WOMEN'S STATE LEGISLATIVE COUNCIL OF UTAH

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GENERAL SESSION

February 11, 2015

Program Topic: Federal Lands Transfer to the State of Utah

Presented by: Natural Resources, Environment and Agriculture Committee
Director: GayLynn Benion
Co-Chairs: Amelia Powers & Donna Stevenson

Speakers: Rep. Ken Ivory (R) Dist. 47 (Salt Lake County)

John Ruple – Research Assoc. Professor, S.J. Quinney College of Law

Heather Bennett – President, Salt Lake City School Board; Founding member, For Kids and Lands

Rep. Ivory, speaking in favor of a public lands transfer, referred to a summery of the 700+ page study and economic analysis of the impacts of the transfer of public lands from federal to state ownership. He passed out copies of the summery (*Pathway to a Balanced Public Lands* Policy) and occasionally referred to it in his remarks.

He said he began serious consideration of Utah's federal lands issue about four years ago as he asked himself the question, "How dependent is Utah on federal funds?" He found that 35% of our state revenue comes from federal funding. He believes, given the federal government's financial inconsistency, that percentage of dependency is unsustainable. 65% of the state's total land mass is federally owned. Rep. Ivory also said the potential land value of Utah's federal lands is $150T. This money is essentially "locked up," he noted, and unavailable to the state.

The history of the federal vs. state lands issue is a long and rather convoluted one. The Land Ordinance of 1785 laid the foundations of land policy in the U.S. until passage of the Homestead Act in 1862. Several additional land laws were enacted in the latter half of the 19th and early 20th centuries. The 1934 Taylor Grazing Act was also mentioned as a self-described management act "pending final disposal of the lands."

Rep. Ivory cited the Enabling Act, passed by Congress in 1894, two years before Utah became a state. In part, the Act states, "...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*;" *(Section 3)*

In the next section, the Act states, "...the proposed state of Utah shall be deemed admitted by Congress into the Union, under and by virtue of this Act, on an *equal footing* with the original States...." *(Section 4)*

Rep. Ivory stated Sections 3 and 4 are clearly contradictory. Utah was admitted into the Union with the promise that the government would one day "extinguish title" to the public lands. Moreover, the Enabling Acts of all new states contained the same promise to "extinguish title" to their public lands. The federal government honored this promise with all states east of Colorado.

The Act served to enable the people of Utah to be admitted into the Union on an equal footing with the original states. "Equal footing," Rep. Ivory argued, indicates the federal government should own no land in Utah, since none of the original states contained federally owned land. In order to join the Union, Utah (as did other western states) gave what amounted to a "quitclaim" (not a guarantee of clear title) deed to the federal government in Section 3.

In 1976 Congress passed the Federal Land Policy Management Act, ("Congress declares that it is the policy of the United States that the public lands be retained in federal ownership") and created the Payment in Lieu of Taxes (PILT) program. PILT funds are given yearly by the federal government to counties with public lands in an effort to offset the loss of a potential state tax base. Counties cannot collect property taxes for those lands, but must still provide services, including law enforcement, search & rescue, emergency services, road maintenance, etc. After the recent federal budget crisis, Rep. Ivory said, much uncertainty still exists as to whether the federal government can continue to make good on the PILT program. That aside, Rep. Ivory believes the program keeps Utah "begging" and we would be better served by controlling our own lands and the revenue from its use.

The two reasons often cited for continued federal ownership are (1) Utah is mainly arid land and (2) the land was given up in the first place. Rep. Ivory maintained these are not valid arguments, particularly in light of the Enabling Act language. State governments, he believes, have a natural vested interest and will do a better job of utilizing state resources and protecting their own environment.

Responding to questions, Rep. Ivory said taxes would possibly need to be raised in order for the state to successfully manage its lands after a transfer, but only during a short transition period. Projected revenue would far outweigh the projected costs. Quality of life issues are important. We must maintain a wise balance as we consider development and environmental stewardship of public lands following any transfer to the state. For more information go to:

American Lands Council Public Policy Statement *www.americanlandscouncil.org*

Utah's Public Lands Coordinating Office (PLPCO) www.publiclands.utah.gov

2012 HB148 Transfer of Public Lands *http://le.utah.gov/~2012/bills/hbillint/hb0148.pdf*

Analysis of a Transfer of Federal Lands to the State of Utah *https://csee.usu.edu/htm/current-past-projects/an-analysis-of-a-transfer-of-federal-lands-to-the-state-of-utah/*

John Ruple, speaking against the transfer of public lands to the state, disagreed with the premise that Utah has any legal right to claim federal lands within its borders. He also cited 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." However, he disagreed with the interpretation of the doctrine offered by Rep. Ivory. An equality of rights is not the same, he pointed out, as equality of condition.

In 1997, the 9th Circuit Court ruled (*United States v. Gardner*) that The Equal Footing Doctrine "applies to political rights and sovereignty; not the economic characteristics of the states" The Gardners had argued that the Equal Footing Doctrine dictated that Nevada had 'paramount title;' otherwise, Nevada would not be on an equal footing with its eastern peers. However, the court ruled that before becoming a state, "Nevada had no independent claim to sovereignty, unlike the original 13 states." The

ruling also affirmed under the Property Clause, that "…the United States can administer its federal lands any way it chooses."

The Gardner ruling also observed, "some states, when they entered the Union, had within their boundaries tracts of land belonging to the federal government; others were 'sovereigns of their soil.' While these disparities may cause economic differences between the states, the purpose of the Equal Footing Doctrine is not to eradicate all diversity among states but rather to establish equality among the states with regards to political standing and sovereignty."

Using topographical and precipitation maps, Prof. Ruble presented "Why the West Is Not Like the East." The physical characteristics of land, he stressed, impact development patterns. Historically, the U.S. policies (grants and federal irrigation projects) that disposed of land in such a way as to encourage settlement were much more successful in the rain-blessed eastern states than in the arid West.

In "Utah's Statehood Bargain," Prof. Ruble emphasized the section of the Utah Enabling Act that states, "Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act." Utah entered the United States as a territory after the Mexican war. The federal government had already signed the treaty with Mexico and already owned the land that would become the state of Utah. Prof. Ruble believes Utah actually struck a bargain that was quite good. He displayed the portion of The Enabling Act's *Section 3* that lays out what the state legally relinquished:

"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."

Federal public land management can and should be improved, he said, but suing the federal government to gain control is not the answer. Utah is not legally entitled to more land. Frustration over federal management does not create a legal claim to those lands. In addition, he believes a takeover by the state would create an unreasonable economic risk.

Responding to questions, Prof. Ruble said a better way forward is for the state and federal governments to work together as peers in creating meaningful policy decisions. Bringing litigation against the federal government takes money away from more productive efforts and makes collaboration more difficult.

He feels a careful reading of the Transfer of Federal Lands Study cited by Rep. Ivory reveals several flawed conclusions and relies on too many uncertainties. For example, would we get 100% of the royalties from our gas & oil revenues? We don't know, but it's possible we would not. One solution to the qualms over continued PILT payments would be to make it a permanent line item. Is there an actual structure in place for the transfer of public lands? **HB148** calls for the development of a framework, but it is not complete. At this point, there is no provision for public input concerning the use of public lands (if the transfer actually took place), but there should be. For more information, go to:

A Legal Analysis of the Transfer of Public Lands Movement by Robert B. Keiter and John Ruple of the S. J. Quinney College of Law, University of Utah
http://content.lib.utah.edu:81/cdm4/item_viewer.php?CISOROOT=/utlawrev&CISOPTR=9160

The Transfer of Public Lands Movement: Taking the 'Public' Out of Public Lands
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2555922##

WSC White Papers are available at: www.law.utah.edu/projects/stegner-research-fellows-program

(Questions or Comments?) john.ruple@law.utah.edu

Heather Bennett, noting she was quite content to have been able to yield much of her time to Prof. Ruple, offered some statistics. She said the state currently spends $4B annually on public education. However, it would take $2.5B to bring Utah up to where it should be regarding per pupil spending. Utah is "about in the middle," she said, with regards to how much federal land lies within the state. We could probably expect only about $50M, after management costs, to be made available to schools if we had use of our public lands.

Ms. Bennett said she has little faith in our state legislators' interest in giving meaningful local control to our public schools. As adults, we need set the positive example to our youth of good, long-range, critical thinking. This is especially true as we consider the issue of our federal lands. It is her belief that if the state wrests control of these lands from the federal government, the environment will suffer. We need stewardship, she cautioned, not exploitation.

To illustrate, Ms. Bennett recounted an incident experienced by her own family when she was growing up. The Chevron Oil Company created an oil spill that ruined the water on their land. We need to be vigilant, she advised, and not endorse the mentality that would allow such careless disregard of the land.

Reported by Pam Grange

NOTE: Two Resolutions were presented to WSLC membership for consideration.

1. **Resolution Supporting the Transfer of Public Lands to the State of Utah**
2. **Resolution in Opposition to 2012 HB148 Transfer of Public Lands Act**

Both Resolutions failed to pass.

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