FEDERAL PUBLIC LAND MANAGEMENT & UTAH’S TRANSFER OF PUBLIC LANDS ACT

John Ruple
Research Associate Professor of Law & Wallace Stegner Center Fellow

Wallace Stegner Center for Land Resources & the Environment
S.J. Quinney College of Law
University of Utah

The Council of State Governments West
August 24-25, 2015
Utah’s Transfer of Public Lands Act

Utah Code Ann. § 63L-6-103(a).

“On or before December 31, 2014, the United States shall:
(a) extinguish title to public lands; and
(b) transfer title to public lands to the state. . . .”
Spinoff Legislation

At least 52 bills or resolutions in 14 states:
- Alaska (1), Arkansas (1), Arizona (7), Colorado (6), Idaho (2), Minnesota (1), Montana (2), Nevada (2), New Mexico (9), Oregon (2), South Carolina (1), Utah (12), Washington (3), and Wyoming (3).

At least 15 bills or resolutions passed by legislatures:
- 13 bills enacted;
- 2 bills enacted and vetoed; and
- Numerous non-binding resolutions.

Legislation called for:
- Federal government to transfer title of public lands to states;
- Studies of the issues relating to transfer of federal lands to the states;
- Interstate compacts on public land transfer efforts; and

Resolutions in support of transfer:
- Republican National Committee;
- National Association of Counties;
- American Legislative Exchange Council (ALEC); and
- Support from non-Western states.
Legal Context
The Property Clause

“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . .”

U.S. CONST. Art. IV, sec. 3., cl. 2.
United States v. Gratiot
39 U.S. 526 (1840).

• Congress’ power over public lands is “without limitation.”

• “Dispose of” includes the power to retain, and disposal decisions are within the discretion of Congress.

Light v. United States
220 U.S. 523 (1911).

• The US can “withhold or reserve land [and] it can do so indefinitely.”
The Equal Footing Doctrine

“All states are admitted to the Union with the same attributes of sovereignty (i.e. on an equal footing) as the original 13 states.”


United States v. Texas


“The ‘equal footing’ clause has long been held to refer to political rights and to sovereignty. It does not, of course, include economic stature or standing. . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.”
Utah’s Statehood Bargain
Federal Land Grants to the State of Utah

<table>
<thead>
<tr>
<th>Purpose of Federal Grant</th>
<th>Acres Granted by Federal Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public schools</td>
<td>5,844,196 (9,132 mi²)</td>
</tr>
<tr>
<td>Public buildings</td>
<td>64,000 (100 mi²)</td>
</tr>
<tr>
<td>Universities</td>
<td>156,080 (244 mi²)</td>
</tr>
<tr>
<td>Ag. &amp; Mining Colleges</td>
<td>200,000 (313 mi²)</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1,150,000 (1,797 mi²)</td>
</tr>
<tr>
<td>Total</td>
<td>7,507,729 (11,731 mi²)</td>
</tr>
</tbody>
</table>

Utah Enabling Act

“Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act.”

28 Stat. 107 (1894).
Utah Enabling Act &
the Utah Constitution

“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.

28 Stat. 107 (1894); see also Utah Const. art. III, cl. 2.
Utah Enabling Act &
the Utah Constitution

“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.”

28 Stat. 107 (1894); see also Utah Const. art. III, cl. 2.
Utah Enabling Act & the Utah Constitution

“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.”

28 Stat. 107 (1894); see also Utah Const. art. III, cl. 2.
INDIAN LAND FOR SALE

GET A HOME OF YOUR OWN
EASY PAYMENTS

PERFECT TITLE
POSSESSION WITHIN THIRTY DAYS

FINE LANDS IN THE WEST
IRRIGATED IRRIGABLE
GRAZING AGRICULTURAL DRY FARMING

In 1910 the Department of the Interior sold under sealed bids allotted Indian land as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Acres</th>
<th>Average Price per Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Endangered Species . . .
**ESA § 7 Consultation**

- The TPLA does not eliminate ESA compliance requirements.
- Federal agencies consult under § 7.
- Non-federal entities must develop Habitat Conservation Plans under § 9.

**Time to Obtain an Incidental Take Statement**

<table>
<thead>
<tr>
<th></th>
<th>Federal Land</th>
<th>State Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>CE</td>
<td>0.5 years</td>
<td>1.7 years</td>
</tr>
<tr>
<td>EA</td>
<td>1.5 years</td>
<td>4-6 years</td>
</tr>
<tr>
<td>EIS</td>
<td>4.4 years</td>
<td>8-12 years</td>
</tr>
</tbody>
</table>
Minerals: Is the Best Case Good Enough?
Federal Mineral Reservations

• Many statehood enabling acts expressly reserve mineral lands to the federal government. (e.g., Idaho, Montana, Washington, and Wyoming)

• Even where minerals were not expressly reserved, the U.S. Supreme Court holds that federal policy since 1785 was to reserve minerals and enabling acts must be read in light of that policy.


• “Where [land grant] sections are mineral — known to be so when the grant takes effect — they do not pass under the grant.”

“[T]itle to unsurveyed sections of the public lands which have been designated as school lands does not pass to the State upon its admission into the Union, but remains in the Federal Government until the land is surveyed.”

An Analysis of a Transfer of Federal Lands to the State of Utah

Prepared for:
Public Lands Policy Coordination Office
Office of the Governor
510 State Office Building
Salt Lake City, Utah 84114-1107

Prepared by:
University of Utah,
Bureau of Economic and Business Research
Jan Elise Stansberry, John C. Dammen, Michael T. Hogen, Levi Pese

Utah State University,
Department of Applied Economics
Paul M. Johnson

Weber State University,
Department of Economics
Theresa C. Gerla

Edited and Produced by the Bureau of Economic and Business Research

November 2014
## Half the Economic Story

(million of dollars)

All figures from: *AN ANALYSIS OF A TRANSFER OF FEDERAL LANDS TO THE STATE OF UTAH* (2014).

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue</td>
<td>$332</td>
</tr>
<tr>
<td>Management Cost</td>
<td>-$247</td>
</tr>
<tr>
<td>Federal Payments</td>
<td>-$35</td>
</tr>
<tr>
<td><strong>Surplus(!)</strong></td>
<td><strong>$50</strong></td>
</tr>
</tbody>
</table>
## The Other Half of the Economic Story

(million of dollars)

All figures from: *AN ANALYSIS OF A TRANSFER OF FEDERAL LANDS TO THE STATE OF UTAH (2014).*

<table>
<thead>
<tr>
<th>Source Description</th>
<th>Revenue (Million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MLA Revenue</td>
<td>$308</td>
</tr>
<tr>
<td>Fed. MLA Revenue</td>
<td>$158</td>
</tr>
<tr>
<td>All Other Revenue</td>
<td>$24</td>
</tr>
<tr>
<td>Utah MLA Revenue</td>
<td>$150</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$332</td>
</tr>
<tr>
<td>Total MLA Revenue</td>
<td>$308</td>
</tr>
</tbody>
</table>
### The Other Half of the Economic Story

(million of dollars)

All figures from: *AN ANALYSIS OF A TRANSFER OF FEDERAL LANDS TO THE STATE OF UTAH (2014)*.

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MLA Revenue</td>
<td>$308</td>
</tr>
<tr>
<td>All Other Revenue</td>
<td>$24</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$332</td>
</tr>
<tr>
<td>Fed. MLA Revenue</td>
<td>$158</td>
</tr>
<tr>
<td>Utah MLA Revenue</td>
<td>$150</td>
</tr>
<tr>
<td>Total New Revenue</td>
<td>$158</td>
</tr>
<tr>
<td>All New MLA Revenue</td>
<td>$158</td>
</tr>
<tr>
<td>All Other Revenue</td>
<td>$24</td>
</tr>
<tr>
<td>Management Cost</td>
<td>- $247</td>
</tr>
<tr>
<td>Federal Payments</td>
<td>- $35</td>
</tr>
<tr>
<td><strong>Potential Deficit</strong></td>
<td>- $100</td>
</tr>
</tbody>
</table>
A Better Path Forward

Some kind of responsibility in a social way—to family, to community, to nation, to whatever else—is absolutely essential.
Some kind of responsibility in a social way— to family, to community, to nation, to whatever else— is absolutely essential.

Federal Land Policy and Management Act

“[T]o the extent consistent with the laws governing the administration of the public lands, coordinate the plans use inventory, planning, and management of activities of or for such lands with the land use planning and management programs of . . . the States and local governments within which the lands are located. . . . Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.”

43 U.S.C. § 1712(c)(9).
National Environmental Policy Act

“A State or local agency of similar qualifications . . . may by agreement with the lead agency become a cooperating agency.”

40 C.F.R. § 1508.5.

“The lead agency shall . . . Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.”

40 C.F.R. § 1501.6(a)(2).
Land Exchanges
Federal Public Land Management can and Should be Improved, but the TPLA is Not the Answer:

• Frustration over federal management does not create a legal claim to those lands.
• Utah is not legally entitled to more land.
• Takeover creates unreasonable economic risk.
• Litigation takes money away from more productive efforts and makes collaboration more difficult.
WSC White Papers are available at:
http://law.utah.edu/projects/stegner-research-fellows-program/

Questions or Comments:
john.ruple@law.utah.edu
(801) 581-6545