

# 10 answers to common questions about public land transfer

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## 1 Is there a constitutional and legal basis for states to gain control over the public lands found within their borders?

Yes, the Utah Commission for the Stewardship of Public Lands compiled a team of renowned constitutional attorneys to examine the legal theories surrounding the transfer of public lands to the states. Centered on the Equal Sovereignty Principle, Compact Theory and Equal Footing Doctrine they determined that "legitimate legal bases exist to attempt to gain ownership or control over Utah's public lands." It was their recommendation that the Commission and Legislature urge the Governor and Attorney General of the State of Utah to "consider instituting litigation against the United States of America under the Original Jurisdiction of the U.S. Supreme Court." These legal theories and arguments not only apply to Utah's litigation efforts, but to all other Western states as well.

Online resource: <http://le.utah.gov/interim/2015/pdf/00005590.pdf>

## 2 Has a transfer been done before?

Yes, during the 19th century the federal government controlled as much as 90 percent of all lands between Indiana and Florida for decades. Midwestern and Southern states recognized the toll this was taking, banded together and compelled Congress to pass legislation transferring federal lands to their care and management. Today, less than 5 percent of these states' landmasses are controlled by the federal government. The transfer of public lands to willing states is nothing new and has a long and storied history steeped in precedent.

Online resources:

<http://www.breitbart.com/big-government/2015/02/10/missouri-transfer-of-public-lands-champion/>

<http://www.breitbart.com/big-government/2015/02/04/illinois-won-the-first-sagebrush-rebellion>

## 3 Who manages lands more effectively, the federal government or Western states?

Federal multiple-use lands have enormous potential to generate revenues for the public good. Yet the BLM and U.S. Forest Service lose taxpayers an average of nearly \$2 billion per year. By comparison, states are controlling costs and generating substantial revenues from state trust lands. From 2009 to 2013 Montana, Idaho, New Mexico and Arizona earned a combined average of \$14.51 for every dollar spent managing state trust lands. During that same period federal land agencies lost money, generating only 73 cents for each dollar spent. High costs and inefficiencies have contributed to the three largest federal land management agencies having a combined deferred maintenance backlog of almost \$18 billion. This threatens the environment and very resources these federal agencies were created to protect.

Online resources:

[http://www.perc.org/sites/default/files/pdfs/150303\\_PERC\\_DividedLands.pdf](http://www.perc.org/sites/default/files/pdfs/150303_PERC_DividedLands.pdf)

[http://www.perc.org/sites/default/files/pdfs/BreakingtheBacklog\\_7IdeasforNationalParks.pdf](http://www.perc.org/sites/default/files/pdfs/BreakingtheBacklog_7IdeasforNationalParks.pdf)

[http://www.perc.org/sites/default/files/pdfs/PLR%20Fed-State%20Recreation\\_REVISED.pdf](http://www.perc.org/sites/default/files/pdfs/PLR%20Fed-State%20Recreation_REVISED.pdf)

## 4 Won't these public lands be sold off to the highest bidder once transferred to the states?

No, public lands are a way of life and integral part of our culture as Western Americans. This year the Utah state legislature passed the Utah Land Management Policy Act. This piece of legislation implements a plan for millions of acres that the state is positioned to receive from the federal government through its litigation efforts. Highlighted among its provisions is its affirmation to keep transferred federal lands firmly in the hands of the public. The law declares that "it is the policy of the state that public land be retained in state ownership." Al-

though the legislation does not entirely preclude the sale of transferred land, it is only under rare and isolated circumstances that former federal lands can be sold. Public hearings, environmental and economic studies, and approval by the director and board of the Division of Land Management are all needed for land to change hands. For any tract of land in excess of 200 acres (less than a third of a square mile) the hurdle is much higher. A sale of this size requires all of the above criteria plus approval by the House, Senate and the Governor. It is the intent of the state of Utah to keep these lands public and other Western states are sure to implement a similar management plan. In fact, if anyone is trying to sell off Western public lands, its Washington DC. On May 2, 2015, Rep. Ted Poe introduced the American Land Act (H.R. 1931) which would require the USFS and BLM to auction off 8% of the lands they control per year for the next 5 years.

Online resources:

<http://le.utah.gov/~2016/bills/static/HB0276.html>

<https://www.congress.gov/bill/114th-congress/house-bill/1931/text>

## 5

### Will people still be able to recreate on transferred federal lands?

Yes, in fact the amount and quality of recreation is likely to increase. All Western states allow for some form of recreation on state trust lands and trust agencies have often found innovative ways to accommodate recreational demands while meeting their fiduciary responsibilities. State parks throughout the West are also effective providers of public recreation opportunities. Although Western state parks make up only one-fifth as much land as national parks, they bring in nearly 80 percent as many visitors as national parks in the West. This popularity is in large part due to the fact that states provide the types and quality of recreational opportunities better than federal agencies. The federal government on the other hand, has no clear method of prioritizing competing uses on our multiple-use public lands and struggles to meet or even establish recreation management goals. As federal land management agencies acquire more land and regulations continue to expand, recreation will continue to decline on our public lands. This makes it imperative that federal lands be transferred those who know how to effectively manage for recreation.

Online resource:

<http://www.perc.org/articles/access-divided-state-federal-recreation-management-west>

## 6

### Can the states afford to manage transferred lands?

Yes, the state of Utah and Utah-based think tank Strata conducted separate studies examining the management costs and how much the state of Utah will generate should lands be turned over from federal management. Both studies found that the state stands not only cover its management costs, but make millions of dollars each year. While this is partially dependent on the price of oil and gas, it should be noted that lower management costs, timber harvests, increased grazing, and more recreational opportunities contribute to this as well. The Utah Public Lands Policy Coordination Office, which oversaw the state's report, wrote in its summary: "The study demonstrates that this can be accomplished without sacrificing the beauty of our state, the quality of our life, or the attraction of Utah to tourists and recreationists from around the country and the world." Other states are currently conducting their own studies with the release of their findings set to come out in the next few months.

Online resources:

<http://publiclands.utah.gov/wp-content/uploads/2014/11/1.%20Land%20Transfer%20Analysis%20Final%20Report.pdf>

<http://www.strata.org/wp-content/uploads/ipePublications/Costs-of-Land-Administration-in-Utah.pdf>

<http://endfedaddiction.org/files/2016/05/Economic-Value-of-Energy-Resources-on-Federal-Lands-Final-Revision-9.17.13.pdf>

## 7

### What will happen to the thousands of federal employees currently managing our federal lands once they are transferred to the states?

While federal oversight of our public lands will be a shadow of its former self, the need for land managers will be more important than ever. States will either expand or create new land management agencies to handle the influx of federal lands being transferred to their care. This will create a host of job openings for federal

biologists, forest rangers, BLM agents, and others currently employed by the national government. Under the guidance of state land management agencies, these good men and women will be able to better manage our public lands.

Online resource:

<http://le.utah.gov/~2016/bills/static/HB0276.html>

8

What will happen to the valid and existing rights (grazing, rights of way, etc.) post transfer?

This is a decision that will have to be made by each individual state. However, Utah has established a good model. The Utah Public Land Management Act states that "Upon receiving title to a tract of federal public land, the state shall honor all pre-existing rights that run appurtenant to that tract of federal public land." Promoting local control and rights is at the heart of the transfer movement, not restricting recreational and economic access.

Online resource:

<http://le.utah.gov/~2016/bills/static/HB0276.html>

9

How is the transfer movement different from what Cliven Bundy, those who occupied the Malheur National Wildlife Refuge, and others are doing?

Many Westerners are discouraged with federal mismanagement of our public lands. They see how federal management has mistreated the land, harmed individual rights, depressed local economies, and polluted the environment. However, what the Bundys have chosen to do is not representative of western values or the means by which transfer advocates hope to restore the balance of federalism. Occupying federal offices does nothing to constructively influence policy and threatens the cause of freedom. The transfer of public lands movement is about embracing the American way of pursuing political change through cultural influence, legislative avenues, and judicial redress- not through the direct action of seizure.

Online resource:

<http://sutherlandinstitute.org/news/2016/01/06/oregon-standoff-frustration-is-reasonable-extremism-is-not/>

10

How will the transfer impact the environment?

Federal land agencies have managed the West like a museum for years. This hands off management approach is destroying watersheds, polluting our air, and burning down forests. Our communities and the environment deserve better. States have the knowhow and incentives to repair decades of federal neglect by tending to the environment like the garden that it is. They understand the needs of the environment far better than DC bureaucrats who are far removed from the land. The transfer of public lands will produce both a healthy environment and thriving communities. It should be the people who live adjacent to these lands and care most for their wellbeing that manage them.

Online resources:

[http://www.swhydro.arizona.edu/archive/V8\\_N2/feature5.pdf](http://www.swhydro.arizona.edu/archive/V8_N2/feature5.pdf)

[https://www.nsf.gov/news/news\\_summ.jsp?cntn\\_id=110580](https://www.nsf.gov/news/news_summ.jsp?cntn_id=110580)

<http://www.perc.org/articles/clearing-smoke-wildfire-policy-economic-perspective>

Find more information, research and data at  
[EndFedAddiction.org](http://EndFedAddiction.org).