. §§7301 et. seq. 93 http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS.html. 94 Information Bulletin No. 2010-026, December 22, 2009; See also http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2012.Par.37716.File.dat/IM2012-138_att1.pdf, (Draft) p. 17.

Funding Comparisons for Federal Agencies in Utah

Funds are appropriated by Congress to the BLM, Forest Service, NPS and FWS to manage the lands and resources in Utah under the control of each. Totals⁹⁵ by agency for FY2011 and FY2012,⁹⁶ in Utah are

	FY 2011	FY 2012
BLM:	\$123,279,000	\$118,825,000
Forest Service: ⁹⁷	\$ 99,149,000	\$ 94,703,000
National Park Service:	\$ 59,135,000	\$ 55,308,000
Fish and Wildlife Service:	\$ 21,142,000	\$ 21,271,000
Adjustments <i>(see text)</i>	(\$81,533,000)	(\$85,301,000)
Total Agency Appropriations	\$208,574,000	\$217,404,000

These funds must be further allocated for spending on the lands which are contemplated for transfer in H.B. 148, which excludes the NPS managed lands, except for Glen Canyon (Lake Powell), Flaming Gorge National Recreation Area (managed by the Forest Service) and certain lands designated as wilderness managed by the Forest Service and the BLM.⁹⁸ In addition, the totals for the Forest Service include around \$12,000,000 per year for various Forestry Science Laboratories and similar facilities. Approximately two-thirds of the FWS budget per year is spent on non-FWS lands for fish propagation and conservation purposes, and the State is a recipient of those funds. Subtracting these figures⁹⁹ produces an approximate total for federal agency spending for the public lands subject to H.B. 148 as follows:

Total Agency Appropriation:	FY 2011	\$208,574,000
	FY 2012	\$217,404,000

In comparison, the budget for FY 2012 for the State Departments of Natural Resources, Agriculture and Food and the School and Institutional Trust Lands Administration totaled¹⁰⁰

Department of Natural Resources	FY 2012	\$199,166,000
Department of Agriculture and Food	FY 2012	\$ 29,058,000
School Trust Lands Administration	FY 2012	\$ 18,641,000
Total¹⁰¹	FY 2012	\$246,865,000

An analysis must be made so that an informed conclusion is reached as to which agency, State or federal, can manage the resources in the most efficient and effective manner. Actual program costs for the federal agencies need to be obtained and compared to State agency costs.

⁹⁵ Totals include mandatory appropriations and Utah's allocation from discretionary appropriations. Mandatory appropriations include fees from recreation fees and oil and gas permit processing fees, and the like. See: Federal Land Management Agency Appropriations for Utah, prepared by the Congressional Research Service for Rep. Rob Bishop, August 8, 2012. ⁹⁶ The figures for the BLM include Wildland Fire Management appropriations, but not for the other agencies. H.J. Res 117, signed by the President on September 28, 2012, provided continuing funding for the operations of the federal government into FY2013, and provided supplemental funding for wildfire suppression costs for the Department of the Interior and the Forest Service (Sections 140 and 14.) for FY2012. The DOI was appropriated \$746,473,000 and the Forest Service \$1,971,390,000 for wildfire suppression costs on a nationwide reimbursement basis. It is not clear how the appropriated amounts relate to the figures for the BLM in the CRS report. ⁹⁷ Id. at p. 7. Based on figures derived from those for the larger Intermountain Region. Information provided by the Forrest Service to the Congressional Research Service. ⁹⁸ Utah Code Ann. §63L-6-102(3) ⁹⁹ Utah Code Ann. §63L-6-102(3) ⁹⁹ No adjustment made for management costs for the wilderness lands which would remain in federal ownership. ¹⁰⁰ Compendium of Budget Information, Utah Legislative Fiscal Analysts Office, prepared for the 2012 General Session. ¹⁰¹ Of course, there is not complete parallel in the responsibilities attached to the state departments and the federal agencies, so the number is useful only as a ballpark figure.



Additional Budget Items - Wildfire Suppression Costs

Most wildland fires are multi-jurisdictional and may involve State, private and federal land.¹⁰² In these cases each entity pays a proportionate amount for suppression based upon an agreement that is established at the time of the fire. In most cases, the costs are apportioned based upon ownership of acres burned. The State, local government and federal agencies all participate in a coordinated wildfire suppression program, coordination that could certainly be maintained if ownership changes occur.

State Division of Forestry, Fire and State Lands

Counties may participate by agreement with the Division of Forestry, Fire and State Lands (the "FFSL") to provide wildland fire protection on all unincorporated and non-federal lands.¹⁰³ Counties may establish budgets with the division to participate in State assistance for wildland fire protection.

Counties pay for suppression costs out of their established budgets until the budgets are exceeded. The county may then request assistance from the State if it participates in the Wildland Fire Suppression Fund (the "WFSF").¹⁰⁴ A few counties do not participate in the WFSF, but instead participate in another program where the State will reimburse 50% of suppression costs once the county budget is exceeded. Fires on State-owned land are the responsibility of FFSL.¹⁰⁵

The legislature provides a firefighting budget to FFSL each year which is used to create the necessary firefighting capacity, and some suppression costs. If costs for any particular year exceed this appropriation, the FFSL requests a supplemental appropriation to cover the additional costs. The fires must be paid for as the bills come in, so each supplemental appropriation covers the previous fire season costs.

On occasion, the FFSL receives financial relief through the Federal Emergency Management Agency for State and private costs on fires that threaten structures. These are called Fire Management Assistance Grants. These grants pay up to 75% of suppression costs

¹⁰² "Interagency Strategy for the Implementation of Federal Wildland Fire Management Policy", June 20, 2003, as modified, http://www.nwcg.gov/branches/ppm/ppc/archives/fire_policy/pdf/strategy.pdf. ¹⁰³ Utah Code Ann. §65A-8-101; 65A-8-202 and 203. ¹⁰⁴ Utah Code Ann. §65A-8-204-207. ¹⁰⁵ Utah Code Ann. §65A-8-210.

On occasion, the FFSL receives financial relief through the Federal Emergency Management Agency for State and private costs on fires that threaten structures. These are called Fire Management Assistance Grants.¹⁰⁶ These grants pay up to 75% of suppression costs.¹⁰⁷ FFSL has received five such grants for the year 2012, up from the previous high of three in one year, 2007.¹⁰⁸

Federal Agencies

The beginning of the fire season occurs at the end of a federal fiscal cycle. Because the number and severity of wildfires are unknown at the beginning of a fire season, the federal government has adopted a supplemental appropriation approach to covering the costs of wildfire suppression. As an example, the Continuing Appropriations Resolution for Federal Fiscal Year 2013 contained the supplemental appropriations for the wildfires which occurred in 2012 on a nationwide basis.¹⁰⁹ The amounts appropriated are:

Forest Service:	\$1,971,390,000
BLM:	\$ 726,473,000

Within Utah, the total cost of 2012 wildfire suppression in Utah is around \$55 million. Based on current ownership, Utah’s portion of those costs will be about \$18 million.¹¹⁰ As an example, the Forest Service estimates that the cost of fire suppression since 2002 has numerically averaged \$15.8 million¹¹¹ a year. In addition, the Forest Service expends funds for treatment of the lands after a fire. These costs numerically average \$3.5 million per year over the last 10 years, ranging from a low of \$1.6 million, to a high of \$48.6 million for the region. The Intermountain Region of the Forest Service estimates that 25% of these costs are attributable to Utah, or about \$875,000¹¹² per year.

Revenue and Expenditures from Federal and State Lands

The public lands currently held by the federal government can and do produce revenue from the resources on and under the lands. Minerals and forage are leased for direct use to produce the food, fiber and minerals we need. Timber is sold and recreational concessions and permits are issued. Each activity producing revenue uses resources from other economic sectors, and induces further economic activity.

¹⁰⁶ <http://www.fema.gov/fire-management-assistance-grant-program> ¹⁰⁷ OMB Circular A - 87, Title 44, Code of Federal Regulations (CFR), Part 206, Subpart L, Fire Suppression Assistance, Title 44, CFR Parts 2, 9, 10, 204 and 206 Disaster Assistance; Fire Management Assistance Grant Program. ¹⁰⁸ <http://www.satrib.com/satrib/news/54424345-78/wildfire.html.csp>. ¹⁰⁹ H.J. Res. 117 (Continuing Appropriations Resolution, 2013), 112th Congress (2012) (enacted). ¹¹⁰ Harv Forsgren, Regional Forester, Intermountain Region, pers. comm. ¹¹¹ Id. ¹¹² Id.

It is difficult to say whether these revenues cover the costs of administering a particular program. The federal government does not generate enough land-based revenue to cover many of the various land management programs, but pays for the programs through general federal appropriations. Because much of the federal cost consists of general overhead, it is often difficult to determine the total federal spending for specific areas of programmatic activity.

Of course, the current discussions in Congress about the federal budget and impending sequestration events will have impacts on many of these land management programs. The Forest Service, for example, recently sent a letter to the State indicating that its ability to repair and maintain roads in the various National Forests may suffer due to “recent and anticipated Federal budget reductions.” The Forest Service expects that some forest roads may not meet expectations for drivability, and safety, at some point in the future. Because many of these roads are public roads used by Utah residents, the Forest Service believes these budget cuts present “a management challenge for the Forest Service and the State of Utah.” Solutions proposed include a conveyance of roads or easements to willing local governments, cost-sharing agreements, and reduced expectations for maintenance on some roads, all in the spirit of working together to “manage these important rural transportation systems.”¹¹³

Federal Land Ownership and Expenditures

In response to the reporting requirements imposed by H.B. 148, PLPCO, acting as staff for the CDC, contracted with the Bureau of Economic and Business Research (the “BEBR”), at the University of Utah to provide an overview of federal and State ownership of public lands in the State of Utah and the costs and revenues associated with management by federal agencies. The BEBR provided an initial analysis in November 2012 entitled Analysis of Federal Land Management Agency Activities in the State of Utah: 2011 (the “2012 BEBR Report”).¹¹⁴

The following information taken from the BEBR Report summarizes some of the salient data collected and findings made by the BEBR, however, the 2012 BEBR Report cautions:

*Given the short time frame for data collection, BEBR asked each agency to provide a "snapshot" of their expenditures and revenue-generating activities in Utah for 2010 and 2011. Given more time, detailed program-specific information could be collected, providing a more thorough and meaningful analysis.*¹¹⁵



¹¹³ Letter from Harv Forsgren, Regional Forester, U.S. Forest Service, October 10, 2012. ¹¹⁴ Analysis of Federal Land Management Agency Activities in the State of Utah: 2011, Bureau of Economic and Business Research, University of Utah, November 2012. ¹¹⁵ Id. at p. 1.

Approximately 66.5 percent of the land in Utah is administered by federal agencies.

Approximately 66.5 percent of the land in Utah is administered by federal agencies including the four major federal land agencies and the Department of Defense (DOD) (See Tables 1 and 2).¹¹⁶

Table 1 Federal Land Ownership in Western States and Alaska, 2010

State	Total Federal Land Acreage ^a	Total State Land Acreage	% of State
Alaska	225,848,164	365,481,600	61.8%
Arizona	30,741,287	72,688,000	42.3%
California	47,797,533	100,206,720	47.7%
Colorado	24,086,075	66,485,760	36.2%
Idaho	32,635,835	52,933,120	61.7%
Montana	26,921,861	93,271,040	28.9%
Nevada	56,961,778	70,264,320	81.1%
New Mexico	27,001,583	77,766,400	34.7%
Oregon	32,665,430	61,598,720	53.0%
Utah	35,033,603	52,696,960	66.5%
Washington	12,173,813	42,693,760	28.5%
Wyoming	30,043,513	62,343,040	48.2%
TOTALS	581,910,475	1,118,429,422	52.0%

Notes: **a Understates total:** includes lands of the four major federal land management agencies and the Department of Defense but excludes lands administered by other federal agencies (e.g., Agricultural Research Service, Bureau of Reclamation, Department of Energy, National Aeronautics and Space Administration).
Source: Congressional Research Service, Federal Land Ownership: Overview and Data. February 2012. Accessed at: www.crs.gov.

Table 2 Federal Acreage in Each Western State Administered by the Four Federal Land Management Agencies and the Department of Defense, 2010

State	BLM	FWS	NPS	USFS	DOD
Alaska	72,958,757	76,626,272	52,620,514	21,956,250	1,686,371
Arizona	12,203,495	1,683,269	2,618,735	1,264,619	2,971,169
California	15,306,243	286,664	7,570,527	20,821,541	3,812,558
Colorado	8,332,001	173,265	609,880	14,520,965	449,964
Idaho	11,610,111	48,974	507,585	20,465,014	4,178
Montana	7,981,452	635,066	1,214,184	17,082,821	8,338
Nevada	47,805,923	2,335,400	774,751	5,764,262	281,442
New Mexico	13,484,405	327,264	376,849	9,417,975	3,395,090
Oregon	16,134,191	574,510	192,020	15,687,556	77,153
Utah	22,854,937	107,885	2,097,106	8,207,415	1,766,260
Washington	429,156	181,693	1,833,697	9,289,102	440,166
Wyoming	18,370,351	70,674	2,344,852	9,241,610	16,025
TOTALS	247,471,022	83,050,936	72,760,700	163,719,130	14,908,714

Source: Congressional Research Service, Federal Land Ownership: Overview and Data. February 2012. Accessed at: www.crs.gov.

116 Id. at p. 2

Federal Agency Revenues and Expenditures-BLM¹¹⁷

Overview

The BLM manages approximately 22.9 million acres of public lands in Utah. This represents about 42 percent of Utah lands and about 9.0 percent of all BLM lands in the nation. Most of the BLM-managed land in located in western and southeastern Utah and includes the Grand Staircase-Escalante National Monument which encompasses nearly 1.9 million acres and 260,273 acres of designated wilderness within the National Landscape Conservation System. BLM also oversees the subsurface rights to 32 million acres in the State. BLM manages 59 campgrounds, 14 visitor centers and numerous OHV areas throughout the State. In 2011, BLM lands and facilities had about 5.7 million visits.¹¹⁸

Expenditures and Revenues

BLM maintains 10 Field Offices in Utah. The agency employs approximately 800 people statewide. Based on information provided under a FOIA request, BLM spent \$118,573,000 in 2011 to manage BLM lands in Utah and \$140,948,000 in 2010.¹¹⁹

Revenues generated on BLM-managed land in Utah during 2011 totaled \$445,484,935 and included \$13,814,594 collected directly by BLM and \$431,670,341 in royalty revenues collected by the Office of Natural Resource Revenue ("ONRR"), another agency within the Interior Department assigned to collect revenues from federally owned minerals. The ONRR revenue is mainly derived from BLM managed resources but also includes almost \$33.9 million in minerals receipts generated on Forest Service-managed lands in Utah.

In 2010, revenues generated on BLM-managed land in Utah totaled \$385,508,758 and included \$10,138,215 collected by BLM and \$378,056,153 in royalty revenues collected by ONRR. Table 3 shows the receipts by source for fiscal years 2010 and 2011.

Revenue Sharing Payments to the State of Utah

The State receives BLM revenue sharing payments based on the value of commercial activities, including grazing, sales of timber and materials and mineral leasing. In 2011, Utah received \$854,421 from activities for which BLM collects revenue and \$149,439,229 in mineral royalties from ONRR for a total of \$150,293,650. Four counties in Utah (Beaver, Iron, Juab and Millard) received \$162,893 from ONRR in 2011.¹²⁰

Given the short time frame for data collection, BEBR asked each agency to provide a "snapshot" of their expenditures and revenue-generating activities in Utah for 2010 and 2011. Given more time, detailed program-specific information could be collected, providing a more thorough and meaningful analysis.

117 See Note 114, *supra*. 118 Id. at p. 4; Bureau of Land Management – Utah website. Accessed at: www.blm.gov/ut/st/en.html. 119 Id.; Freedom of Information Act request: 1278 (UT-950) FOIA 2012-51 EFTS# BLM-2012-01052. Financial information reported in response to FOIA request does not match similarly reported numbers discussed above. These discrepancies must be resolved by further investigation. 120 Id.; U.S. Department of the Interior, Bureau of Land Management. Public Land Statistics: FY 2011 and FY 2010. Accessed at www.blm.gov/public_land_statistics/index.htm and Office of Natural Resources Revenue, Statistics Website. Accessed at: www.onrr.gov/ONRRWebStats/Home.aspx.



In 2010, Utah received a total of \$143,089,868 which includes \$392,934 from BLM and \$142,696,934 from ONRR. County payments totaled \$274,787.¹²¹

The BLM makes payments to state government based on the value of commercial activities, including grazing, sales of timber and materials and mineral leasing. In 2011, Utah received \$854,421 from activities for which BLM collects revenue and \$149,439,229 in mineral royalties from ONRR for a total of \$150,293,650.

Table 3 Revenues Collected on BLM-managed Lands in Utah: 2011 and 2010

Revenue Source	FY 2011	FY 2010
BLM Collections		
Mineral leases	\$ 1,392,958	\$ 470,900
Timber sales	15,714	14,423
Sales of land and materials	1,234,071	665,595
Grazing leases	1,060,156	1,059,476
Fees and Commissions	1,975	2,213
Right-of-Way rents	3,413,346	2,485,579
Rent of land	25,578	15,571
Recreation fees	2,868,961	2,738,602
Other sources	33,892	246
Mining fees	3,404,443	2,685,612
Federal land acquisition facilitation proceeds	363,500	0
Office Of Natural Resources Revenue Collections		
Royalty Revenue ^a ,	431,670,341	375,370,543
GRAND TOTAL	\$445,484,935	\$385,508,760

Notes: a. Royalty Revenue reported by ONRR in 2011 includes \$33,879,457 in minerals receipts generated on Utah lands managed by the U.S. Forest Service.
Source: U.S. Department of the Interior, Bureau of Land Management, Public Land Statistics: FY 2011 and FY 2010.
Accessed at: www.blm.gov/public_land_statistics/index.htm and Office of Natural Resources Revenue, Statistics Website. Accessed at: www.onrr.gov/ONRRWebStats/Home.aspx

121 Id.

Federal Agency Revenues and Expenditures- Forest Service¹²²

Overview

Utah is part of the USFS Intermountain Region (Region 4), headquartered in Ogden. Region 4 includes southern Idaho, Nevada, Utah and western Wyoming and manages a total of 12 National Forests encompassing 34,271,103 acres of land. In Utah, the agency manages a total of 8,208,270 acres, of which 775,537 is designated national wilderness.¹²³

National Forests in the Intermountain Region include: Ashley, Boise, Bridger-Teton, Dixie, Fishlake, Manti-LaSal, Payette, Salmon-Challis, Sawtooth, Caribou-Targhee, Humboldt-Toiyabe and Unita-Wasatch-Cache. Seven of these forests are either wholly or partially located in the State of Utah.

Included in the Utah lands managed by the Intermountain Region Office are the national forests (*including a national recreation area*) and one research and experimental area. (*See Table 4*)



Table 4 U.S. Forest Service Acres in Utah, by Unit Type: 2011

National Forests	USFS Acreage In Utah	Other Acres	Total Acreage
Ashley National Forest ^a	1,286,123	11,832	1,297,955
Caribou National Fores ^a	6,955	1,985	8,940
Dixie National Forest	1,889,127	78,038	1,967,165
Fishlake National Forest	1,461,226	78,511	1,539,737
Manti-La Sal National Fores ^a	1,243,781	67,089	1,310,870
Sawtooth National Forest ^a	71,983	20,421	92,404
Uinta-Wasatch-Cache National Forest ^a	2,193,445	746,928	2,940,373
National Forests Total	8,152,640	1,004,804	9,157,444
Research and Experimental Areas			
Desert Range Experiment Station	55,630	0	55,630
Research and Experimental Areas Total	55,630	0	55,630
UTAH TOTALS	8,208,270	1,004,804	9,213,074

Notes: a. Forest is in two or more states.
Source: Land Areas of the National Forest System: 2011. U.S. Department of Agriculture, Forest Service. Accessed at www.fs.fed.us/land/staff/.

122 See Note 114, *supra*. 123 Id. at 6; Lands of the National Forest System. Accessed at: www.fs.fed.us/land/staff/.



Expenditures and Revenues

In addition to the Intermountain Region headquarters office in Ogden, the Forest Service maintains national forest supervisor’s offices and ranger district offices throughout the State to administer national forests located in Utah. The Forest Service employs about 480 people in Utah.

Forest Service spending in Utah - mostly for land management - totaled \$100,103,474 in 2011. This total includes \$9,099,043 spent for fire suppression but excludes costs associated with maintaining the headquarters offices in Ogden.¹²⁴ Total spending in 2011 for each of the largest forests and three forestry sciences laboratories located in Utah is shown in Table 5.

Table 5 U. S. Forest Service Intermountain Region Expenditures in Utah: 2011

National Forest or Unit	Non-fire Suppression Expenditures	Fire Suppression Expenditures	Total Expenditures
Ashley National Forest ^a	10,980,916	404,583	11,385,499
Dixie National Forest	19,899,116	770,548	20,669,664
Fishlake National Forest	13,217,776	6,700,518	19,918,294
Manti-LaSal National Forest ^a	11,114,470	881,962	11,996,432
Uinta-Wasatch-Cache National Forest ^a	22,228,453	341,432	22,569,885
Logan Forestry Sciences Laboratory	631,900	0	0
Ogden Forestry Sciences Laboratory	11,844,000	0	0
Provo Forestry Sciences Laboratory	1,087,800	0	0
TOTALS	91,004,431	9,099,043	100,103,474

Notes: a Total has been adjusted to reflect only expenditures made in Utah. Adjustment is based on the number of acres of the specific national forest located in Utah as a percentage of the total acreage for that forest.
Source: Information provided by the United States Department of Agriculture, Forest Service, Intermountain Regional Office under a Freedom of Information Request filed September 11, 2012. FOIA File Code: R4 12-2346-R.

Fire suppression funds are managed at the agency level and are a significant cost in managing Forest Service lands. From 2002 through 2011, the Forest Service spent a total of \$158,471,340 for fire suppression in Utah. This annualizes to an average of \$15,847,134 over the last ten years. The ten year annual average for each forest is shown in Table 6.

124 Id.; Freedom of Information Act request: United States Department of Agriculture, Forest Service 6270 FOIA R4 12-2346-R. September 11, 2012.
Financial information reported in response to FOIA request does not match similarly report numbers discussed above. These discrepancies must be resolved by further investigation.

Table 6 Fire Suppression Expenditures in Utah National Forests:
10-Year Annual Average

National Forest	Ten-year Annual Average
Ashley National Forest	\$1,258,744
Dixie National Forest	\$4,424,724
Fishlake National Forest	\$3,835,844
Manti-LaSal National Forest	\$2,163,274
Uinta-Wasatch-Cache National Forest	\$4,164,547
Ten-year Annual Average	\$15,847,134

Source: Freedom of Information Act request: United States Department of Agriculture, Forest Service 6270 FOIA R4 12-2346-R. September 11, 2012.

Revenue generated on lands managed by the Forest Service is collected by the Forest Service and by ONRR. In 2011, the Forest Service collected \$4,093,951 for activities undertaken on Utah lands. In addition, ONRR collected approximately \$33,879,457 in mineral royalties (\$2,376,937 for oil and gas, \$2,520 for phosphate and \$31,500,000 for coal).¹²⁵

Table 7 shows the non-mineral royalty revenue generated on Forest Service lands in Utah for 2010 and 2011.

Table 7 National Forest Receipts for Utah: 2010 and 2011

Revenue Source	2010	2011
Timber	63,873	63,166
Land Use	361,497	435,363
Recreation – Special Uses	1,389,131	1,969,640
Power	299,097	465,045
Minerals	2,785	4,634
Grazing	571,745	588,285
KV	92,298	90,593
Specified Road Credits	23,342	38,843
Salvage Sales	535,712	419,850
TPTP Revenue	14,318	18,532
TOTALS	\$3,353,798	\$4,093,951

Note: Does not include mineral royalties collected by ONRR. These are reported in Table 3.
Source: United States Department of Agriculture, Forest Service, “National Forest Statement of Receipts” (ASR-13-2) 2010 and 2011. Accessed at <http://www.fs.usda.gov/main/pts/securepayments/projectedpayments>

125 Ibid.

Table 8 shows the non-mineral revenue receipts generated on forest service land, by forest, for 2010 and 2011.

Table 8 National Forest Receipts by Forest in Utah: 2010 and 2011

Forest	2010 Revenues	2011 Revenues
Ashley National Forest	257,411	269,638
Caribou National Forest	3,999	2,975
Dixie National Forest	370,806	630,712
Fishlake National Forest	761,140	589,929
Manti-LaSal National Forest	281,011	292,430
Sawtooth National Forest	44,179	47,206
Uinta-Wasatch-Cache National Forest	1,635,250	2,261,059
TOTALS	\$3,353,798	\$4,093,951

Notes: (1) Includes only revenue generated on those portions of National Forests located in the state of Utah. (2) Does not include mineral royalties collected by ONRR.
Source: United States Department of Agriculture, Forest Service, "National Forest Statement of Receipts" (ASR-13-2) 2010 and 2011.
Accessed at www.fs.usda.gov/main/pts/securepayments/projectedpayments

Revenue Sharing Payments to the State of Utah

The Forest Service sends payments from the 25% fund, Secured Rural School Fund, Special Acts payments and National Grasslands directly to States. Federal law requires that these payments are used to fund local schools and road budgets. Each state determines the proportion of the payment that will go to schools and roads. Counties in Utah received \$11,141,393 in Secure Rural School Funds from the U.S. Forest Service in 2011 and \$12,326,647 in 2010.¹²⁶

¹²⁶ Id. at 10; Information obtained from the Forest Service website. Accessed at: <http://www.fs.usda.gov/main/pts/securepayments/projectedpayments>.

Federal Agency Revenues and Expenditures-NPS¹²⁷

Overview

There are 13 National Park Service units (*park units*) in Utah including five national parks (*Arches, Bryce Canyon, Canyonlands, Capitol Reef and Zion*), six national monuments, (*Cedar Breaks, Dinosaur, Hovenweep, Natural Bridges, Rainbow Bridge and Timpanogos Cave*), one national recreation (*Glen Canyon (Lake Powell)*) area and one national historic site (*Golden Spike*). Table 9 shows the park units managed by NPS and the estimated acreage of each unit (where available).

Table 9 Characteristics of National Park Units Located in Utah: 2011

Park Unit	Unit Type	Acres	Location	Recreation Visits
Arches	National Park	76,679	Utah	1,014,183
Bryce	National Park	35,835	Utah	1,298,746
Canyonlands	National Park	337,598	Utah	435,054
Capitol Reef	National Park	241,904	Utah	663,822
Cedar Breaks	National Monument	6,155	Utah	502,115
Dinosaur	National Monument	210,283	Utah/Colorado	207,872
Glen Canyon	National Recreation Area	1,254,117	Utah/Arizona	2,139,351
Golden Spike	National Historic Site	2,735	Utah	43,998
Hovenweep	National Monument	785	Utah/Colorado	27,718
Natural Bridges	National Monument	7,636	Utah	95,915
Rainbow Bridge	National Monument	160	Utah	105,035
Timpanogos Cave	National Monument	46,301	Utah	117,048
Zion	National Park	146,597	Utah	2,680,377

Source: (1) National Park Service, Land Resources Division, Listing of Acreage (Summary). Accessed at: <https://irma.nps.gov/Stats>.

In addition to the park units shown in Table 9, NPS manages four national historic trails, some portions of which are located in Utah. These include: California Trail, Mormon Pioneer Trail, Old Spanish Trail and the Pony Express Trail.

Expenditures and Revenues

The operational base budget for park units in Utah totaled \$40,871,000 in 2011, excluding costs associated with managing the national trail system. Further the base budget does not include funding from other appropriations such as land acquisition and construction which are paid with discretionary funds. Because several park units cross state borders, not all of this money was spent in Utah.

¹²⁷ See Note 114, *supra*.



Four of the 13 park units located in Utah did not report revenue. These include: *Arches, Hovenweep, Natural Bridges, and Rainbow Bridge*. The revenue reporting park units generated \$14,847,476 in fees and concession revenue in 2011.

Table 10 shows the base operating budget and revenue generated for each park unit in Utah for fiscal years 2010 and 2011. No attempt has been made to allocate by state, the operating base amounts or revenues.

Table 10 Base Operating Budgets and Revenues Generated by National Park Units Located in Utah: 2011 and 2011

Park Unit	FY 2010 Enacted Base Budget	FY 2011 Enacted Base Budget	FY 2010 Revenue	FY 2011 Revenue
Arches	1,981,000	1,949,000	0	0
Bryce Canyon	3,531,000	3,397,000	2,612,053	2,639,720
Canyonlands	6,797,000	6,575,000	2,975,771	3,031,885
Capitol Reef	2,382,000	2,284,000	1,883,235	172,895
Cedar Breaks	710,000	695,000	123,781	119,136
Dinosaur	3,685,000	3,488,000	66,783	43,116
Glen Canyon	11,769,000	11,128,000	3,038,352	2,929,041
Golden Spike	1,104,000	1,087,000	63,782	66,842
Hovenweep	564,000	557,000	0	0
Natural Bridges	560,000	536,000	0	0
Rainbow Bridge	112,000	112,000	0	0
Timpanogos Cave	1,106,000	1,082,000	445,748	383,685
Zion	8,307,000	7,981,000	5,539,493	5,461,156
TOTALS	\$42,608,000	\$40,871,000	\$15,054,088	\$14,847,476

Source: Rod Rivera, Budget Officer, National Park Service, Intermountain Region. Response to FOIA Request.

Revenue Sharing Payments to the State of Utah

The National Park Service provides revenue to the States directly through appropriations from the Land and Water Conservation Fund ("LWCF") and the Historic Preservation Fund. The NPS also provides money to States and local communities through a competitive grant process.

In 2011, Utah’s apportionment from the LWCF was \$488,956. In 2010 (the latest year for which data are available from the NPS website) Utah’s apportionment from the Historic Preservation Fund was \$766,045.

Federal Agency Revenues and Expenditures-FWS¹²⁸

Overview

The Utah activities of FWS include management of 3 wildlife refuges under the National Wildlife Refuge Program, 2 fish hatcheries, a fish and wildlife conservation office under the Fisheries Program and the implementation of four endangered species recovery programs under the Ecological Services Program. A brief description of each program is provided below.

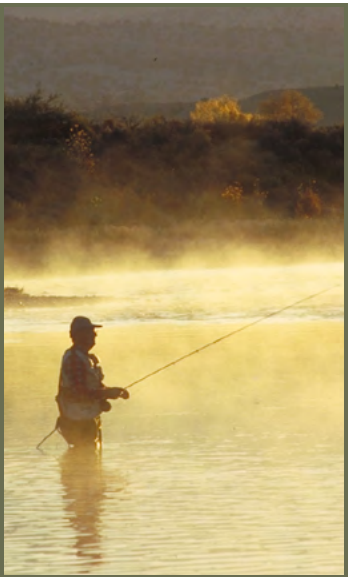
National Wildlife Refuge Program

FWS manages 3 national wildlife refuges in Utah covering 105,840 acres. These include the Bear River Migratory Bird Refuge ("MBR"), the Fish Springs National Wildlife Refuge and the Ouray National Wildlife Refuge.

Bear River MBR lies in northern Utah, where the Bear River flows into the northeast arm of the Great Salt Lake. The Bear River Delta has long been considered one of the most valuable water bird and wetland areas of the Intermountain West. In 1991, the Refuge was designated as a Western Hemisphere Shorebird Reserve. The Refuge protects marshes found at the mouth of the Bear River.

Fish Springs is remotely located approximately 80 northwest of Delta, Utah and is accessible only by gravel roads. The refuge covers 17,992 acres with a 10,000 acre marsh system. The lush habitat of the Refuge, surrounded by miles of Great Basin Desert is an oasis for wildlife in the region.

The Ouray National Wildlife Refuge is located 30 miles southwest of Vernal in northeastern Utah. It consists of 11,987 acres, including 12 miles of the Green River. The Ouray Refuge includes desert uplands, wetlands, and cottonwood forest and provides a critical habitat for the endangered Colorado pike minnow and razorback sucker.



128 See Note 114, *supra*.

Fisheries Program

Under the fisheries program, Utah FWS employees stock fish for recreational fishing and work toward the recovery of endangered species. In addition to managing a Fish and Wildlife Conservation Office and Colorado River Fishery Project Office (both in Vernal, Utah), FWS manages two National Fish Hatcheries—Ouray Fish Hatchery and the Jones Hole National Fish Hatchery.

Located on the Ouray National Wildlife Refuge, the Ouray Fish Hatchery was established in 1996 as a fish refuge and technology development facility to assist in the recovery of razorback sucker, Colorado Pikeminnow, Boneytail and humpback chub.



The Jones Hole National Fishery is located 40 miles northeast of Vernal, Utah on the Utah-Colorado border. It was established in 1956 when Congress authorized the Hatchery under Section 8 as part of the Colorado River Storage Project ("CRSP"), mandating that fish be reared and then stocked into all CRSP waters, which include Flaming Gorge, and Steinaker and Redfleet Reservoirs. Nearly 2 million trout are raised at the fishery each year.

Ecological Services Program

The FWS, in cooperation with 25 partners, is responsible for the implementation of four endangered species recovery programs, two Habitat Conservation Plans and multiple conservation efforts in Utah. The service also coordinates with various land and resource management agencies in the State on issues including energy and water development, wetlands impacts and environmental contaminants assessment and mitigation.

Expenditures and Revenues

The FY 2010 Resource Management Budget for FWS Activities in Utah totaled \$7,463,784, roughly the same as the FY 2011 budget. Of the total spending in Utah, \$2,600,156 was appropriated to manage lands in Utah, specifically the Wildlife Refuges. The remainder was appropriated to manage fisheries and administer programs not involving land under the jurisdiction of FWS.^{129, 130}

¹²⁹ Id. at 14; U.S. Fish and Wildlife Service website. Accessed at: www.fws.gov/mountain-prairie/factsheets/states/Utah.pdf. ¹³⁰ Id.; Information on Wildlife refuge spending was provided by Dean Rundle, refuge supervisor, Mountain-Prairie Region division via personal conversation.

Federal Payments in Lieu of Taxes (PILT)¹³¹

Utah counties receive PILT to make up for the presence of nontaxable land within their jurisdictions. Changes in the federal land base will affect PILT. Counties in the State of Utah received \$34,659,277 in PILT in 2011 and \$34,265,151 in 2010.

In 2011, federal land agencies spent approximately \$267.0 million to manage and administer lands in Utah. These lands generated \$464.4 million in revenue of which \$198.1 was returned to the State and local governments in the form of revenue-sharing payments. (See Table 12)

Table 12 Summary of Federal Land Agency Activity in Utah: 2011¹³²

Federal Agency	Expenditures	Revenues	Shared Revenue
Bureau of Land Management	\$118,573,000	\$445,484,935	\$150,293,650
U.S. Forest Service	100,103,474	4,093,951	11,141,393
National Park Service	40,871,000	14,847,476	1,255,001
U.S. Fish and Wildlife Servic	7,463,784	3,176	730,691
PILT			34,659,277
TOTALS	\$267,011,258	\$464,429,538	\$198,080,012

Notes: (1) Revenue reported for BLM includes mineral royalties generated on lands managed by BLM and the U.S. Forest Service. (2) Shared Revenue reported for BLM includes payments made by ONRR to Utah for revenue generated on lands managed by BLM and the U.S. Forest Service. (3) Revenue shown for the U.S. Forest Service does not include mineral royalties that are collected by ONRR. That amount is included in the Revenue total shown for BLM. (4) Shared Revenue shown for the U.S. Forest Service does not include mineral royalty payments made to Utah from the ONRR. That amount is included in the Shared Revenue total shown for BLM. (5) Shared Revenue shown for the U.S. Fish and Wildlife Service only includes the appropriated payments due under the RRSA and State Wildlife Grants program. It does not include discretionary grants for fish and wildlife restoration activities.

The Shared Revenue amounts were available for the State to use according to law in its annual budgeting and appropriation process. Further analysis, as indicated in the BEBR Report, using not only the above information, but also additional information yet to be collected and analyzed, is necessary to fully understand the circumstances under which this revenue can be increased.

¹³¹ See Note 114, *supra*. ¹³² Id.

The Shared Revenue amounts were available for the state to use according to law in its annual budgeting and appropriation process.

Revenue Enhancement from Expanded Land Access and Usage

In the area of resource production and development, a basic theory of economics holds that an increase in revenue requires the price of the commodity to go up, the commodity be produced at a lower cost (more efficiently), or more of the commodity be produced at a stable price. The price of the commodity is driven by many market forces, including global supply and demand considerations. This leaves the accessibility of the resource, and the efficiency of the regulatory approval process, as the variables within the control of the land manager, whether federal, state or local, by which to produce greater revenue.

Regarding recreational activities, revenue enhancement requires greater access to high quality scenic or activity-driven infrastructure, such as trails, campgrounds, or ski resorts, which are then made available to the public either directly, or indirectly, through outfitters and guides. Recreational activities also involve the management of wildlife, for watching or hunting. Protection of the quality of the scenic, wildlife or recreational resource may require access quotas and license restrictions, which have to be administered, implemented and enforced. Recreational management costs are ripe for efficiency measures, such as that proposed by the Price Field Office of the BLM in its proposal to move the permitting process for river trips through Desolation Canyon from a phone call first-come first-served, to an automated web based system, accessed at www.recreation.gov.¹³³

For energy and mining activities, revenue is enhanced by moving to production as quickly as possible, as revenue is tied to royalties and jobs are tied to the production and sale of the commodity. This is true of grazing and timber sales as well. Grazing fees generate controversy these days, with a U.S. Government Accountability Office ("GAO") report in September 2005 briefly outlining the issues.¹³⁴ The report, for example, identifies that federal agencies spent at least \$144 million in FY 2004 to manage grazing, and collected \$21 million in fees nationwide. Of the total collected, about \$5.7 million was returned to the areas where the grazing occurred. Of this differential, the report states

The grazing fee BLM and the Forest Service charge, which was \$1.43 per AUM in 2004, is established by formula, and is generally much lower than the fees charged by the other federal agencies, states, and private ranchers. ...The formula used to calculate the BLM and

Forest Service grazing fee incorporates ranchers' ability to pay, therefore the current purpose of the fee is not primarily to recover the agencies' expenditures or to capture the fair market value of forage. ... If the purpose of the fee were to recover expenditures, BLM and the Forest Service would have had to charge \$7.64 and \$12,26 per AUM, respectively. ...The purpose of the grazing fee is, ultimately, for the Congress to determine.

In this regard, perhaps the BLM and the Forest Service, or State agencies, could consider providing the grazing community a better product, one more in tune with the economics of the industry and involving better timing or certainty in the use of the resource. Examples of the possibilities are found in the operations of the Deseret Land and Livestock group in Summit and Rich Counties, Utah, and the current proposal from the Department of Agriculture and Food to establish a rest-rotation system on multi-agency lands in Rich County, Utah. Such a coordinated system could induce higher revenue offers.

Existing Federal Planning Processes | General

Within the BLM and the Forest Service, access, conservation and resource-use decisions are made within each agency's statutorily required Land Management Plans.¹³⁵ These plans designate how the BLM and Forest Service lands are to be managed based upon the *in situ* various resources: lands may be designated for for mineral leasing, grazing, timber production, recreational pursuits, wildlife protection, or for conservation purposes, such as wilderness. The plans also identify and manage the transportation systems needed to access these resources, sometimes in cooperation with state and local government, and sometimes contrary to local and state wishes. Land use planning has become a major focus of the federal agencies, with massive amounts of time and effort by federal and state officials, private interest groups and the general public required to generate a complex, multi-layered document encompassing a multitude of varied considerations, regulations, stipulations and conditions. Unfortunately, even when a plan is completed by a federal agency, there is no guarantee the plan will be fully implemented.

Integral to the federal land management decision-making process is the preparation of an Environmental Impact Statement ("EIS") under the provisions of NEPA, which requires an agency, such as the Forest Service or the BLM, to take what the courts call a "hard look"¹³⁶ at a proposal and alternatives to a proposal, including the alternative of doing nothing (the no-action alternative). NEPA also requires that an



¹³³ See: www.blm.gov/ut/st/en/info/newsroom/2012/october/blm_price_field_office.html. ¹³⁴ U.S. General Accountability Office (GAO), LIVESTOCK GRAZING Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged, GAO-05-869, September 2005.

¹³⁵ See e.g., <http://www.blm.gov/ut/st/en/prog/planning.html>; <http://www.fs.usda.gov/planningrule>. ¹³⁶ *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1977).

agency provide an opportunity for the public to review and make comment on the information and analysis within a required EIS. The EIS must look carefully at the cumulative impacts of many related proposals, and must not segment the proposal into smaller pieces. New information which may be generated during the preparation of an EIS has to be considered, even if the analysis must be redone. Preparation of an EIS for a large project can take anywhere from two to eight years.

Over the decades since NEPA was passed, the cumulative impact of the numerous court decisions concerning the planning requirements of NEPA, as well as the duration of litigation, has raised questions about the efficiency of this decision making process, as well as the ability of public agencies to develop or conserve resources in a timely manner.

Public Involvement in the Planning Process

The public should always have the opportunity to see and comment on decision-making by public officials. Alternatives to NEPA, including decision processes by elected officials, or Boards and Commissions appointed by elected officials, should be considered. A process, open and transparent to the public, by which decisions are proposed, reviewed, and the public given an opportunity to comment, is essential. On federal lands, project review is governed by NEPA. NEPA analysis and public comment provisions must be followed for any decision having a federal nexus, which, in the public lands arena, typically involves federal lands or federal funds. If federal lands are transferred to the State, a public review process will be required, with the understanding that any use of federal funds may still require NEPA review.

NEPA requirements form the basis of a large portion of challenges to federal decision-making. Administrative and judicial challenges commonly allege a failure to properly consider newly discovered facts or engage in analysis related to some related factor. As examples, recent challenges have decried federal decision-making for not properly considering

- Newly gathered information, such as the existence of wilderness characteristics,¹³⁷
- Connections between the proposed action to related or similar actions, such as
 - for a pipeline - use of the product which will pass through a pipeline,¹³⁸
 - for a powerline - source of the electricity to be transmitted,¹³⁹
- The effects of the project on climate change.¹⁴⁰

¹³⁷ *Norton v. SUWA*, 542 U.S. 55 (2004); *Utah v. Norton*, 2006 WL 2711798. ¹³⁸ *Hammond v. Norton*, 370 F.Supp.2d 226 (D.D.C. 2005).
¹³⁹ *Ass'n of Public Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158 (9th Cir. 1997). ¹⁴⁰ See e.g. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 508 F.3d 508 (9th Cir. 2007).



NEPA review is a lengthy, complex and expensive process, yet is not a process with a defined, clear end point which can support useful and efficient decision-making. Though NEPA was founded on the very reasonable concept to require analysis of the project or plan and reasonable alternatives, followed by consideration of the social, economic and environmental effects, the decades of NEPA litigation have produced a system which simply generates a large amount of documentation, much of it duplicative and difficult for an average reader to follow. Many differ as to whether all the work amounts to a useful and necessary examination of all possible effects of a proposal, or an out-of-control cost and regulatory burden upon reasonable business ventures. Proposals to streamline and modernize NEPA have been made, but none has yet progressed through Congress.¹⁴¹

Existing Federal Processes - Forest Service

An example of the difficulties of federal decision-making processes is the multi-year effort to modernize the basic planning rules for the Forest Service. Planning involves the proposal of land-use choices, receipt of public opinion on the proposed choices and a final decision - a process that has become inseparably combined with the requirements of NEPA. The Forest Service has not completed a new plan since 2003 when the Uinta National Forest Plan was completed on the heels of a revision of the Wasatch-Cache National Forest Plan.¹⁴² As a result, the decisions made in the National Forests near the Wasatch Front are based on relatively new plans, while the National Forests in the other parts of the State are based on 1980's era decisions. The Fishlake, Dixie and Manti-La Sal National Forests had planning efforts underway in the mid-'00s, only to have them be placed on hold due to

uncertainty about the basic planning rule. The new basic rules governing planning on Forest Service lands were proposed, adopted, challenged in court, rejected by the courts, and redone several times though the decade of the '00s. Again in 2012, the Forest Service has adopted a new planning rule,¹⁴³ and will start planning efforts in some of the National Forests in rural Utah, a process expected to take several years to complete. As a result of this continuing turmoil in the planning process, decisions are made on an ad hoc basis, and have to make assumptions about changes in circumstances covering many years of time. This ad hoc process itself then can become an issue for judicial challenge.



As a result of the planning logjam, forest health is becoming questionable in places, and simple forest management is stymied. Thousands of acres of dead trees, and the creation of huge fire hazards in many Utah forests, are symptomatic of this process.

¹⁴¹ See, e.g., the report from the Oversight Hearing on NEPA: Lessons Learned and Next Steps from a hearing held before the Committee on Resources, U.S. House of Representatives, on Thursday November 15, 2005. See also an article on NEPA - Reform in Government Decision-Making, for a discussion of the expected benefits of NEPA analysis from the early days of NEPA implementation (2 ELR 50025). ¹⁴² <http://www.fs.usda.gov/detailfull/uwcnf/landmanagement/planning/?cid=stelprdb5076923&width=full>. ¹⁴³ "National Forest System Land Management Planning," Final Rule, 77 (No. 68) Fed. Reg. 21162-211276 (April 9, 2012)(to be codified at 36 CFR Part 219)



Existing Federal Planning Processes - BLM

Similarly, the planning processes for the BLM have proven difficult to complete. In the last decade, as part of an emphasis on achieving energy independence, BLM undertook an effort to revise the land use plans for areas with high energy potential on an expedited basis. In Utah, this effort covered the Vernal and Price Field Offices. Plans were to be completed within a two to three year time frame. In October of 2008, some seven to eight years later, those plans were finally completed, along with four others in the eastern part of Utah.¹⁴⁴ The Vernal and Price Resource Management Plans were immediately challenged in court¹⁴⁵ and were placed on hold following a Temporary Restraining Order (TRO) hearing in the District Court for the District of Columbia in early 2009. Following this court action, the Secretary of the Interior prohibited 77 oil and gas leases, duly paid for by industry at auction, from being issued because the plans were on hold. The case concerning the Resource Management Plans, later expanded to all six 2008-completed RMPs, was finally transferred to the District Court in Utah in 2012, and is being actively prosecuted today, largely for issues unrelated to the original decision granting the TRO.¹⁴⁶

In the interim, agencies continue to work with many partners on the issues affecting BLM lands. For example, the issue of development and air quality in the Uinta Basin, which arguably led to the RMP restraining order, has been

the subject of a huge cooperative effort among the State Division of Air Quality, BLM, industry, and Utah State University to discover the actual cause of the ozone issues, and find management solutions.¹⁴⁷ In November of 2011, after further review under the provisions of NEPA, six of the 77 leases were reoffered at auction. All were leased, with bonus bids totaling \$48.6 million, half of which was subsequently sent to the State of Utah.¹⁴⁸

State and Local Government Planning Processes

A process which allows public comment from citizens and governmental agencies within Utah, the Nation, and around the world, is essential, but consideration should be given to processes other than the formalized process of NEPA. Other examples of a public involvement processes are available, as not all business or government decisions require NEPA review. The many and various Boards and Commissions within State and local government, such as those at the Departments of Natural Resources and Environmental Quality, engage in public review and participation processes, as do the Planning Commissions, City and County Councils and Commissions operating within city and county authorities. These processes feature:

- *an application process requiring detailed plans and estimates of cost and effect*
- *review by the authorizing agency*
- *public review and hearing*
- *revisions as necessary*
- *final approval or denial.*

Serious review of these public processes – NEPA, local approvals, Boards and Commissions, and others must be considered, and an efficient process established, in order to expect an increase in revenue from the resources found on the public lands.

Access to Resources – What Effect of Change?

What could be expected if a more local, more efficient process, which still provided the opportunity for public review, could be established? The energy and mineral sector produces a large amount of the revenue from the public lands in Utah, so what enhancements in revenue are possible? The production of revenue from oil and gas operations requires approval at various points in the process, including acquisition of a lease, approval of a project, and finally, permission to actually drill and operate a well.

Additional Opportunities to Lease

A recent report by the Congressional Research Service ("CRS")¹⁴⁹ discussed U.S. crude oil production on federal and non-federal lands,¹⁵⁰ finding in general

Oil production fluctuated widely in the past five years, thus giving different results when comparing years. For example, when comparing 2010 with 2007, the federal share of the increase over 2007 was about 72% of the total. On federal lands, there was also an increase in production from 2008-2009 and another increase in 2010 (258,000 b/d), then a decline in 2011. Overall, oil production on federal lands is up slightly in 2011 when compared to 2007.

The CRS report indicates that approximately 38.3 million acres of land are leased onshore in the country, and about 11.5 million acres are producing commercial volumes of oil and gas.

There are lands available for leasing in Utah. BLM routinely conducts an auction for leasable parcels on a quarterly basis, and the State receives approximately 50% of the bonus bids received at auction. However, in recent years, BLM has placed significant areas in the Uintah Basin and Eastern Utah off-limits to leasing, despite the recent (2008) completion of new Resource Management Plans in those Field Offices, in order to conduct further review pursuant to the provisions of NEPA. This new review is part of a BLM program called Master Leasing Plans,¹⁵¹ and is touted as a comprehensive review of the availability of lands for oil and gas leasing in the West.¹⁵²

In addition to a new planning requirement, rather than offering parcels from all parts of the State, the BLM has begun a rotation system, whereby the location of leases offered moves around the State on an annual basis. As a result of these adjustments, ongoing revenue to the federal treasury and to the state has dropped significantly. At the most recent sale, August 2012, covering the Salt Lake Field Office no parcels were sold at auction. At the February 2012 auction, covering parcels in the Canyon County District, 13 parcels were sold, for a total bonus bid value of \$502,924. However, as mentioned, at the November 2011 sale covering lands in the Price and Vernal Field Offices, 11 parcels were sold for a total of \$49,425,779.

In addition to the opportunity to lease the lands, many other approvals are necessary before drilling can begin. For example, on federal lands, once a lease is obtained, (after extensive NEPA review), and approval for a development project is received, (after an additional extensive NEPA review), the oil and gas operator must also obtain approval of an Application to Drill. Only after that may actual drilling and production begin, and the generation of royalty revenue commence.

¹⁴⁴ See, http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo/planning/rod_approved_rmp.Par12251.File.dat/VernalFinalPlan.pdf. ¹⁴⁵ *SUWA v. Allred*, Case No. 1:08cv02187 (D.D.C. filed 12/17/2008; transferred to D.Utah 02/29/2012). ¹⁴⁶ *SUWA v. Burke*, Case No. 2:12cv257, (D. Utah. filed 10/04/2012). ¹⁴⁷ <http://www.deq.utah.gov/locations/uintahbasin/problem.htm> ¹⁴⁸ http://www.blm.gov/ut/st/en/info/newsroom/2011/november/blm_utah_oil_and_gas.html

¹⁴⁹ See U.S. Crude Oil Production in Federal and Non-Federal Areas, Congressional Research Service, March 20, 2012. ¹⁵⁰ These figures include off-shore production.

¹⁵¹ See http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas.html for a description. ¹⁵² Despite this emphasis, the only Master Lease Plan process in effect in Utah, due to budgetary constraints, is in the Moab Juan County area, and is also strongly emphasizing potash leasing. (Pers. Comm.)



According to the BLM, the average wait for completion of an Application for Permit to Drill ("APD") is 307 days,¹⁵³ of which 236 days are attributed to industry delays in submitting a complete application, and 71 days are attributed to BLM processing time.

In contrast to the federal oil and gas production approval requirements, SITLA offers leasing opportunities on a regular basis for its lands, and DOGM will complete processing of APD applications for wells on State and private land in 45 days. The differences in these approval time frames and other requirements should be reviewed to determine a path to additional revenue through more efficient approval processes; processes which also protect the environment.

State Revenue from State and Public Lands

The State also derives revenues from State lands, and some from activities on federal, State and private lands, not counting sales and income tax. The federal disbursements discussed above represent the State’s share of federal mineral receipts. In addition, State agencies and the State itself collect revenue from leases, taxes and user fees for State Parks and Recreation programs, State Sovereign Lands, Wildlife Resources hunting and leasing programs, severance tax, and SITLA revenue centers. In rough figures, for FY 2011, the State collected

State Parks and Recreation:	Parks	\$ 13,674,600
	Recreation	\$ 8,971,949
	Total:	\$ 22,646,562
State Sovereign Lands		\$ 11,500,000
Wildlife Resources hunting permits		\$ 34,292,000
SITLA	Oil & Gas	\$ 60,909,236
	Coal and Other Minerals	\$ 18,619,526
	Surface Sales	\$ 1,768,196
	Surface Leases and Easements	\$ 6,939,196
	Development Sales	\$ 3,145,089
	Development Leases & Easements	\$ 767,206
	Miscellaneous	\$ 3,234
	Total:	\$ 92,151,683
State Severance Tax ¹⁵⁴	Oil and Gas	\$ 59,855,000
	Minerals	\$ 27,118,000
	Severance tax total:	\$ 86,973,000
Total State Revenue for Public Lands 2011:		\$247,563,245

153 See e.g., http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html. 154 Calendar year 2011.

Utah’s Ongoing Payments to the Federal Government

The records of the Office of Natural Resources Revenue, Department of the Interior, display the royalties received and disbursed for the mineral leasing activities on federal lands in Utah.¹⁵⁵ In recent years, the Total Reported Royalty Revenue¹⁵⁶ for all leasable¹⁵⁷ minerals in Utah was

FY 2011	\$ 441,390,300
FY 2010	\$ 374,034,774
FY 2009	\$ 260,434,652
FY 2008	\$ 521,686,513
FY 2007	\$ 325,425,231
FY 2006	\$ 411,611,586
FY 2005	\$ 286,015,157
FY 2004	\$ 182,848,800
FY 2003	\$ 142,285,865
Total:	\$ 2,945,732,878

From this total, the federal government disbursed the following amounts to State government for its share of mineral receipts:

FY 2011	\$ 149,439,229
FY 2010	\$ 142,696,934
FY 2009	\$ 128,636,159
FY 2008	\$ 173,839,327
FY 2007	\$ 135,429,658
FY 2006	\$ 173,074,712
FY 2005	\$ 87,444,534
FY 2004	\$ 69,013,576
FY 2003	\$ 50,614,416
Total:	\$ 1,110,188,545

Revenue contributed by the State of Utah to the Federal Treasury in the last 9 years from leasable mineral royalties: **\$ 1,835,544,333**

155 See: <http://www.onrr.gov/ONRRWebStats/Home.aspx>. 156 Reported in Sales Years. 157 Oil, gas, brine, coal bed methane, potash, gilsonite, salts, carbon dioxide, coal and various others. Figures also include sales of electricity from geothermal operations.

Federal Management Objectives

Management objectives on BLM and Forest Service lands, by federal law, are guided by the vision of multiple-use and sustained yield. Multiple use and sustained yield were defined in 1960 to mean¹⁵⁸

“Multiple-use” means: *The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people, making the most judicious use of the land for some for all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.*

“Sustained yield of the several products and services” means *the achievement and maintenance in perpetuity of a high-level annual or periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.*

In 1976, the Bureau of Land Management was required to use the concepts of multiple-use and sustained yield in its land use planning efforts,¹⁵⁹ but the term multiple-use was amended¹⁶⁰ to include

The term “multiple use” means ...the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources, and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.



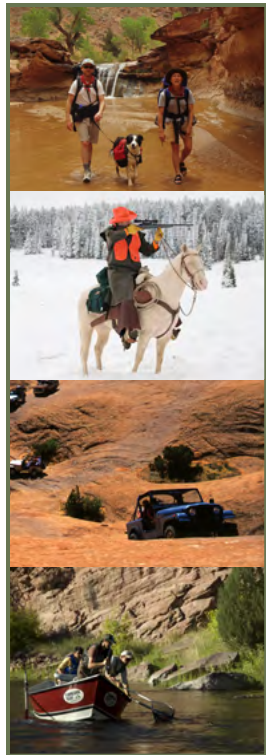
The Bureau of Land Management is required to develop and maintain plans for the use of the public lands under its authority, as is the Forest Service.¹⁶¹ In these planning efforts, the BLM is required to “*use and observe*” the principles of multiple-use and sustained yield, and is further required to employ an “*integrated consideration of physical, biological, economic and other sciences,*” and to “*weigh long-term benefits to the public against short-term benefits.*”¹⁶²

In recent years, the terms multiple-use and sustained yield have been undergoing revision. Non-use of the land and resources and ecosystem services are now considered components of thoughtful multiple-use management. In addition, the recently completed Forest Service Planning Rule, by which future plans for the management of all the national forests will be guided, reconfigures sustainability to include ecological, economic and social sustainability and basically defines sustainability to mean the “*capability to meet the needs of the present generation without compromising the ability of future generations to meet their needs.*”¹⁶³

State Management Objectives

In contrast, the State lands are managed under different management purposes, all of which permit many different types of uses. State school trust lands are managed under a fiduciary duty for the exclusive benefit of the beneficiaries, the schoolchildren of Utah, to provide the most “substantial support possible to the beneficiaries.”¹⁶⁴ State sovereign lands are managed under the principles of the Public Trust Doctrine which recognizes that public resources are held in trust for the use of the public and protects the rights of the public to use and enjoy sovereign lands, waters and resources for a variety of uses.¹⁶⁵

In many cases, the collective expertise of State agencies and local government is the functional equivalent of that found in the federal land management agencies, however, expertise in the management of certain resources may have to be created in some state agencies and additional employees may be necessary to handle the increased workload. Under any scenario, key to the ability of the State to provide access to high quality, well-managed public lands will be a clear statement about the goals for the use of the land, whether the term multiple-use continues, primary-use zones are established, or some other definition is generated.



¹⁵⁸ 16 U.S.C. Section 531, P.L. 86-517, 74 Stat. 215 ¹⁵⁹ 43 U.S.C. Section 1701(a)(7). ¹⁶⁰ 43 U.S.C. Section 1702(c).

¹⁶¹ National Forest Management Act of 1976, 16 U.S.C. §§1600-1614. ¹⁶² 43 U.S.C. Section 1712 et. seq. ¹⁶³ 36 CFR Section 219.19 (2012) ¹⁶⁴ Utah Code Ann. §53C-1-102. ¹⁶⁵ *Colman v. Utah Land Board*, 795 P.2d 622 (Utah 1990); *National Parks and Conservation Ass'n v. Board of State Lands (NPCA)*, 869 P. 2d. 909 (Utah 1993).

Federal Laws with Continuing Application

Many federal laws have nationwide scope and effect, and would still apply to lands owned by the State. These federal laws include, for example:

- Endangered Species Act of 1973¹⁶⁶
- Jurisdictional Waters of the United States (*wetlands*)¹⁶⁷
- Clean Air Act¹⁶⁸
- Clean Water Act¹⁶⁹
- Migratory Bird (*International*) Treaties¹⁷⁰
- Surface Mining Reclamation Act¹⁷¹

Any discussion of the costs, benefits and economic effects of a transfer of lands from federal to State ownership must consider the effects of these laws upon the discretion to make choices about the use of the land.

Economic Drivers on Utah's Federal Lands

The federal lands in Utah provide the resources for a number of economic drivers or engines. Scenery and snow attract tourists and recreationalists from all over the world. Mineral resources found underground provide energy for travel and heating, and provide the foundational minerals for industry such as potash, cement, copper and other base minerals. Water provides sustenance and allows crops to thrive. These economic engines typically either extract the resource in some form (*hunting, oil and gas production*), or may simply use the resource in place (*scenery, skiing and tourism*).

There is no shortage of unfiltered economic data collected to identify social and economic conditions and trends, nor interpretive reports and studies generated to advocate for the importance of a particular industry, activity or resource to the larger social and economic picture of the State. In any discussion of the costs of management of the federal and State lands, it is vital to understand the connection between the lands and resources and these economic drivers. Unfortunately, it is very easy to become inundated with information from these datasets and studies, and lose any grasp of the larger picture of the effects of land management on the economic vitality of Utah as a whole, and of the specific localized rural economies.

¹⁶⁶ 16 U.S.C. §§1531 et. seq.; 87 Stat. 884. ¹⁶⁷ See, e.g. Clean Water Act" Section 404. ¹⁶⁸ 16 U.S.C. §§7401 et. seq. ¹⁶⁹ 33 U.S.C. §§1251 et. seq. ¹⁷⁰ See, e.g. 50 CFR Part 20; See, <http://www.fws.gov/laws/lawsdigest/Treaties.html>. ¹⁷¹ 30 U.S.C. 1201-1328; 91 Stat. 445



County-level Information

Basic economic information includes economic data gathered by governmental agencies, such as the Utah Department of Workforce Services. Of interest to the economic picture in rural Utah is the county by county wage and employment data. This information provides figures for the number of jobs, number of establishments, payroll, and average monthly wage for each county within standardized industry sectors, such as construction, retail trade, real estate and its, entertainment and recreation. Federal and State government employment is included as well. As an example, Kane County 2011 non-farm payroll summary data indicates¹⁷²

- 2,246 private sector jobs totaling \$57,894,471 in payroll
(average monthly wage of \$2,148)
- 99 federal government jobs totaling \$5,111,891 in payroll
(average monthly wage of \$4,314)
- 2 State government jobs totaling \$3,100,460 in payroll
(average monthly wage of \$3,588)
- 570 local government jobs totaling \$16,442,255 in payroll
(average monthly wage of \$2,405)

Detail within the private sector jobs reveals 87 jobs in construction, 100 jobs in manufacturing, 335 in retail trade, 27 in real estate, 86 in Health Care and Social Assistance, 10 jobs in Arts, Entertainment and Recreation, and 845 jobs in Accommodation and Food Services. Similar data can be obtained for the other counties in the State. Comparisons of this data to similar data from the other rural counties can produce a snapshot of the economic conditions in the timeframes of interest.

Unfortunately, it is very easy to become inundated with information from these datasets and studies, and lose any grasp of the larger picture of the effects of land management on the economic vitality of Utah as a whole, and of the specific localized rural economies.



¹⁷² See Kane County data for 2011, found at: <https://jobs.utah.gov/jsp/wi/utalmis/gotoIndustry.do>

Available General Reports on the Overall Economic Picture

State Government Reports

The annual *Economic Report to the Governor*, (the "ERG")¹⁷³ published by the Governor's Office of Planning and Budget is a good example of a big picture type study. While including aggregate information similar to the above, the 2011, the ERG discusses economic areas of relevance including:

Domestic leisure travel

The following are some trends and attitudes in domestic leisure travel: Vacationing is still considered a right; travelers are trading down, not out; leisure travelers are driving instead of flying – staying closer to home – camping, or staying in budget hotels; between 2000 and 2010, leisure travelers reported a significantly higher percentage of weekend trips; and the increasing use of weekend trips reflects household budget constraints and the right to get away. The internet continues to play a key role in travel planning.

Energy

Utah continues to experience significant annual increases in crude oil production stemming from healthy crude oil prices spurring exploration and development in the Uintah Basin. In contrast, a weaker natural gas price has lead to a retreat from the record-high production recorded in 2009. Moreover, 2010 coal production dipped to a 20 year low based on a combination of lower demand and temporary mine closures. Production of electricity in Utah decreased for the second straight year, still hampered by a slowdown in the economy....Utah will continue to be a net exporter of energy, producing more natural gas, coal, and electricity than is used in-State, but will remain reliant on other States and Canada for crude oil and petroleum products....

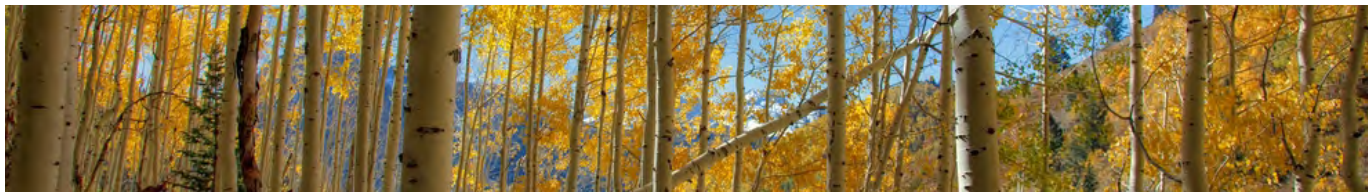
Agriculture

Proprietor income refers to farm profits after wages and farm expenses. Farm earnings are proprietor income plus farm wages, and thus they are always higher than proprietor income. During the recession, farm proprietor income dropped from \$127 million to -\$113 million, a 180% drop. This was a dramatic loss for the farming industry, but we are beginning to see signs of recovery fueled by price increases.

In general, as might be expected, reports using localized information tend to carry more useful information for a determination of the effects of any potential changes in resource management.



¹⁷³ See <http://www.governor.utah.gov/dea/ERG/2011ERG.pdf>



Although the recession has caused proprietor income to fall dramatically, higher prices in agricultural commodities has [sic] led to a fairly quick recovery in agriculture... The agricultural sector was able to maintain its strong footing in cattle, dairy, hogs and hay even through the recession. The cattle industry experienced the greatest decrease in sales but has since bounced back to 2005 levels and looks to be climbing.

Industry Studies and Reports

Many industry representatives, governmental organizations, and advocacy groups publish economic reports or studies that identify economic information, values or computational conclusions in an effort to either inform or to convince the public or other targeted group of the importance of specifically identified resources to the economic health of the region being studied.

These reports or studies can be of great informative value to policy makers and their decisions, but must be read with a critical eye. The reports use varied terms to describe economic conditions, such as "economic activity," "gross economic output," or "economic impact to personal income." Not surprisingly, the choice of the term used to describe the economic situation is sometimes made with an eye toward the term which generates the largest number possible.¹⁷⁴

Additionally, reports may contain information about Utah as part of a national study, a regional study, or a study (or portion of a study) specific to Utah. Accordingly, when examining the data in the study, the reader should focus on:

- *understanding the difference these studies advance between the State economy as a whole, (recognizing that this economic view is largely centered on the Wasatch Front, Park City, Logan and St. George), and*
- *effects on the economies of the rural parts of the State.*

Information that may be gleaned from these types of reports and studies varies greatly. A sample of some of these studies follows. These studies reflect the oil and gas industry and the recreation industry and conservation values, as these viewpoints are often presented as opposing positions on use of the public lands. However, it must be emphasized that many other studies exist that should be reviewed to obtain additional useful information, and to more fully understand the optimal management of the resources found on the public lands.

¹⁷³ See <http://www.governor.utah.gov/dea/ERG/2011ERG.pdf>. ¹⁷⁴ See *Economic Impact Studies: Instruments for Political Shenanigans?* Crompton, *Journal of Travel Research*, August 2006, p. 79.

Available Energy Industry Reports

American Petroleum Institute Media Report

A media report by the American Petroleum Institute ("API")¹⁷⁵ states that the oil and natural gas industry currently

- › supports 78,425 jobs in Utah,
- › at an average annual salary of \$73,186,
- › compared to the annual average salary in Utah of \$38, 936 for all industries and sectors,
- › contributes \$3.8 billion to Utah labor income, and
- › contributes \$8 billion to the Utah economy.

In addition, the API argues that “with sensible energy development and sound tax policy,” Utah could realize

- › an additional 26,554 jobs by 2015, and
- › an additional 49,304 jobs by 2020 from the oil and gas industry operations,
- › leading to an additional \$255 million per year to the State every year through 2030.

The API Report is based upon a 2011 report by Wood MacKenzie, an energy consulting firm with offices world-wide, to support these new job and revenue figures. The report, entitled *U.S. Supply Forecast and Potential Jobs and Economic Impacts (2012 – 2030)*,¹⁷⁶ discusses necessary changes within what is referred to as the current developmental path in order to achieve these additional revenues. Under the current scenario, with respect to issues relevant to Utah, exploration and development of oil and gas fields is hindered by new federal regulations on hydraulic fracturing and the lack of new areas opened for exploration in the Rocky Mountain region. In contrast, Wood Mackenzie argues (with respect to Utah issues) if “leasing and permitting issues do not significantly hinder current company plans,” and shale gas and tight oil plays are not hindered by duplicative and unduly burdensome regulations (*regarding hydraulic fracturing*), and that areas in the Rocky Mountains currently off-limits to leasing, drilling and development are opened up, the State will be able to realize the calculated benefits.¹⁷⁷



Bureau of Economic and Business Research Report

The Bureau of Economic and Business Research (the “BEBR”), at the University of Utah, authored a report in July 2009 entitled *The Structure and Economic Impact of Utah’s Oil and Gas Exploration and Production Industry*.¹⁷⁸ The BEBR Report obtained and analyzed detailed expenditure figures by the oil and gas exploration and production industry, along with the normal indicators of economic health and economic trends reported by governmental agencies as discussed above. The BEBR Report constitutes a snapshot of the economic impacts to the State’s oil and gas producing regions in 2007. Those regions are the Uintah Basin (*Uintah and Duchesne Counties*), the Paradox Basin (*San Juan County*), the Coalbed Methane Area (*Carbon and Emery Counties*), the Hingeline (*Central Utah*), the Overthrust, (*Summit and Rich Counties*), and the Uncompahgre Uplift (*Grand County*).

In terms of general results, the BEBR Report demonstrates that, in 2007, total employment from the industry - direct, indirect and induced - was 10,582 jobs. In addition, the BEBR Report demonstrates revenue to State and local entities as follows:¹⁷⁹

› Local Sales Tax Revenue	\$ 5,158,217
› Local Oil and gas Property Taxes	\$34,522,793
› State Fiscal Impacts	\$39,501,180
› State Severance Tax	\$65,429,873
› State Conservation Fee	\$ 4,747,883
› Rents and Royalties – SITLA	\$63,293,869
› Federal Royalties Disbursed (to Utah)	\$95,756,417

Of particular interest, the BEBR Report went into great detail about the total economic picture for each of the six oil and gas producing regions of the State, and places oil and gas activities into the larger context of economic activities in other industries and sectors. The individual reports on the Uintah Basin, which includes Uintah and Duchesne Counties, and the Uncompahgre Uplift, within Grand County, are instructive.



¹⁷⁵ See: http://www.api.org/~media/files/policy/jobs/energyworks/energyworks_utah-api.pdf. ¹⁷⁶ http://www.api.org/newsroom/upload/api-us_supply_economic_forecast.pdf. ¹⁷⁷ Id.

¹⁷⁸ <http://www.bebr.utah.edu/Documents/studies/Oil%20&%20Gas%20Economic%20Impact.pdf>. ¹⁷⁹ See Id., Executive Summary at p. xx.



Grand County. Grand County is largely perceived as a region dedicated to tourism, and as a tourism-based economy, yet energy production does occur. In fact, in Grand County

- *The mining sector¹⁸⁰ provided 124 jobs, while the Arts, Entertainment and Recreation and Accommodations and Food Services sectors¹⁸¹ provided a combined 1,548 jobs.*
- *The drilling companies in Grand County drill wells for a number of other purposes besides oil and gas development, for example, other minerals or water. Indeed those who do work in the oil and gas industry in Grand County live in and operate out of Grand Junction, Colorado.*
- *The mining industry workers receive a much higher wage than those in the Recreation and Accommodation sectors – an average of \$50,759 for the mining industry and \$17,006 for the Recreation and \$14,817 for the Accommodation sector.*

Uintah Basin. In contrast, the Uintah Basin is seen as an energy producing area, with a great deal of employment in the oil and gas Exploration and Production industry, though tourism has a place in the local economy as well.¹⁸²

- *The equivalent mining sector employment in the Uintah Basin is 4,778 jobs, while the Arts, Entertainment and Recreation sector totaled 67. The Accommodation and Food Services sector totaled 1,397 jobs, but those jobs may be providing services to the mining industry as well as the tourism industry.*
- *Again, the mining sector supports a higher wage, which for the Uintah Basin is, on the average, \$57,958, while the average in the Recreation and Accommodation sectors are \$7240, and \$11,060 respectively.*
- *Concerning the Uintah Basin, the study states:¹⁸³*

Mining is the basic industry in the Uintah Basin... By 2006... mining's share of employment in the Uinta Basin had increased to 32 times the national average. Despite this strength relative to the country, mining is not the largest industry in the region. From 1969 to 2000, government jobs provided about 20 percent of total employment on average, declining to 16 percent in 2006... Two-thirds to three-quarters of the jobs were at the local level.

¹⁸⁰ Defined by the NAICS 21 category of the Bureau of Labor Statistics. ¹⁸¹ NAICS categories 71 and 72 respectively; Bureau of Labor Statistics, ¹⁸² See Note 178, *supra*. ¹⁸³ See, "Socioeconomic Profile – Uinta Basin" (*attached to the Report*), p. 16.

Available Federal Government Reports

Department of the Interior Contribution Analysis

The Department of the Interior released a report entitled The Department of the Interior's Economic Contributions, FY 2011 on July 9, 2012.¹⁸⁴ The report highlights the contributions of the Department to the Nation as a whole, and breaks out contributions within individual States. The report identifies the key economic sectors, including

- **Recreation and Tourism**
- **Energy and Minerals**
- **Water, Timber and Forage**
- **Grants and Payments**
- **Employment for Youth**
- **Physical Infrastructure**
- **Ecosystem Services**

The report specifically estimates, for example, the following direct employment and the dollars of economic "output"¹⁸⁵ which results from BLM-managed minerals and renewable energy projects, grazing and timber, in Utah. The employment figures represent the average number of full and part-time private sector jobs.

- **Oil and Gas** - 1,777 direct jobs and \$6.5 billion in economic output
- **Coal Mining** – 952 direct jobs and \$260 million in economic output
- **Other Leasable Minerals** – 179 direct jobs and \$4 million in economic output
- **Geothermal Energy** – 101 direct jobs and \$3 million in economic output
- **Wind Energy** – 2 direct jobs and \$100,000 in economic output
- **Grazing** – 1,258 direct jobs and \$57 million in economic output
- **Timber** - 24 direct jobs and \$4 million in economic output

By looking at the activities of the Department of the Interior as a whole, and after making economic calculations using an accepted economic multiplier program,¹⁸⁶ the report concludes that 83,292 jobs in Utah are due to the Department, and that the Department is responsible for economic output and direct payments¹⁸⁷ as follows:

- **Recreation** – 21,269 jobs and \$1.1 billion in economic output
- **Energy & Minerals** – 55,109 jobs and \$10.76 in economic output
- **Grazing and Timber** – 1,707 jobs and \$120 million in economic output
- **Grants and Payments** – 3,938 jobs and \$350,000 in grants and payments
- **DOI salary** – 1,190 jobs and \$130 million in direct salary payments
- **Total** – 83,292 jobs and \$13.08 billion in economic output



¹⁸⁴ <http://www.fort.usgs.gov/Products/Publications/23407/23407.pdf>. ¹⁸⁵ See id., Report at p. 4. "The results of the study are presented in terms of the value of output and jobs supported by Interior's activities. This analysis is best characterized as a contribution analysis in comparison to other measures of economic activity, such as an analysis of net economic benefits." ¹⁸⁶ The Report uses the IMPLAN program created by the U.S. Forest Service. ¹⁸⁷ To understand possible connections among these reports, presumably if the conditions for the API report discussed above were met, the Department's economic contributions report for a subsequent year would include the API figures.

Available Conservation Economic Reports

In recent years, many reports and published papers have spoken to the value of a conservation ethic to the local economy, and that an emphasis on conservation will not, at the very least, harm economic growth in rural areas in the West. The Sportsmen for Responsible Energy Development contracted with Southwick Associates to study the connections between the conservation of lands and economic prosperity. The resulting report, entitled *Conserving Lands and Prosperity: Seeking a Proper Balance Between Conservation and Development in the Rocky Mountain West*,¹⁸⁸ examines the connection between the amount of protected State and federal lands in the Rocky Mountain States,¹⁸⁹ per capita income and employment growth from 1969 to 2009 in five categories oriented around the non-metropolitan counties in the west:

- Conservation Counties,
- Moderately Managed Counties,
- Less Than 1% Protected Lands,
- Intensely Managed Counties,
- Mining Counties.

The report defines Conservation Counties as those containing National Parks, wilderness and similar protections. In comparison, the Intensely Managed Counties are those with a higher percentage of school trust lands dedicated to the generation of revenue for the schoolchildren. The report posits a strong correlation between the presence of conservation lands and

- the highest employment growth rates,
- the highest per capita income, and
- the highest per capita income growth in the region.

Conversely, the absence of conservation lands was associated with slower growth rates and lower per capita income. The report states

*In addition to being correlated with population growth, increased levels of higher paying jobs and desirable housing, ...the presence of conservation/recreation lands is correlated with economic development: where you find conserved lands, you tend to find relatively rapid employment growth, income growth and higher incomes when compared to other rural counties in the Rocky Mountain West.*¹⁹⁰

Graphs in the report portray Per Capita Income Growth 1969 – 2009, Per Capita



Income 2009, Employment Growth 1969-2009, Population Growth 1970-2010, and Median Housing Value 2010.¹⁹¹ These graphs show that the greatest increases in all categories were in the Top 5 Conservation Counties, with the twenty-three Mining Counties with the next greatest amounts. The Top 5 Conservation Counties in the region of the study are Teton County – Wyoming (Jackson), Valley County – Idaho (McCall), Mineral County – Montana (west of Missoula), Idaho County – Idaho (Grangeville) and Pitkin County – Colorado (Aspen). Mining dependent counties in Utah (four of twenty-three) are Carbon, Emery, Duchesne and Uintah. Sevier and Beaver Counties are the only other Utah Counties to rank in the study, listed as 3rd and 4th in the Moderately Managed Counties.¹⁹²

An appendix to the report is entitled *Rural Jobs in Utah Associated with Tourism and Recreation: A County-Level Analysis of All Industry Sectors*. Based on the categorization of rural versus urban/suburban counties in Utah,¹⁹³ the appendix indicates that resources in rural Utah counties support 3,946 jobs in the “Mining, Quarrying and Oil and Gas Extraction” category, representing 10.1% of the jobs. On the other hand, the “Recreation and Tourism Combined” category supports 5,803 jobs, representing 14.8% of the workforce in rural counties. It is difficult to directly compare these employment numbers with numbers in other studies, because this study has categorized the rural parts of the State differently than other studies.

The conclusion of this report opines on the nature of the different economic drivers, stating

*Both economic models, commodity production and amenity-based growth, are valuable to the Western economy. Some areas are more conducive to one or the other, while many, if not most, areas have succeeded in balancing both activities. In places where commodity production has exceeded this balance, the local economy will achieve less growth, and be in a worse position to offset the next downward cycle in the commodities sector. Likewise, communities that have underutilized natural resources and are in a position to responsibly develop their resources will not receive their according levels of economic returns.*¹⁹⁴

¹⁸⁸ http://www.sportsmen4responsibleenergy.org/Balancing_Western_Lands_Use_Policy.pdf. ¹⁸⁹ These states are Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming. ¹⁹⁰ See Note 188, *supra*, Report at p. 18.

¹⁹⁴ See Note 188, *supra*, Report at pp. 15-17. ¹⁹² See Note 188, *supra*, Report, Appendix 2 at p. 21. ¹⁹³ For Utah, the metropolitan counties include Davis, Utah, Tooele, Summit, Morgan, Juab, Salt Lake, Weber, Washington and Cache Counties. Box Elder, Iron, Kane, Duchesne, Sanpete, Rich and Daggett Counties are denominated suburban counties, leaving Grand, Carbon, Millard, San Juan, Sevier, Uintah, Beaver, Garfield, Emery, Wayne and Piute Counties as the rural counties. ¹⁹⁴ See Note 188, *supra*, Report at p. 19.



A Deeper, More Focused Economic Look Required

All of these economic reports and studies present useful information. Part and parcel of the decision-making process for management of the public lands, both before and after transfer, should be a very detailed examination of the sources of value (including conservation values and industry concerns) and revenue from the public lands, and the best methods to obtain this value for the citizens of Utah and the Nation.

All of these economic reports and studies present useful information. Part and parcel of the decision-making process for management of the public lands, both before and after transfer, should be a very detailed examination of the sources of value (including conservation values and industry concerns) and revenue from the public lands, and the best methods to obtain this value for the citizens of Utah and the Nation. Differences in these studies, the use of different terminology and the use of different categories for baseline examinations need to be reconciled if possible, or at least placed into a more coherent context.

The nature of the best value is entirely dependent upon the choices people of Utah and the Nation make, and the lifestyle desired in the rural parts of the State. The above information suggests, for example, that a balance between the commodity industries (*mining, timber, etc.*) and the amenity industries (*tourism, ecosystem services*) is best, yet clearly in Utah, wages from the commodity/extractive industries greatly exceed those in the Recreation and Tourism industries. On strictly an average wage basis, the commodity/extractive jobs would generate more revenue for the schools, because State income tax is dedicated to education, assuming no deductions. However, in a recent editorial,¹⁹⁵ Utahns are asked to support the (*lower paying*) conservation jobs because the “steady, sustainable and relatively low-impact “industries” centered on tourism conform closely with the two-fold mission of preservation and protection in perpetuity” that conservation and protective status (*such as a national monument*) confers on an area.¹⁹⁶ All these studies, and the underlying values they represent, should be reviewed by a State Public Lands Interim Commission in order to determine the best path forward.

¹⁹⁵ Editorial by Jeff Clay, Salt Lake Tribune, October 7, 2012. ¹⁹⁶ See also National and State Economic Impacts of Wildlife Watching (FWS), 2001 which states that the economic output of wildlife watching (avian tourism) supports 16,374 jobs in Utah, and generates \$29.4 million in sales tax revenue.

CREATION OF A PUBLIC LANDS INTERIM COMMISSION

H.B. 148 set a deadline of December 31, 2014 for the transfer of the public lands by the federal government to the State. In the interim, it assigned to the CDC numerous tasks, including the preparation of legislation creating a public lands commission to administer the transfer, to address the management of transferred lands, establish actions to be taken if the federal government refuses to transfer and to detail the various interests and rights presently associated with the public lands. It became apparent early on that the CDC did not have sufficient information upon which to base these determinations, nor does it now know the economic implications of a transfer if it were to occur. A meeting with economists revealed that a meaningful study could not be made within the time frame established by H.B. 148.

The need for additional information, analysis and economic projections cannot be overstated. Rational and informed decisions as this initiative moves forward will require a firm grasp of all the elements that will bear upon the many and difficult issues that will be confronted. It doesn't matter whether the process moves forward through legislation, negotiation or litigation or some combination thereof. The State must be as certain as possible as to the ramifications and consequences of the decisions that are made, including the economic impacts to federal, state and county government, as well as to the private users of the public lands. While it is recognized that there are political pressures to move this initiative along, it would be a mistake to get ahead of ourselves.

Accordingly, the CDC has drafted legislation (Appendix 2) that requires that the interim period be used to perform the necessary study and economic analysis, and to prepare

and submit a report and recommendations based upon this empirical data to the Governor and Legislature. Because this groundwork is needed before a permanent structure for the administration of the public lands can be meaningfully fashioned, the draft legislation creates an "interim" commission. The sole function of the interim commission would be to perform the study, report the findings of the study and make recommendations based upon the study, including recommendations as to the creation of a permanent commission.

The draft would create a nine member citizen commission to be appointed by the Governor. Eight of the members would be representative of eight interest groups, i.e. mineral extraction, ranching, environment, outdoor recreation, water, education, tourism, and county government. The ninth member would be selected at large and would serve as the chair. The commission would hire a full-time director who would manage the day to day operations. The director could hire staff as needed, and could enter into consulting contracts if approved by the commission.

The commission would be charged with the duty of conducting and overseeing the aforementioned study and economic analysis. The study would take into account the various existing interests that presently use or derive revenues from the public lands. Following completion of the study, the commission would prepare a report and recommendations to be submitted to the Governor and Legislature. The recommendations would include proposed legislation in accordance with the dictates of H.B. 148, as well as legislation that would create a permanent public lands commission.

CONSIDERATIONS FOR THE UTAH LEGISLATURE

The research conducted and the data collected for the preparation of this report constitute a commencement of what must be a larger investigation into the various issues and concerns identified or that may arise with additional scrutiny. Based on the information set forth in this report, the following actions should be considered and evaluated by the Utah Legislature:

- Create a county indemnification fund to guarantee that counties experience no net-loss of revenue as a result of a transfer of lands.
- Review and modify existing State park designations, clearly distinguishing between historic and cultural parks, outdoor recreation-focused parks, and sport-related parks (golf courses).
- Increase funding for existing State parks to further demonstrate Utah’s commitment to conserving and protecting its natural landscapes.
- Significantly increase funding for the LeRay McAllister Critical Land Conservation Fund to provide resources for State-led conservation efforts to protect agricultural lands, wildlife habitat, watershed protection, and other culturally or historically unique landscapes.
- Consider proposing mechanisms to guarantee that all or a portion of new revenues that may be obtained after taking ownership of the lands are dedicated to fund education or other priorities as established by the Utah Legislature.
- Create a Utah State Wilderness Act that outlines the way high-conservation value lands would be managed under State control.
- Create a Utah State public lands management policy act that outlines an open and public process for land management decisions in Utah that demonstrates a continued commitment to keeping public lands open.
- Prior to any transfer of lands, pre-designate wilderness or other conservation areas through State law so that when any lands are transferred to the state, the public knows the preservation management regime under which the new State lands will be managed.



- Clarify and strengthen the Utah Energy Zones legislation that passed last session to ensure that areas ripe with energy resources are managed in a way that will prioritize responsible development of the Utah's energy resources.
- Study and consider key conservation areas or ecosystems within Utah that may be transferred to non-profit environmental organizations for management under a long-term lease.
- Actively publicize and reiterate Article 18 of the Utah State Constitution which states: “The Legislature shall enact laws to prevent the destruction of and to preserve the Forests on the lands of the State, and upon any part of the public domain, the control of which may be conferred by Congress upon the State.” This provision not only clearly contemplates that it was anticipated that lands were to be transferred to the State, but it also demonstrates that Utahns have always recognized the importance of preserving and caring for forest lands.
- Study and consider adopting a highest or best-use (*preferential-use*) management regime for areas instead of the current multiple-use model.
- Organize with other Western States to pursue a regional agenda for western management of western public lands.
- Undertake, through the Public Lands Commission to be created, a full study identifying both the direct and indirect costs of land management in addition to the revenue expectations that can be derived from the public lands within Utah.
- Instigate an active and robust coordination effort with western Governors and members of Congressional delegations from the West to facilitate a process that would allow for and expedite large-scale land exchanges and re-designations.
- Explore the option of utilizing the Interstate Compact Clause of the United States Constitution to enter into a congressionally approved regional compact under which that Bureau of Land Management and Forest Service lands in the West are transferred to Western States under a public trust. States agreeing to the compact and trust agreement would pledge to keep the vast majority of lands open to public access and to manage for sustainable prosperity and conservation.
- Urge the United States Congress to create a twenty-first century public land law review commission to begin to systematically address the basic structural problems that plague current public land management.
- Statutorily limit the sale of any lands transferred to Utah from the federal government to a private entity without legislative approval.
- Identify areas that may be managed most effectively by SITLA.



CONCLUSION

The transfer of public lands contemplated by H.B. 148 is a bold initiative that will require a re-examination of public lands policy on a federal, state and county level. This re-examination must be fully informed and its implications thoughtfully evaluated.

It is noteworthy that in the Eastern States, where public land owned by federal government is limited, discussions about the general state of human and natural resource affairs can focus on local wants, desires, needs and personalities. In the Western States, where public land is dominated by federal ownership of resources, local issues are given little voice. In the West, the only election that matters concerning the local land issues focused on in the East is the national election of the President and the potential of a new administration. Consequently, the possibility of changing or developing new federal land policy only occurs every four years.

The transfer of public lands contemplated by H.B. 148 is a bold initiative that will require a re-examination of public lands policy on a federal, state and county level. This re-examination must be fully informed and its implications thoughtfully evaluated. The many interests that have become institutionalized over the course of the past century must be identified, studied and given a voice in what must be characterized as a process. This process should have as its goal the development of a new vision for the public lands that better meets the economic, energy, education and recreation needs of today. This report should be viewed as a step forward in this process.

Committee Members

Members:

Gary R. Herbert	Governor
Greg S. Bell	Lieutenant Governor
Wayne L. Neiderhauser	Senate Majority Designee
Michael E. Noel	House Majority Designee
Ross I. Romero	Senate Minority Designee
Brian S. King	House Minority Designee
John E. Swallow	Attorney General Designee
Kevin S. Carter	Director, State Institutional Trust Lands Administration
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Clare Ramsay	Commissioner, Garfield County

Ex Officio Members:

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Spencer P. Eccles	Director, Governor's Office of Economic Development
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Appendix 1: Transfer of Public Lands Act and Related Study (H.B. 148) Enrolled Copy

Enrolled Copy		H.B. 148
1	TRANSFER OF PUBLIC LANDS ACT AND RELATED	
2	STUDY	
3	2012 GENERAL SESSION	
4	STATE OF UTAH	
5	Chief Sponsor: Ken Ivory	
6	Senate Sponsor: Wayne L. Niederhauser	
7	Cosponsors:	Francis D. Gibson Curtis Oda
8	Johnny Anderson	Richard A. Greenwood Patrick Painter
9	Stewart Barlow	Keith Grover Lee B. Perry
10	Roger E. Barrus	Stephen G. Handy Jeremy A. Peterson
11	Jim Bird	Wayne A. Harper Val L. Peterson
12	Derek E. Brown	Neal B. Hendrickson Dixon M. Pitcher
13	Melvin R. Brown	Christopher N. Herrod Kraig Powell
14	David G. Butterfield	Gregory H. Hughes Paul Ray
15	LaVar Christensen	Eric K. Hutchings Douglas Sagers
16	Bradley M. Daw	Don L. Ipson Stephen E. Sandstrom
17	Brad L. Dee	Todd E. Kiser Dean Sanpei
18	John Dougall	Bradley G. Last V. Lowry Snow
19	Jack R. Draxler	Rebecca D. Lockhart Kenneth W. Sumsion
20	Susan Duckworth	John G. Mathis Evan J. Vickers
21	James A. Dunnigan	Daniel McCay Christine F. Watkins
22	Rebecca P. Edwards	Ronda Rudd Menlove R. Curt Webb
23	Steve Eliason	Michael T. Morley Ryan D. Wilcox
24	Craig A. Frank	Merlynn T. Newbold Brad R. Wilson
25	Gage Froerer	Jim Nielson Bill Wright
26	Brad J. Galvez	Michael E. Noel
27		
28	LONG TITLE	

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29 **General Description:**
30 This bill addresses issues related to public lands, including the transfer of title to public
31 lands to the state and requiring the Constitutional Defense Council to study or draft
32 proposed legislation on certain issues related to public lands.
33 **Highlighted Provisions:**
34 This bill:
35 ▶ enacts the Transfer of Public Lands Act;
36 ▶ defines terms;
37 ▶ requires the United States to extinguish title to public lands and transfer title to
38 those public lands to the state on or before December 31, 2014;
39 ▶ provides that if the state transfers title to public lands with respect to which the state
40 receives title to the public lands under the Transfer of Public Lands Act, the state
41 shall retain 5% of the net proceeds the state receives, and pay 95% of the net
42 proceeds the state receives to the United States;
43 ▶ provides that the 5% of the net proceeds of those sales of public lands shall be
44 deposited into the permanent State School Fund;
45 ▶ provides a severability clause;
46 ▶ requires the Constitutional Defense Council to study or draft legislation on certain
47 issues related to the transfer, management, and taxation of public lands, including:
48 • drafting proposed legislation creating a public lands commission; and
49 • establishing actions that shall be taken to secure, preserve, and protect the state's
50 rights and benefits related to the United States' duty to have extinguished title to
51 public lands and transferred title to those public lands to the state; and
52 ▶ makes technical and conforming changes.
53 **Money Appropriated in this Bill:**
54 None
55 **Other Special Clauses:**
56 This bill provides an immediate effective date.

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57 **Utah Code Sections Affected:**
58 ENACTS:
59 **63L-6-101**, Utah Code Annotated 1953
60 **63L-6-102**, Utah Code Annotated 1953
61 **63L-6-103**, Utah Code Annotated 1953
62 **63L-6-104**, Utah Code Annotated 1953
63 **Uncodified Material Affected:**
64 ENACTS UNCODIFIED MATERIAL
65

66 *Be it enacted by the Legislature of the state of Utah:*
67 Section 1. Section **63L-6-101** is enacted to read:
68 **CHAPTER 6. TRANSFER OF PUBLIC LANDS ACT**
69 **63L-6-101. Title.**
70 This chapter is known as the "Transfer of Public Lands Act."
71 Section 2. Section **63L-6-102** is enacted to read:
72 **63L-6-102. Definitions.**
73 As used in this chapter:
74 (1) "Governmental entity" is as defined in Section 59-2-511.
75 (2) "Net proceeds" means the proceeds from the sale of public lands, after subtracting
76 expenses incident to the sale of the public lands.
77 (3) "Public lands" means lands within the exterior boundaries of this state except:
78 (a) lands to which title is held by a person who is not a governmental entity;
79 (b) lands owned or held in trust by this state, a political subdivision of this state, or an
80 independent entity;
81 (c) lands reserved for use by the state system of public education as described in Utah
82 Constitution Article X, Section 2, or a state institution of higher education listed in Section
83 53B-1-102;
84 (d) school and institutional trust lands as defined in Section 53C-1-103;

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85 (e) lands within the exterior boundaries as of January 1, 2012, of the following that are
86 designated as national parks:
87 (i) Arches National Park;
88 (ii) Bryce Canyon National Park;
89 (iii) Canyonlands National Park;
90 (iv) Capitol Reef National Park; and
91 (v) Zion National Park;
92 (f) lands within the exterior boundaries as of January 1, 2012, of the following national
93 monuments managed by the National Park Service as of January 1, 2012:
94 (i) Cedar Breaks National Monument;
95 (ii) Dinosaur National Monument;
96 (iii) Hovenweep National Monument;
97 (iv) Natural Bridges National Monument;
98 (v) Rainbow Bridge National Monument; and
99 (vi) Timpanogos Cave National Monument;
100 (g) lands within the exterior boundaries as of January 1, 2012, of the Golden Spike
101 National Historic Site;
102 (h) lands within the exterior boundaries as of January 1, 2012, of the following
103 wilderness areas located in the state that, as of January 1, 2012, are designated as part of the
104 National Wilderness Preservation System under the Wilderness Act of 1964, 16 U.S.C. 1131
105 et seq.:
106 (i) Ashdown Gorge Wilderness;
107 (ii) Beartrap Canyon Wilderness;
108 (iii) Beaver Dam Mountains Wilderness;
109 (iv) Black Ridge Canyons Wilderness;
110 (v) Blackridge Wilderness;
111 (vi) Box-Death Hollow Wilderness;
112 (vii) Canaan Mountain Wilderness;

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113 (viii) Cedar Mountain Wilderness;
114 (ix) Cottonwood Canyon Wilderness;
115 (x) Cottonwood Forest Wilderness;
116 (xi) Cougar Canyon Wilderness;
117 (xii) Dark Canyon Wilderness;
118 (xiii) Deep Creek Wilderness;
119 (xiv) Deep Creek North Wilderness;
120 (xv) Deseret Peak Wilderness;
121 (xvi) Doc's Pass Wilderness;
122 (xvii) Goose Creek Wilderness;
123 (xviii) High Uintas Wilderness;
124 (xix) LaVerkin Creek Wilderness;
125 (xx) Lone Peak Wilderness;
126 (xxi) Mount Naomi Wilderness;
127 (xxii) Mount Nebo Wilderness;
128 (xxiii) Mount Olympus Wilderness;
129 (xxiv) Mount Timpanogos Wilderness;
130 (xxv) Paria Canyon-Vermilion Cliffs Wilderness;
131 (xxvi) Pine Valley Mountain Wilderness;
132 (xxvii) Red Butte Wilderness;
133 (xxviii) Red Mountain Wilderness;
134 (xxix) Slaughter Creek Wilderness;
135 (xxx) Taylor Creek Wilderness;
136 (xxxi) Twin Peaks Wilderness;
137 (xxxii) Wellsville Mountain Wilderness; and
138 (xxxiii) Zion Wilderness;
139 (i) lands with respect to which the jurisdiction is ceded to the United States as provided
140 in Section 63L-1-201 or 63L-1-203;

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141 (j) real property or tangible personal property owned by the United States if the
142 property is within the boundaries of a municipality; or
143 (k) lands, including water rights, belonging to an Indian or Indian tribe, band, or
144 community that is held in trust by the United States or is subject to a restriction against
145 alienation imposed by the United States.
146 Section 3. Section **63L-6-103** is enacted to read:
147 **63L-6-103. Transfer of public lands.**
148 (1) On or before December 31, 2014, the United States shall:
149 (a) extinguish title to public lands; and
150 (b) transfer title to public lands to the state.
151 (2) If the state transfers title to any public lands with respect to which the state receives
152 title under Subsection (1)(b), the state shall:
153 (a) retain 5% of the net proceeds the state receives from the transfer of title; and
154 (b) pay 95% of the net proceeds the state receives from the transfer of title to the
155 United States.
156 (3) In accordance with Utah Constitution Article X, Section 5, the amounts the state
157 retains in accordance with Subsection (2)(a) shall be deposited into the permanent State School
158 Fund.
159 Section 4. Section **63L-6-104** is enacted to read:
160 **63L-6-104. Severability clause.**
161 If any provision of this chapter or the application of any provision to any person or
162 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
163 remainder of this chapter shall be given effect without the invalid provision or application. The
164 provisions of this chapter are severable.
165 Section 5. **Constitutional Defense Council study.**
166 (1) During the 2012 interim, the Constitutional Defense Council created in Section
167 63C-4-101 shall prepare proposed legislation:
168 (a) creating a public lands commission to:

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169 (i) administer the transfer of title of public lands to the state; and
170 (ii) address the management of public lands and the management of multiple uses of
171 public lands, including addressing managing open space, access to public lands, local planning,
172 and the sustainable yield of natural resources on public lands;
173 (b) to establish actions that shall be taken to secure, preserve, and protect the state's
174 rights and benefits related to the United States' duty to have extinguished title to public lands,
175 in the event that the United States does not meet the requirements of Title 63L, Chapter 6,
176 Transfer of Public Lands Act;
177 (c) making any necessary modifications to the definition of "public lands" in Section
178 63L-6-102, including any necessary modifications to a list provided in Subsections
179 63L-6-102(3)(e) through (h);
180 (d) making a determination of or a process for determining interests, rights, or uses
181 related to:
182 (i) easements;
183 (ii) geothermal resources;
184 (iii) grazing;
185 (iv) mining;
186 (v) natural gas;
187 (vi) oil;
188 (vii) recreation;
189 (viii) rights of entry;
190 (ix) special uses;
191 (x) timber;
192 (xi) water; or
193 (xii) other natural resources or other resources; and
194 (e) determining what constitutes "expenses incident to the sale of public lands"
195 described in Subsection 63L-6-102(2).
196 (2) During the 2012 interim, the Constitutional Defense Council created in Section

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197 63C-4-101 shall study and determine whether to prepare proposed legislation:
198 (a) to administer the process for:
199 (i) the United States to extinguish title to public lands;
200 (ii) the state to receive title to public lands from the United States; or
201 (iii) the state to transfer title to any public lands the state receives in accordance with
202 Title 63L, Chapter 6, Transfer of Public Lands Act;
203 (b) establishing a prioritized list of management actions for the state and the political
204 subdivisions of the state to perform on public lands:
205 (i) before and after the United States extinguishes title to public lands; and
206 (ii) to preserve and promote the state's interest in:
207 (A) protecting public health and safety;
208 (B) preventing catastrophic wild fire and forest insect infestation;
209 (C) preserving watersheds;
210 (D) preserving and enhancing energy and the production of minerals;
211 (E) preserving and improving range conditions; and
212 (F) increasing plant diversity and reducing invasive weeds on range and woodland
213 portions of the public lands;
214 (c) establishing procedures and requirements for subjecting public lands to property
215 taxation;
216 (d) establishing other requirements related to national forests, national recreation areas,
217 or other public lands administered by the United States; and
218 (e) addressing the indemnification of a political subdivision of the state for actions
219 taken in furtherance of Title 63L, Chapter 6, Transfer of Public Lands Act.
220 (3) The Constitutional Defense Council may study any other issue related to public
221 lands as determined by the Constitutional Defense Council.
222 (4) The Constitutional Defense Council shall:
223 (a) make a preliminary report on its study and preparation of proposed legislation to the
224 Natural Resources, Agriculture, and Environment Interim Committee and the Education

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225 Interim Committee:
226 (i) on or before the June 2012 interim meeting; and
227 (ii) on or before the September 2012 interim meeting; and
228 (b) report on its findings, recommendations, and proposed legislation to the Natural
229 Resources, Agriculture, and Environment Interim Committee and the Education Interim
230 Committee on or before the November 2012 interim meeting.
231 Section 6. **Effective date.**
232 If approved by two-thirds of all the members elected to each house, this bill takes effect
233 upon approval by the governor, or the day following the constitutional time limit of Utah
234 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
235 the date of veto override.

Appendix 2: Proposed Legislation, "Public Lands Interim Commission Act"

1 **PUBLIC LANDS INTERIM COMMISSION ACT**
2
3 2013 GENERAL SESSION
4
5 STATE OF UTAH
6
7 **Chief Sponsor:**
8
9 **General Description:**
10 This bill addresses issues related to the 2012 Transfer of Public Lands Act, including the
11 creation of a Public Lands Interim Commission and requiring the Interim Commission to
12 conduct and oversee a study and economic analysis of the public lands, and to submit a report
13 and recommendation's based upon this study to the Governor and the Legislature.
14 **Highlighted Provisions:**
15 This Bill:
16 • enacts the Public Lands Interim Commission Act;
17 • sets forth the purposes of the act;
18 • defines terms
19 • provides for the appointment, membership, chair and quorum of the Interim Commission;
20 • requires the Interim Commission to conduct and oversee a study and economic analysis
21 to determine the ramifications and economic impacts of the transfer of public lands;
22 • requires the Interim Commission to prepare and submit to the Governor and the
23 Legislature a report and recommendations based upon the study and economic analysis;
24 • provides for the selection of a director to oversee the day to day operations of the Interim
25 Commission;
26 • requires the Interim Commission to prepare legislation to administer the process of the
27 transfer of public lands, establishing actions that shall be taken to secure, preserve and
28 protect the state's rights and benefits related to the federal government's duty to dispose
29 of the public lands in the event that the federal government does not transfer the public
30 lands, and creating a permanent Public Lands Commission to oversee the transfer of and
31 to thereafter administer the public lands to promote multiple use and sustainable yield;
32 • provides a severability clause; and
33 • makes the Interim Commission subject to the Public Officer's and Employee's Ethics Act.

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34 **Money Appropriated in this Bill:**
35
36
37
38 **Other Special Clauses:**
39 This bill provides an immediate effective date.
40 **Utah Code Sections Affected:**
41 ENACTS:
42 **63L-7-101**, Utah Code Annotated
43 **63L-7-102**, Utah Code Annotated
44 **63L-7-103**, Utah Code Annotated
45 **63L-7-104**, Utah Code Annotated
46 **63L-7-105**, Utah Code Annotated
47 **63L-7-106**, Utah Code Annotated
48 **63L-7-107**, Utah Code Annotated
49 **63L-7-108**, Utah Code Annotated
50 **Uncodified Material Affected:**
51 ENACTS UNCODIFIED MATERIAL
52
53
54 *Be it enacted by the Legislature of the State of Utah:*
55 Section 1. Section **63L-7-101** is enacted to read:
56 **CHAPTER 7. PUBLIC LANDS INTERIM COMMISSION ACT**
57 **63L-7-101. Title.**
58 This chapter is known as the "Public Lands Interim Commission Act."
59 Section 2. Section **63L-7-102** is enacted to read:
60 **63L-7-102. Purpose.**
61 The purpose of this title is to implement certain of the provisions of the Transfer of Public
62 Lands Act, **63L-6-101** et seq. by:
63 (1) Creating a Public Lands Interim Commission;
64 (2) Providing for the appointment and membership of this Interim Commission and setting a
65 deadline for such appointment;
66 (3) Setting forth the duties, responsibilities and powers of the Interim Commission;

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67 (4) Providing for the appointment of a Director to oversee the administration of the Interim
68 Commission;
69 (5) Requiring the Interim Commission to conduct and oversee a study and economic analysis
70 to determine the ramifications and economic impacts of the transfer of public lands; and
71 (6) Requiring the Interim Commission to prepare a report and recommendations for
72 subsequent actions to the Governor and Legislature and settling a deadline for the submission.
73 Section 3. Section **63L-7-103** is enacted to read:
74 **63L7-103. Definitions.**
75 As used in this chapter:
76 (1) " Interim Commission" means the Public Lands Interim Commission created by this
77 chapter.
78 (2) "Public Lands" are those lands defined in Section 63L-6-102 (3).
79 Section 4. Section **63L-7-104** is enacted to read:
80 **63L-7-104. Interim Commission appointment, membership, chair, quorum.**
81 (1) There is established a Public Lands Interim Commission.
82 (2) The Interim Commission shall consist of nine members appointed by the Governor. Such
83 appointments shall be made on or before March 31, 2013.
84 (3) The terms of the members shall run from the date of appointment to March 31, 2015 or the
85 date of the creation of a permanent Public Lands Commission, whichever is sooner.
86 (4) The membership of the Interim Commission shall be as follows:
87 (a) one member shall be a representative of the mineral extraction industry;
88 (b) one member shall be a representative of the ranching industry;
89 (c) one member shall be a representative of the outdoor recreation industry
90 (d) one member shall be a representative of the environmental community;
91 (e) one member shall be a representative of water interests;
92 (f) one member shall be a representative of education interests;
93 (g) one member representing the tourism industry;
94 (h) one member shall be a representative of county government and this member shall serve
95 as the vice chair of the Interim Commission; and
96 (i) one member shall be selected at-large and this member shall serve as the chair of the
97 Interim Commission.

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98 (5) Five members of the Interim Commission shall constitute a quorum for the transaction of
99 business, however the chair must be a member of the quorum.
100 (6) The Governor may remove a member of the Interim Commission with or without cause.
101 Section 5. Section **63L-7-105** is enacted to read:
102 **63L-7-105. Director.**
103 (1) The Interim Commission with the consent of the Governor shall select a Director who
104 shall be responsible for the day to day operations, such selection to be on the basis of outstanding
105 qualification's pertinent to the purposes of this chapter.
106 (2) The Director shall have those powers and duties as established by the Interim Commission
107 which shall include the hiring of staff, as needed.
108 (3) The Director shall also have the authority, with the approval of the Interview Commission
109 to enter into contracts with outside contractors or consultants on behalf of the Interim
110 Commission.
111 (4) The Director shall serve from the date of hire to March 31, 2015 or until a permanent
112 Public Lands Commission is created, whichever is sooner.
113 (5) The Interim Commission:
114 (a) shall establish the compensation of the director;
115 (b) annually report the director's compensation to the Legislature;
116 (6) The Interim Committee may remove the director from office for cause by a majority vote.
117 (7) The Governor may petition the Interim Commission for the removal of the director for
118 cause.
119 (a) the Interim Commission shall hold a hearing on the Governor's petition within 30 days
120 after its receipt.
121 (b) if after hearing the Interim Commission finds cause for removal by a preponderance of the
122 evidence, it shall remove the director from office by a majority vote.
123 Section 6. Section **63L-7-106** is enacted to read:
124 **63L-7-106. Study and economic analysis.**
125 (1) The Interim Commission shall conduct and oversee a study and economic analysis to
126 determine the ramifications and economic impacts of the transfer of the public lands to state
127 ownership as contemplated by the Transfer of Public Lands Act.
128 (2) The study and economic analysis shall include but not be limited to the following:

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129 (a) inventory, assess and synthesize the current state of publicly available information
 130 regarding public lands ownership, management and methods of transfer.
 131 (b) evaluate current databases to determine present public lands uses in Utah, and the ways in
 132 which socio-economic conditions are influenced by these land uses, to include:
 133 (c) evaluate present payments in lieu of taxes, timber receipts, severance taxes, mineral lease
 134 royalties, community impact board payments and other forms of revenue sharing and their
 135 impacts on county and local government revenues.
 136 (d) identify and obtain databases developed for research projects that provide insights into the
 137 use of public lands in Utah as well as the land use and management preferences of Utahans'.
 138 (e) identify, assess and economically evaluate the major issues and impacts pertaining to the
 139 transfer of all or part of the public lands to the state using the theoretical modeling of various
 140 transfer alternatives.
 141 (3) The Interim Commission shall provide input and information, as requested, to any efforts
 142 in the Congress of the United States to transfer public lands to the state.
 143 Section 7. Section **63L-7-107** is enacted to read:
 144 **63L-7-107. Report and recommendation to Governor and Legislature.**
 145 (1) Based upon the study and economic analysis, the Interim Commission shall prepare and
 146 submit a report of its findings and recommendations to the Governor and the Legislature.
 147 (2) The report and recommendation shall include proposed legislation:
 148 (a) to administer the process for:
 149 (i) the United States to extinguish title to public lands;
 150 (ii) the state to receive title to public lands from the United States; or
 151 (iii) the state to transfer title to any public lands the state receives in accordance with Title
 152 63L, Chapter 6, Transfer of Public Lands Act;
 153 (b) establishing a prioritized list of management actions for the state and the political
 154 subdivisions of the state to perform on public lands both before and after the United States
 155 extinguishes title to the public lands;
 156 (c) establishing procedures and requirements for subjecting public lands to property taxation;
 157 (d) establishing other requirements related to national forests, national recreation areas, or
 158 other public lands administered by the United States;

159 (e) addressing the indemnification of a political subdivision of the state for actions taken in
 160 furtherance of Title 63L, Chapter 6, Transfer of Public Lands Act.
 161 (f) establishing action's that shall be taken to secure, preserve, and protect the state's rights
 162 and benefits related to the feral governments' duty to have extinguished title to the public lands
 163 in the event that the federal government does not meet the requirements of the Transfer of
 164 Public Lands Act; and
 165 (g) creating a permanent Public Lands Commission to oversee the transfer of and thereafter
 166 administer the public lands in a manner that will promote multiple use and sustainable yield.
 167 Section 8. Section **63L -7-108** is enacted to read:
 168 **63L-7-108. Interim Commission subject to the Public Officers' and Employees' Ethics**
 169 **Act.**
 170 Interim Commission members, the director, employees and agents of the Interim Commission
 171 are subject to the requirements of Title 67, Chapter 16, Public Officer's and Employee's Ethics
 172 Act, and to any additional requirements established by the Interim Commission.
 173 Section 9. **Severability Clause.**
 174 If any provision of this chapter or the application of any provision to any person or
 175 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
 176 remainder of this chapter shall be given effect without the invalid provision or application. The
 177 provisions of this chapter are severable.
 178 Section 10. **Effective date**
 179 If approved by two-thirds of all the members elected to each house, this bill takes effect upon
 180 approval by the governor, or the day following the constitutional time limit of Utah Constitution
 181 Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto
 182 override.



CONSTITUTIONAL DEFENSE COUNCIL

801.537.9801