



IDAHO FREEDOM  
FOUNDATION

# THE TRANSFER OF PUBLIC LANDS

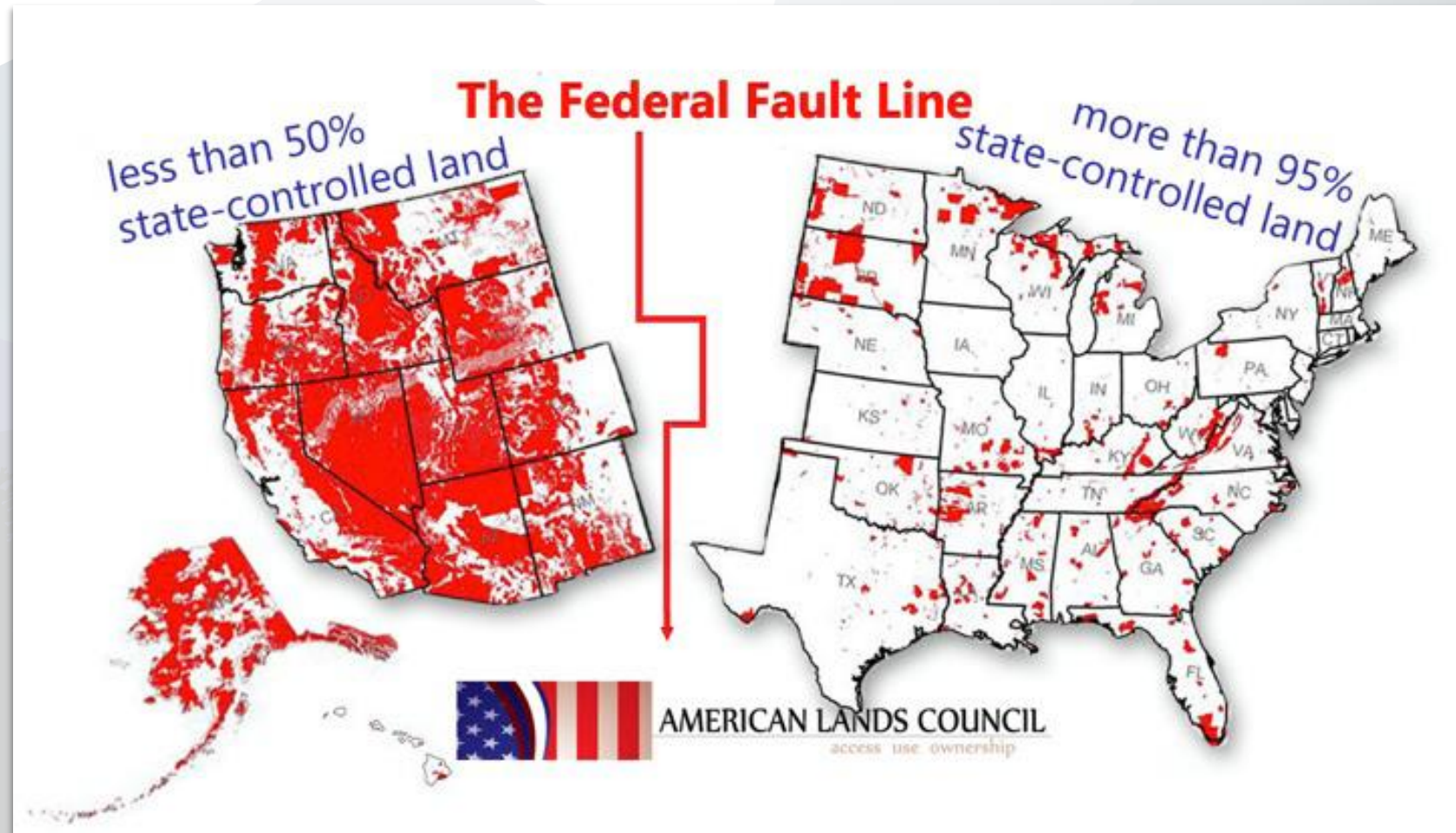
*Roundtable on Energy & Environmental Stewardship*

September 29, 2015

The background features a stylized landscape with layered mountain ranges in shades of light blue and grey. Below the mountains, there is a dark silhouette of a dense forest of evergreen trees. Two horizontal blue lines are positioned above and below the main text, creating a frame for the title.

# Historical reasons to transfer federal lands to the states

# It matters for our state and our nation





# We are talking about...

**THIS:**

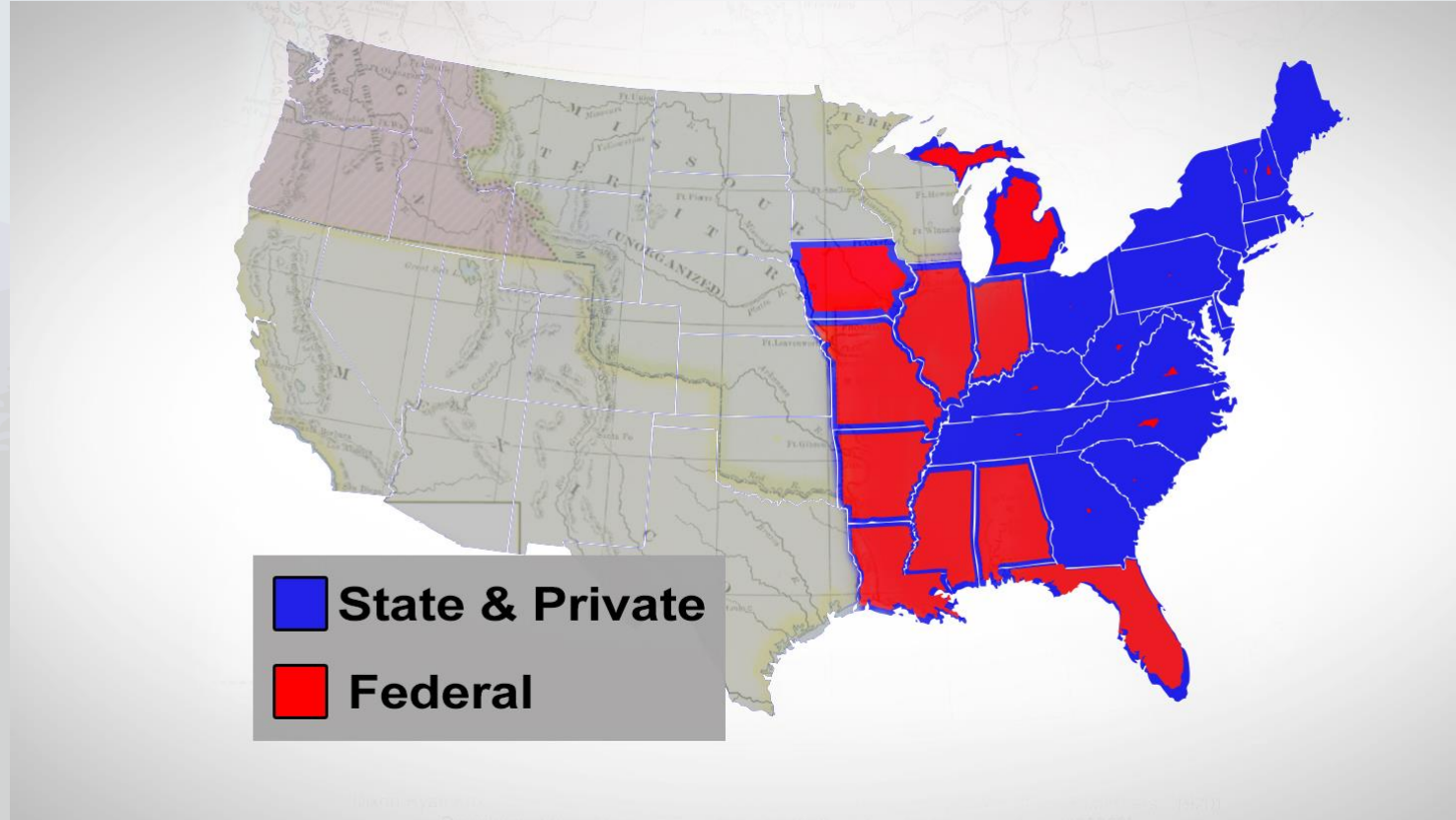


**NOT THIS:**



# It's already been done before!

MI, IA, IL, MO, IN, AR, LA, AL, MS, FL, etc.  
were as much as **90% federally controlled** for decades





**The Promises are the Same!  
So...why the difference?**

<b>Nebraska</b> <b>Enabling Act, April 19, 1864</b> <b>22% Federally Controlled in 1896</b> <b>1% Federally Controlled Today</b>	<b>Nevada</b> <b>Enabling Act, March 21, 1864</b> <b>86% Federally Controlled in 1896</b> <b>81% Federally Controlled Today</b>
<p><i>“That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that ... no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by the United States.”</i> Section 5, Third, Nebraska Enabling Act, April 19, 1864</p>	<p><i>“That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that ... no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by, the United States.”</i> Section 5, Third, Nevada Enabling Act, March 21, 1864</p>

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<p><i>"That five per centum of the proceeds of the sales of all public lands lying within said state, which have been or shall be sold by the United States prior or subsequent to the admission of said state into the Union, after deducting all expenses incident to the same, shall be paid to the said state for the support of common schools."</i> Section 12, Nebraska Enabling Act, April 19, 1864</p>	<p><i>"That five per centum of the proceeds of the sales of all 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 expenses incident to the same, shall be paid to the said state for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the state, as the legislature shall direct."</i> Section 12, Nevada Enabling Act, March 21, 1864</p>





All of these states were formed as a result of the **SAME** Enabling Act

<p>North Dakota Enabling Act, February 22, 1889 49.9% Fed. Controlled in 1896 <b>3% Fed. Controlled Today</b></p>	<p>Montana Enabling Act, February 22, 1889 76.3% Fed. Controlled in 1896 <b>28.9% Fed. Controlled Today</b></p>	<p>South Dakota Enabling Act, February 22, 1889 28.8%% Fed. Controlled in 1896 <b>5.4% Fed. Controlled Today</b></p>	<p>Washington Enabling Act, February 22, 1889 42.7% Fed. Controlled in 1896 <b>28.5% Fed. Controlled Today</b></p>
<p><i>"An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on <b>equal footing with the original States</b>"</i> – Section 1, Enabling Act</p>	<p><i>"An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on <b>equal footing with the original States</b>"</i> – Section 1, Enabling Act</p>	<p><i>"An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on <b>equal footing with the original States</b>"</i> – Section 1, Enabling Act</p>	<p><i>"An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on <b>equal footing with the original States</b>"</i> – Section 1, Enabling Act</p>
<p><i>"That the people inhabiting said proposed States <b>do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, ...and that until the title thereto shall have been extinguished</b> by the United States, the same shall be and remain subject to the disposition of the United States,"</i> – Section 4, Enabling Act</p>	<p><i>"That the people inhabiting said proposed States <b>do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, ...and that until the title thereto shall have been extinguished</b> by the United States, the same shall be and remain subject to the disposition of the United States,"</i> – Section 4, Enabling Act</p>	<p><i>"That the people inhabiting said proposed States <b>do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, ...and that until the title thereto shall have been extinguished</b> by the United States, the same shall be and remain subject to the disposition of the United States,"</i> – Section 4, Enabling Act</p>	<p><i>"That the people inhabiting said proposed States <b>do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, ...and that until the title thereto shall have been extinguished</b> by the United States, the same shall be and remain subject to the disposition of the United States,"</i> – Section 4, Enabling Act</p>





# 1889 Enabling Act

## North & South Dakota, Montana, and Washington

*“That the people inhabiting said proposed States do agree and declare that they **forever disclaim all right and title** to the unappropriated public lands lying within the boundaries thereof, ... 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 ... **no taxes shall be imposed by the States** on lands or property therein belonging to or which hereafter be purchased by the United States or reserved for its use;”*



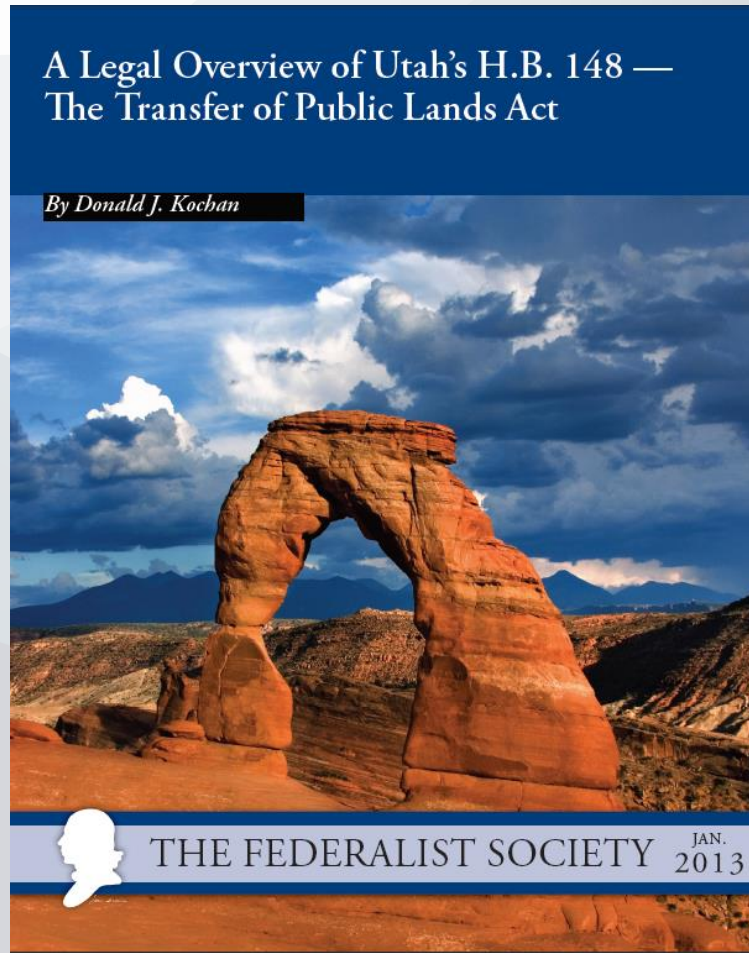


# Modern legal reason to transfer federal lands to the states

***“the legal arguments  
in favor of the TPLA  
are serious”***

--The Federalist Society

(a national organization of 40,000 lawyers, law students, scholars and other individuals located in every state and law school in the nation)





# U.S. Constitution Article IV, Section 3

## – NEW STATES

(NOTE: Article IV, New States; NOT Article I, Powers of Congress)

*“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; and **nothing** in this Constitution **shall** be so construed as to **prejudice any Claims of the United States, or of any particular state.**”*

\*NOTE: The Constitution does not say Congress shall have the power to keep the lands forever and ever!



# U.S. Supreme Court: NFIB vs. Sebelius (June 2012)



**“Basic Principles”**  
States Must Act Like  
Independent Sovereigns

“...we look to the States to defend their prerogatives by adopting “the simple expedient of **not yielding” to federal blandishments** when they do not want to embrace the federal policies as their own.”

# U.S. Supreme Court: NFIB vs. Sebelius (June 2012)



**“Basic Principles”**  
States Must Act Like  
Independent Sovereigns

**“The States are separate  
and independent  
sovereigns.  
Sometimes they have to  
act like it.”**



## Equality of States Essential to Republic

**“...‘the constitutional equality of the States is essential to the harmonious operation of ... the Republic ....”**

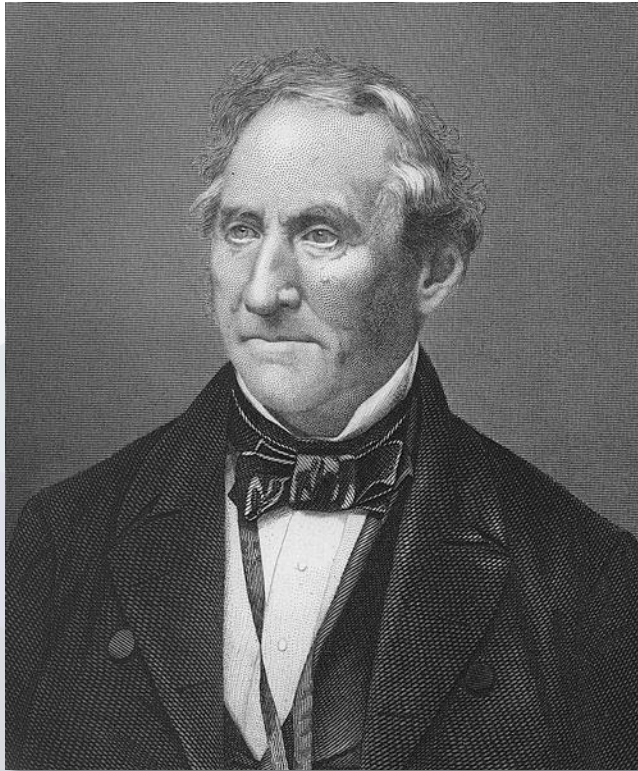
Shelby County v. Holder, 570 U.S. \_\_\_\_ (2013)

# Equal Sovereignty is Fundamental

There is a “fundamental principle of equal sovereignty’ among the States.” ...

“... our Nation ‘was and is **a union of States, equal in power, dignity and authority.**’”

Shelby County v. Holder, 570 U.S. \_\_\_\_ (2013)



U.S. Senator  
Thomas Hart Benton  
(D-MO)

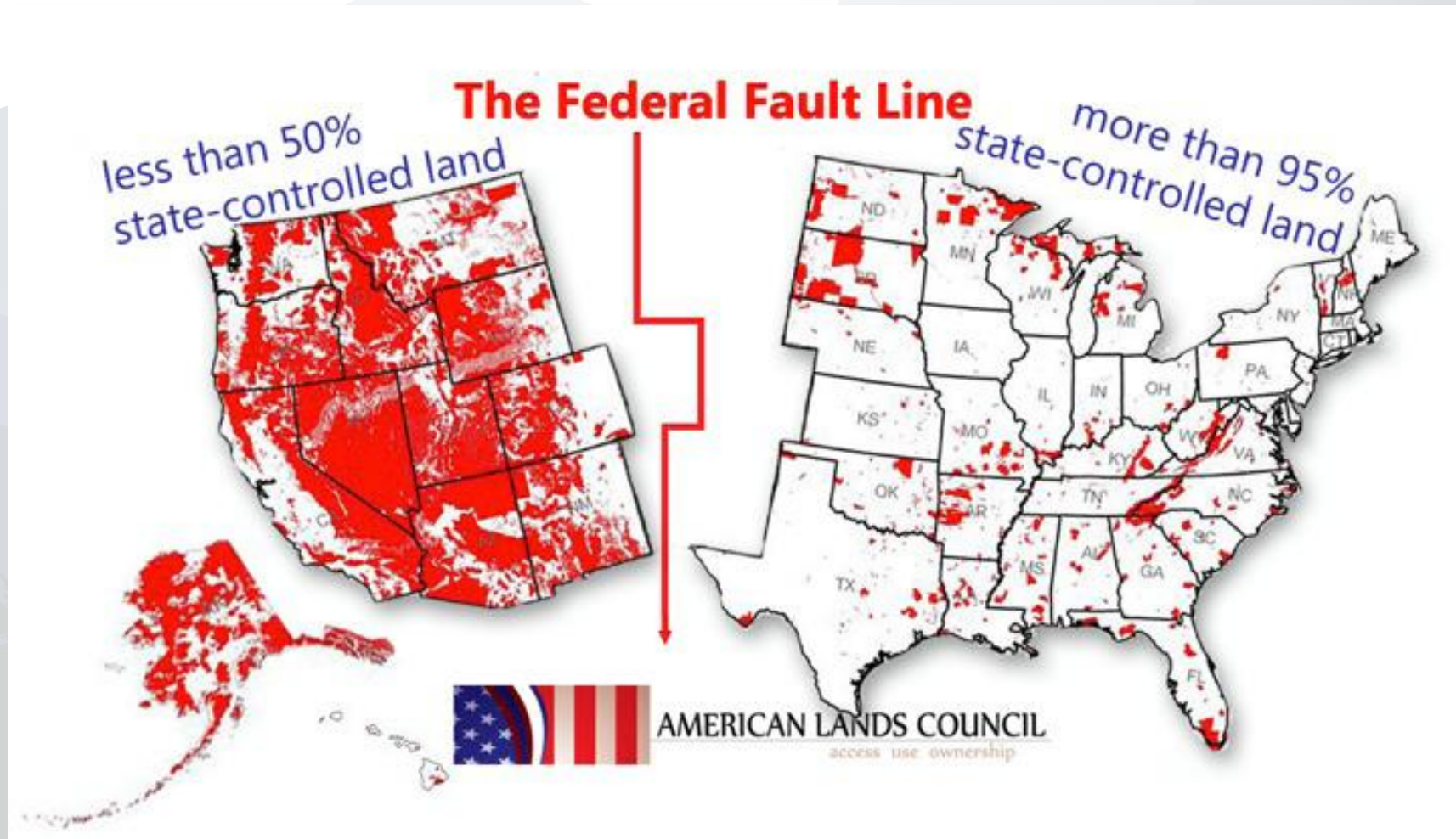
“But the members in Congress from the new States should not intermit their exertions, nor vary their policy; and should fix their eyes steadily upon the period of the speedy extinction of the federal title to all the lands within the limits of their respective States ...”

*Thirty Years View*, Thomas Hart Benton





# The Promises are the same... Why the difference?

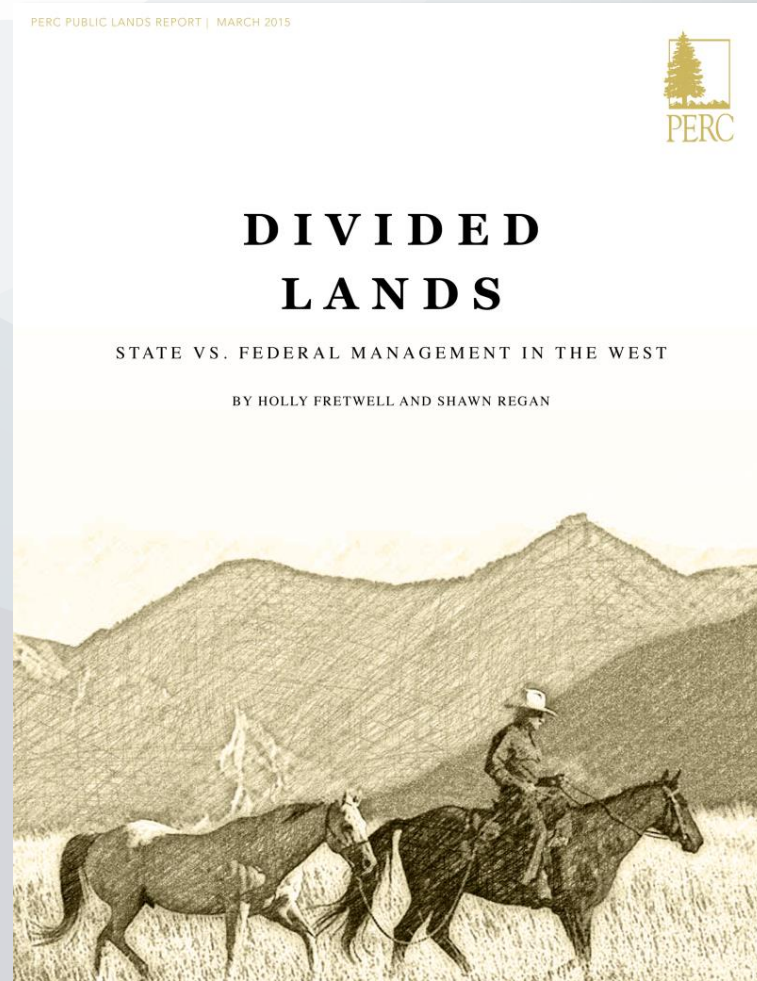




# Economic and resource reasons to transfer federal lands to the states

# State vs. Federal Management in the West

- The federal government loses money managing valuable natural resources, while states generate significant financial returns from state trust lands.
- States generate more revenue per dollar spent than the federal government on a variety of land management activities, including timber, grazing, minerals, and recreation.



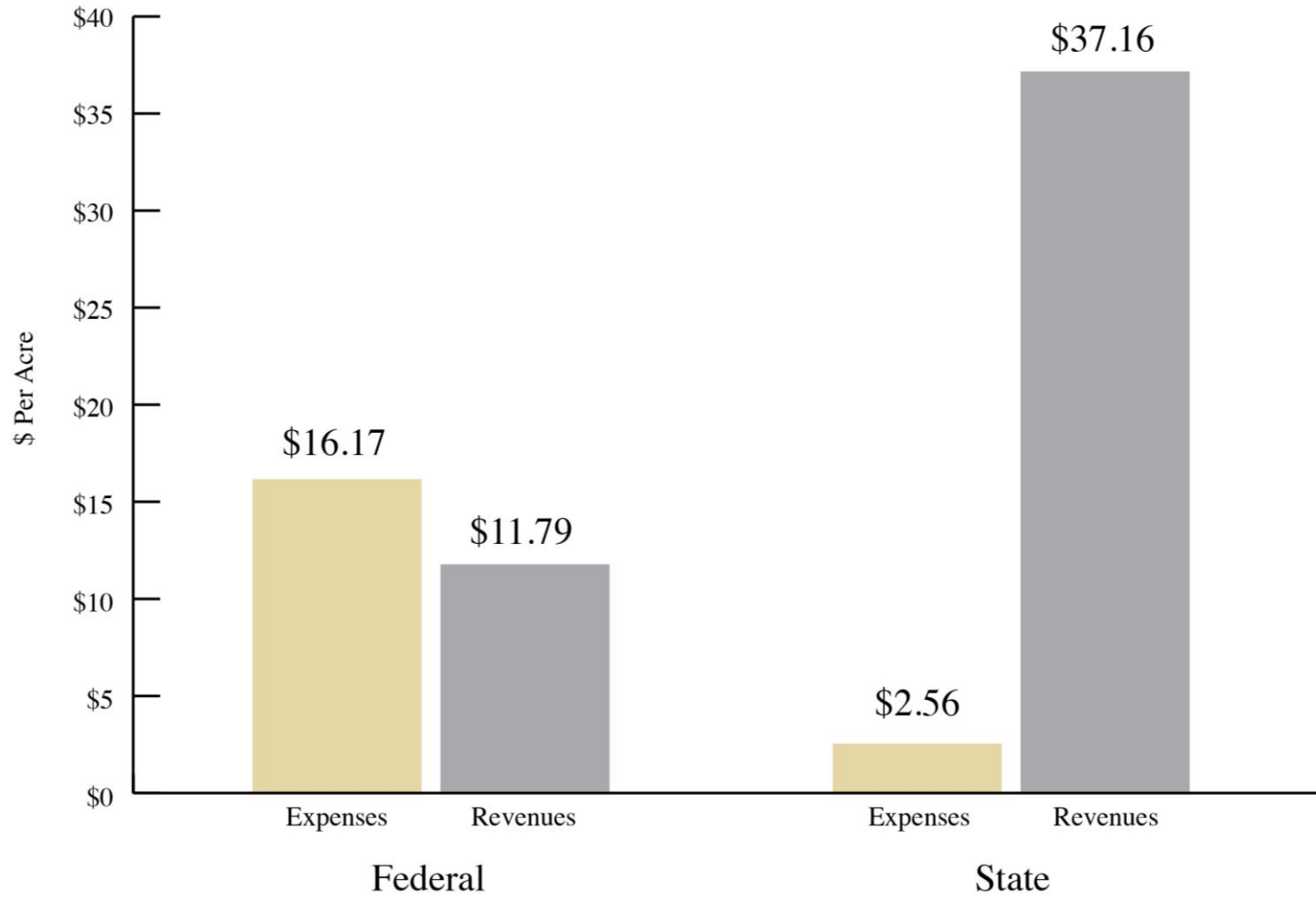


## The Cost of Land Management: Federal vs. State

	Revenue	Expenses	Revenue per \$ Spent	Net Revenue
Federal Multiple-Use Lands	\$5,261,863,132	\$7,216,610,309	\$0.73	-\$1,954,747,177
State Trust Lands	\$239,921,512	\$16,540,387	\$14.51	\$223,281,126

*Note: Data are 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal multiple-use lands include lands managed by the U.S. Forest Service and the Bureau of Land Management. BLM data includes Office of Natural Resource Revenues (ONRR) revenues. State trust land data includes Montana, Idaho, New Mexico, and Arizona.*

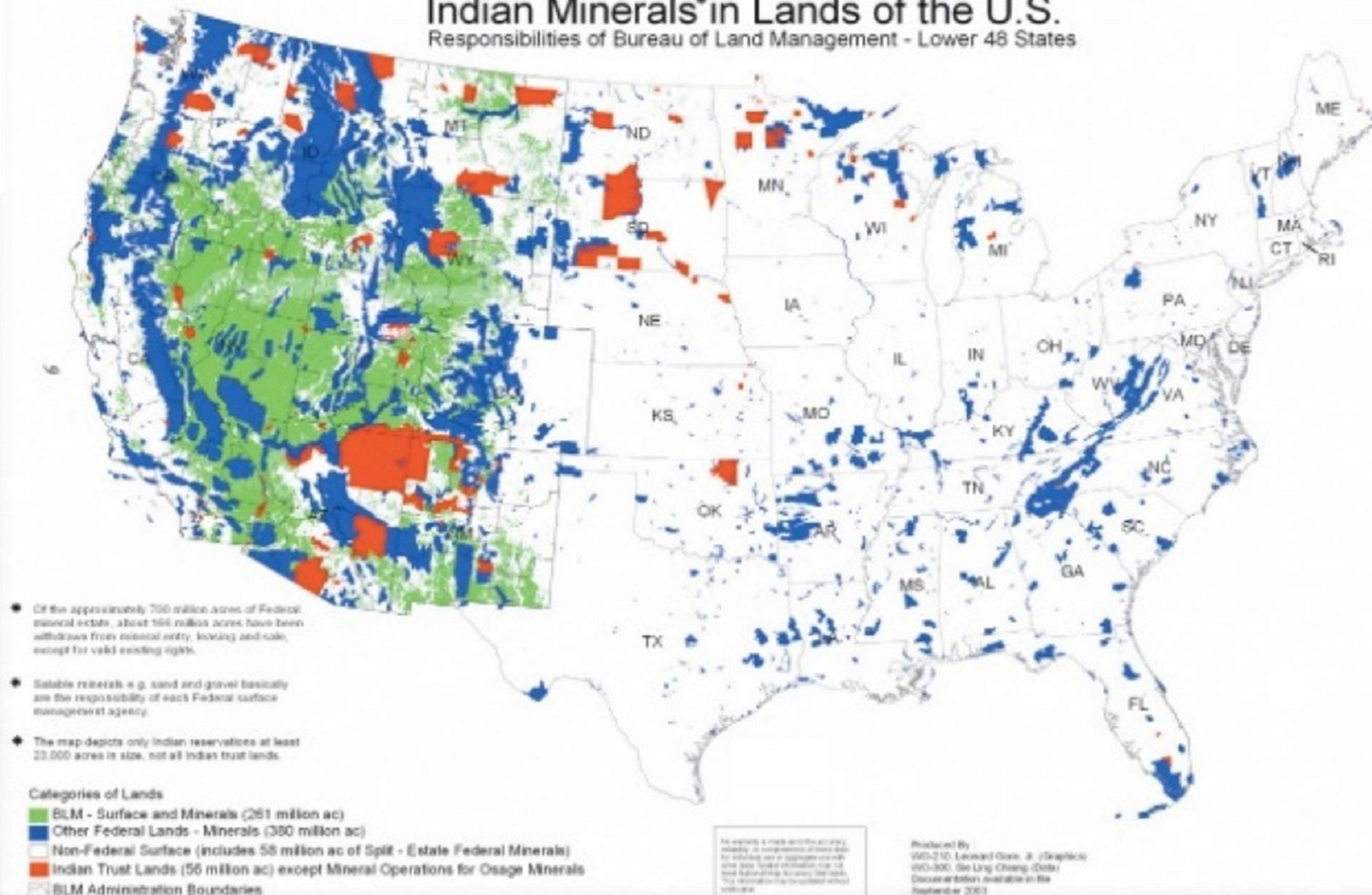
## Federal vs. State Land Management: Revenues and Expenses per Acre



*Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal data includes U.S. Forest Service and Bureau of Land Management. State data includes Montana, Idaho, New Mexico, and Arizona state trust lands.*

# \$150 Trillion in Minerals Locked Up

## Public Lands, On-Shore Federal and Indian Minerals\* in Lands of the U.S. Responsibilities of Bureau of Land Management - Lower 48 States





## Minerals Management: Federal vs. State

	Revenue	Expenses	Revenue per \$ Spent
All Federal Lands	\$4,413,338,743	\$223,367,859	\$19.76
Montana	\$59,988,493	\$957,347	\$62.66
Idaho	\$3,479,576	\$501,570	\$6.94
New Mexico	\$533,447,123	\$2,592,115	\$205.80
Arizona	\$25,852,473	\$459,012	\$56.32
State Trust Lands (averaged)	\$155,691,916	\$1,127,511	\$138.08

*Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal land revenue data include all onshore federal mineral receipts reported by the Office of Natural Resource Revenues, Forest Service, and BLM. Federal land expenditure data includes all Forest Service and BLM mineral expenses.*



# MONTANA

## FEDERAL

**26,921,861**

acres owned by the  
federal government

**28.9%**

of state owned by  
federal government

**\$109,627,941**

in direct federal-land payments  
made to Montana

**\$4.07**

in revenue to state and local communities  
per acre of federal land in Montana

## STATE

**5,100,000**

acres of state trust  
land in Montana

**5.5%**

of state held in state  
trust management

**\$107,062,945**

in annual distributions to state  
trust beneficiaries

**\$20.99**

in revenue to state trust beneficiaries  
per acre of state trust land



## IDAHO

### FEDERAL

**32,635,835**

acres owned by the  
federal government

**61.7%**

of state owned by  
federal government

**\$68,046,153**

in direct federal-land payments  
made to Idaho

**\$2.09**

in revenue to state and local communities  
per acre of federal land in Idaho

### STATE

**2,446,651**

acres of state trust  
land in Idaho

**4.6%**

of state held in state  
trust management

**\$51,676,270**

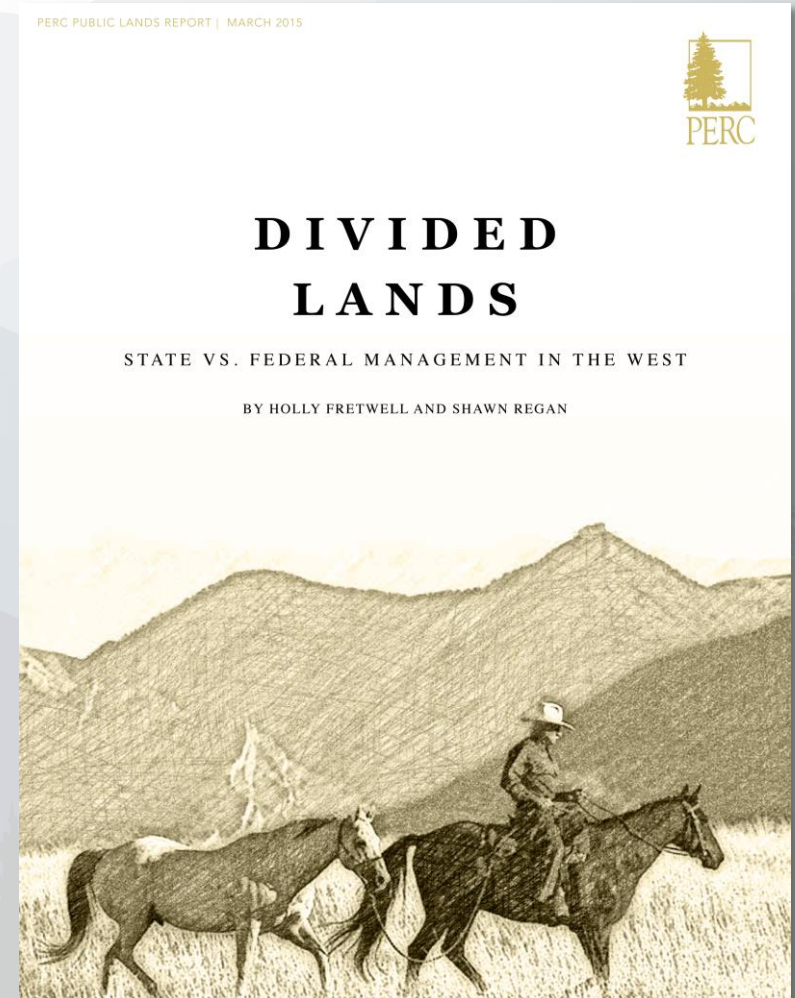
in annual distributions to state  
trust beneficiaries

**\$21.12**


in revenue to state trust beneficiaries  
per acre of state trust land

# What the states can accomplish

- States have a responsibility to generate revenues. Federal agencies face overlapping and conflicting regulations and lack a clear mandate.
- States could earn greater revenues than the federal government, but land management would have to change in some cases.







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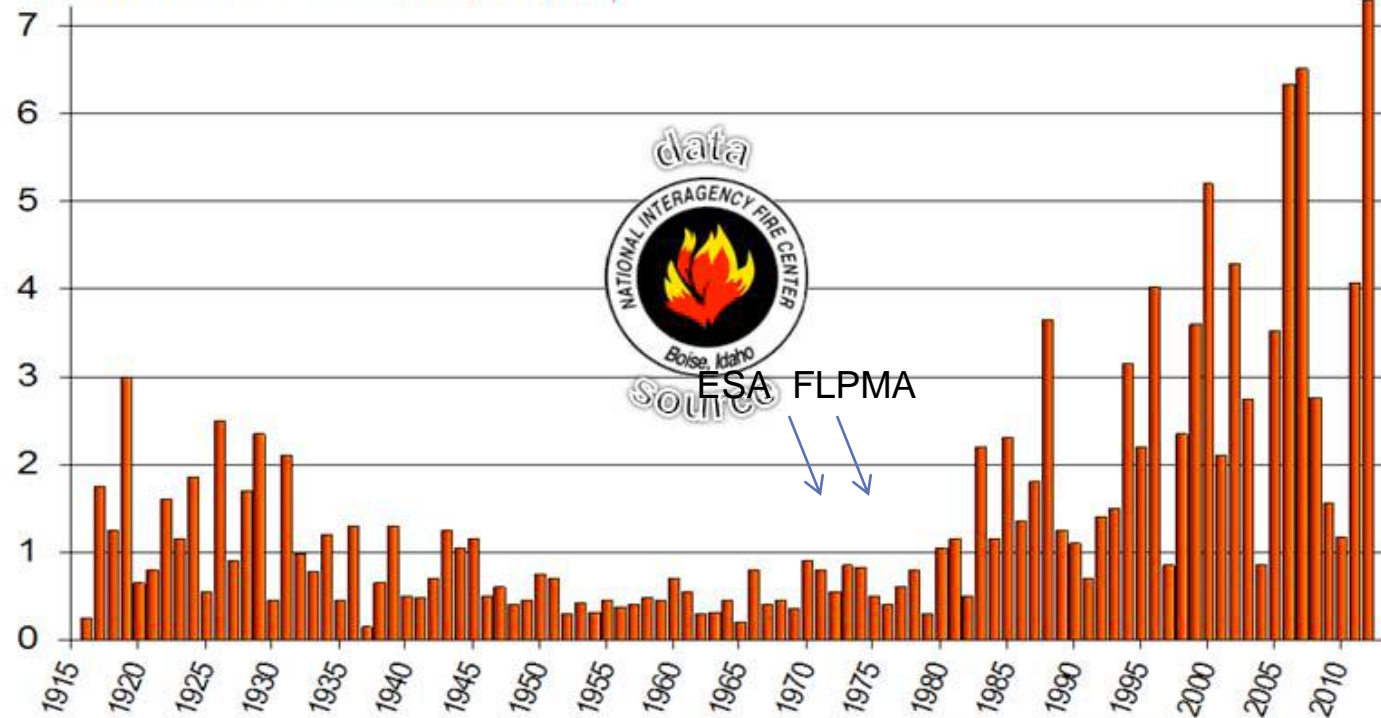
# Policy overview of the transfer federal lands to the states

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# Wildfire trends are a modern disaster

## Wildfires in 11 western states,\* 1916-2012

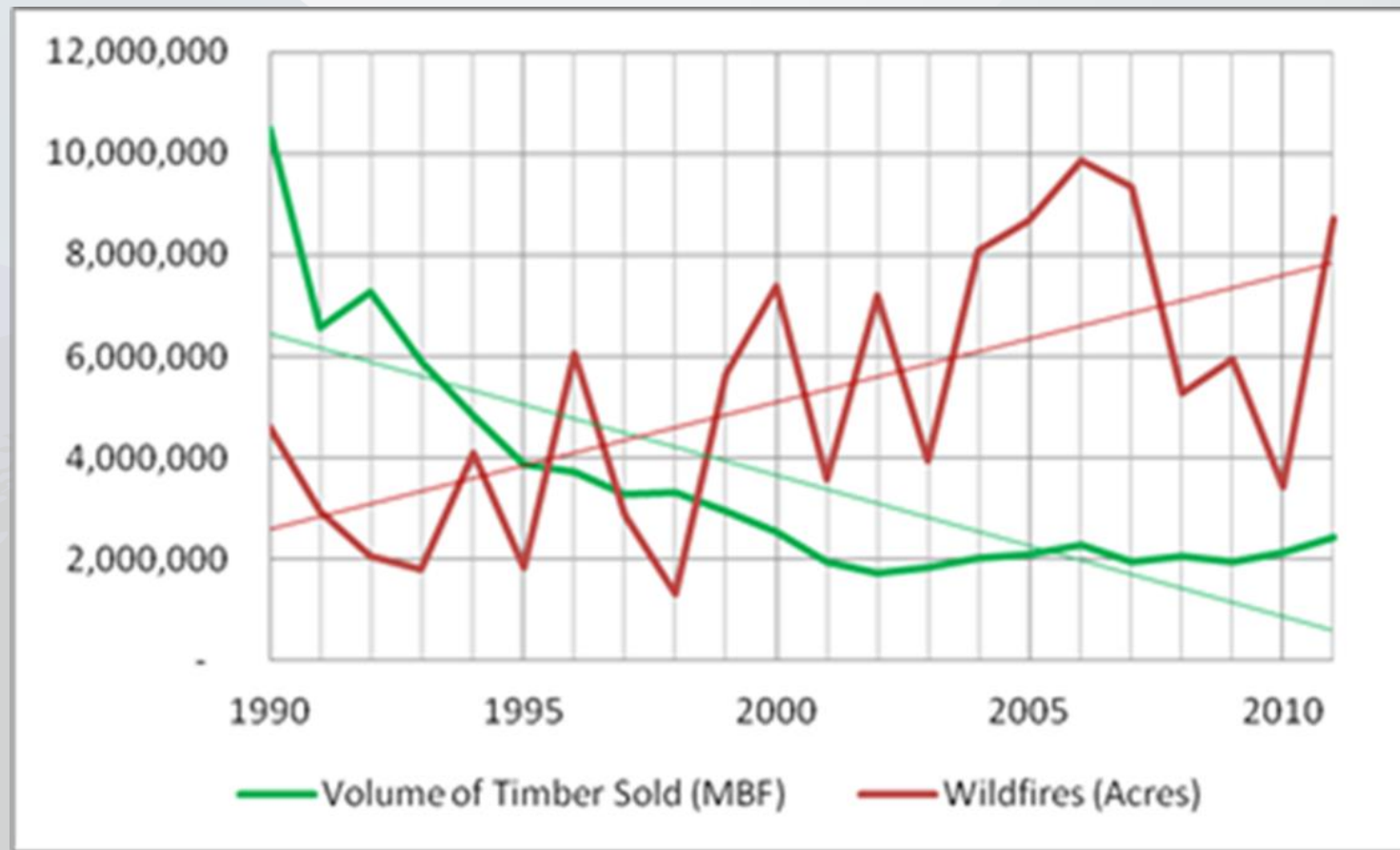
Millions of acres burned by wildfire



\*11 states: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY

# The federal government blames climate change for fires

## Decreased Logging = Increased Wildfire



# Why should we settle for failure?



## Failing Federal Policies:

*“Analysis paralysis”* and *“management by litigation”* are killing millions of animals, destroying our environment, wasting natural resources, and depressing western communities.



# Federal management is a death sentence for wildlife



Hayman Fire

# Federal management is a death sentence for the environment



EPA spill in the Animas river



Would poor management of this land be tolerated at the state level?



Long's Peak in Colorado



**AMERICAN  
LANDS COUNCIL**

ACCESS · HEALTH · PRODUCTIVITY

## Public Policy Statement

Ratified by unanimous consent Oct 9, 2014 at ALC Multi-State Workshop  
Salt Lake City, UT

1. **WE URGE THE TIMELY AND ORDERLY TRANSFER OF FEDERAL PUBLIC LANDS TO WILLING STATES FOR LOCAL CONTROL THAT WILL PROVIDE BETTER PUBLIC ACCESS, BETTER ENVIRONMENTAL HEALTH, AND BETTER ECONOMIC PRODUCTIVITY;**
2. **WE SUPPORT EXCLUDING EXISTING NATIONAL PARKS, CONGRESSIONALLY DESIGNATED WILDERNESS AREAS, INDIAN RESERVATIONS, AND MILITARY INSTALLATIONS FROM THE TRANSFER; AND**
3. **WE SUPPORT EQUIPPING FEDERAL, STATE, AND LOCAL AGENCIES WITH RESOURCES NECESSARY TO PLAN FOR A SUCCESSFUL TRANSITION TO STATE-BASED OWNERSHIP AND MANAGEMENT OF THE TRANSFERRED PUBLIC LANDS; AND**
4. **WE URGE MANAGEMENT PRIORITIES FOR THESE LANDS THAT WILL:**
  - i. **IMPROVE PUBLIC ACCESS:** Protect public access, rights of way, and multiple-uses on public lands for all people including sportsmen, tourists, recreational users, subsistence and sustenance activities, and emergency access; and
  - ii. **IMPROVE ENVIRONMENTAL HEALTH:** Reduce catastrophic wildfire fuel loads that threaten communities, infrastructure, watersheds, critical wildlife habitat, and our environment. Facilitate restoration of healthy forests, range lands, and waterways; and
  - iii. **IMPROVE ECONOMIC PRODUCTIVITY:** Secure jobs and economic growth through responsible natural resource stewardship and use including tourism and recreational opportunities; and
  - iv. **RETAIN PUBLIC OWNERSHIP OF PUBLIC LANDS:** Federal public lands shall become state public lands to be managed in accordance with state and local plans; and



# Supports Local Government Tax Base



## **Resolution Supporting the Full and Immediate Implementation of the Transfer of Public Lands**

**Issue:** Transfer of public lands

**Adopted Policy:** NACO believes all fifty states are equal and that every state should receive everything that was promised to them in their enabling acts, including land transfers, if requested by an individual state with consultation with the affected counties.

**Background:** At statehood, the federal government promised all states, in their enabling acts, that it would transfer title to the public lands within the newly created states.

The U.S. Supreme Court has called these promises "solemn compacts," "bilateral agreements," and "trusts" that must be performed "in a timely fashion".

States like Illinois, Missouri, Indiana, Florida, Louisiana, Arkansas, Alabama, and Mississippi were once as much as 90 percent federally controlled for decades. These "Western States" (as they called themselves at the time) succeeded in compelling the federal government to transfer their public lands because they understood the historical duty of the federal government to dispose of the same, and they banded together and refused to be silent or take "No" for an answer because federally controlled public lands prevented them from (i) generating tax revenues to educate their children, (ii) growing their economies, (iii) caring for their lands, and (iv) responsibly utilizing their abundant natural resources.

The current western states are still waiting for the federal government to honor the same promise it made and kept with all states east of Colorado.

Despite the fact that the promise is the same to dispose of the public lands upon being admitted as states, states east of Colorado have less than 5 percent federally controlled lands, while the western states (excluding Hawaii) have more than 50 percent federally controlled lands.

**Fiscal/Urban/Rural Impact:** The transfer of federal lands to state ownership will have many positive effects including, responsible development of natural resources, higher paying jobs, a growing tax base, and the ability to generate higher revenue for schools and local government.,

Adopted July 23, 2012

# BROAD BASED SUPPORT...

- \* Cities, Counties, States
- \* School Districts/Education Assoc
- \* Trade Unions
- \* Chambers, Econ Councils
- \* User Groups
- \* Resource Industries
- \* Farm Bureau, Cattlemen, etc.

City of Herriman

**WESTERN GROWTH COALITION**

The Honorable Gary R Herbert  
Governor

City of Riverton

Dear Governor:

City of South Jordan

City of Taylorsville

City of West Jordan

City of West Valley

Chamber West

South Jordan Chamber of Commerce

Southwest Valley Chamber of Commerce

West Jordan Chamber of Commerce

As a united coalition of government officials and business leaders, and as citizens of the Great State of Utah, we pledge our support for your ongoing efforts to wrest our state lands from Federal control. Indeed, we believe that there exists no realistic and feasible pathway to fiscal sustainability without our ability to utilize these lands for the purposes originally conceived when Utah entered the Union.

We find it tragic that the Federal government appears determined to follow a course of insolvency, which will drag Utah and every other state with it over the "fiscal cliff." Yet trillions in natural resources remain untapped and under Federal control. It is in Utah's best interest to wean itself from a dependency on Federal dollars by utilizing the wealth and resources of our state to create jobs, provide the best possible education for our children, bring fiscal sustainability to our local communities, and secure economic self-reliance and energy independence. Such can only be accomplished if Utah, like so many other states who have gained control of their lands, can successfully realize the same objective.

We urge the continued petition of the Federal government to honor Utah's compact of statehood, as they have to Eastern states, by disposing of public lands. The success enjoyed by other states in securing control of their lands was and is the product of a united front and an unequivocal determination to reject "No" as an answer. These Eastern states succeeded in compelling Congress to transfer title of the public lands, and so should we.

We stand with you at this critical time, as we endeavor to secure a brighter future for our children and their posterity. The ability to control our lands and prudently draw upon Utah's vast natural resources is not only an important component of fiscal sustainability, but we declare that there exists no more critical issue upon which our attention and energies should be focused.

The Federal government has made a sacred pledge to dispose of these lands. We stand ready to assist you in helping Washington honor that promise. Our prosperity and quality of life depend upon our success.

Respectfully,  
The Western Growth Coalition

  
**Craig Dearing**  
Western Growth Coalition Chairman  
President/CEO West Jordan Chamber of Commerce

  
**Rick Davis**  
Western Growth member  
West Jordan City Manager

8000 S Redwood Road • West Jordan, Utah 84088 • 801-569-5150 • craig@westjordanchamber.com

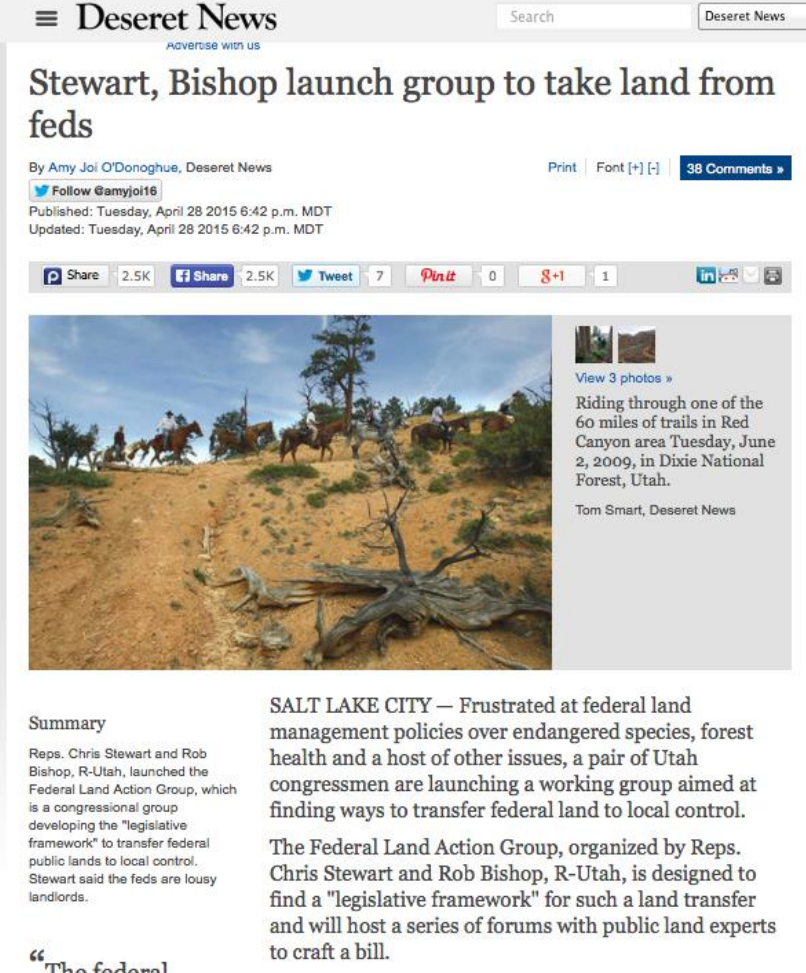
# Congressional Federal Land Action Group

created April 28, 2015

“The federal government has been a lousy landlord for western states and we simply think the states can do it better. **If we want healthier forests, better access to public lands, more consistent funding for public education and more reliable energy development, it makes sense to have local control.**”

Rep. Chris Stewart (UT)

Other members include Reps. Mark Amodei, R-Nev.; Diane Black, R-Tenn.; Jeff Duncan, R-S.C.; Crescent Hardy, R-Nev.; and Cynthia Lummis, R-Wyo.



The screenshot shows a news article from Deseret News. The headline is "Stewart, Bishop launch group to take land from feds". The author is Amy Joi O'Donoghue. The article includes a photo of people riding horses on a trail in a desert landscape. The article text discusses the launch of a working group by Reps. Chris Stewart and Rob Bishop to find ways to transfer federal land to local control. A summary section is also visible, along with social media sharing options and a search bar at the top.

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## Stewart, Bishop launch group to take land from feds


By Amy Joi O'Donoghue, Deseret News

Print | Font [+][-] | 38 Comments »

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Published: Tuesday, April 28 2015 6:42 p.m. MDT  
Updated: Tuesday, April 28 2015 6:42 p.m. MDT

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View 3 photos »

Riding through one of the 60 miles of trails in Red Canyon area Tuesday, June 2, 2009, in Dixie National Forest, Utah.

Tom Smart, Deseret News

### Summary

Reps. Chris Stewart and Rob Bishop, R-Utah, launched the Federal Land Action Group, which is a congressional group developing the "legislative framework" to transfer federal public lands to local control. Stewart said the feds are lousy landlords.

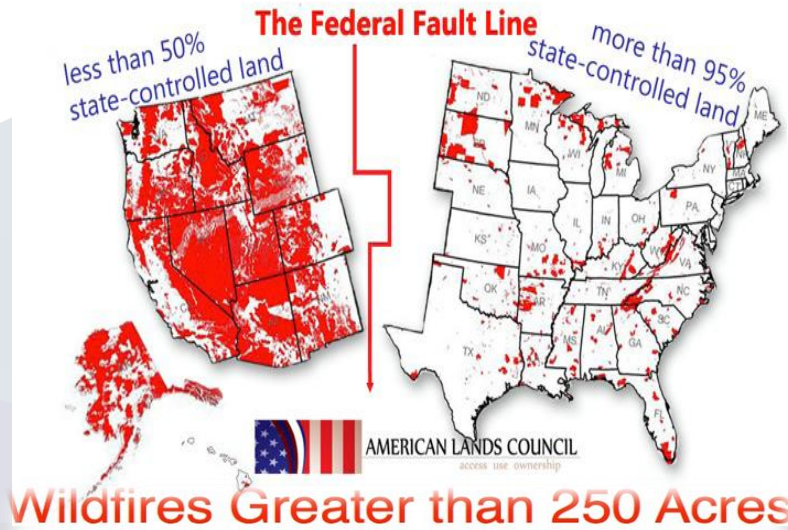
SALT LAKE CITY — Frustrated at federal land management policies over endangered species, forest health and a host of other issues, a pair of Utah congressmen are launching a working group aimed at finding ways to transfer federal land to local control.

The Federal Land Action Group, organized by Reps. Chris Stewart and Rob Bishop, R-Utah, is designed to find a "legislative framework" for such a land transfer and will host a series of forums with public land experts to craft a bill.

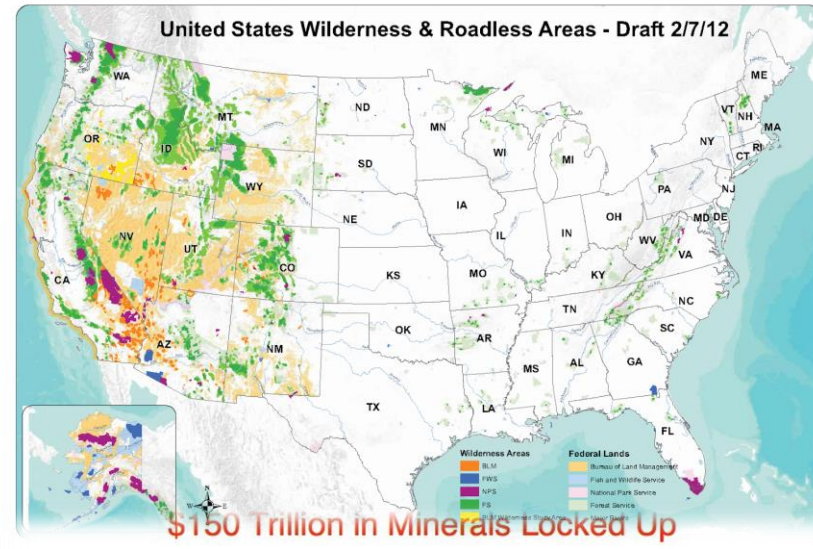
“The federal



# Better Access – Better Health – Better Productivity



Wildfires Greater than 250 Acres



\$150 Trillion in Minerals Locked Up

