

Disposal and Taxation of Public Lands Act

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3 **WHEREAS**, in 1780, the United States Congress resolved that “the unappropriated lands
4 that may be ceded or relinquished to the United States, by any particular states, pursuant
5 to the recommendation of Congress of the 6 day of September last, shall be granted and
6 disposed of for the common benefit of all the United States that shall be members of the
7 federal union, and be settled and formed into distinct republican states, which shall
8 become members of the federal union, and have the same rights of sovereignty, freedom
9 and independence, as the other states: . . . and that upon such cession being made by any
10 State and approved and accepted by Congress, the United States shall guaranty the
11 remaining territory of the said States respectively. . . . That the said lands shall be granted
12 and settled at such times and under such regulations as shall hereafter be agreed on by the
13 United States in Congress assembled, or any nine or more of them”; and
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15 **WHEREAS**, under these express terms of trust, the land claiming states, over time,
16 ceded their western land to their confederated Union and retained their claims that the
17 confederated government dispose of such lands to create new states “and for no other use
18 or purpose whatsoever” and use the proceeds of any sales of such lands only for the
19 purpose of paying down the public debt; and
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21 **WHEREAS**, by resolution in 1790, the United States Congress declared “That the
22 proceeds of sales which shall be made of lands in the Western territory, now belonging or
23 that may hereafter belong to the United States, shall be, and are hereby appropriated
24 towards sinking or discharging the debts for the payment whereof the United States now
25 are, or by virtue of this act may be holden, and shall be applied solely to that use, until the
26 said debt shall be fully satisfied”; and
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28 **WHEREAS**, in 1833, referring to these land cession compacts which arose from the
29 original 1780 congressional resolution, President Andrew Jackson stated, “These solemn
30 compacts, invited by Congress in a resolution declaring the purposes to which the
31 proceeds of these lands should be applied, originating before the constitution, and
32 forming the basis on which it was made, bound the United States to a particular course of
33 policy in relation to them by ties as strong as can be invented to secure the faith of
34 nations”; and
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36 **WHEREAS**, with respect to the disposition of the federal territorial lands, the
37 Northwest Ordinance of July 13, 1787 provides, “The legislatures of those districts or
38 new States, shall never interfere with the primary disposal of the soil by the United States
39 in Congress assembled, nor with any regulations Congress may find necessary for
40 securing the title in such soil to the bona fide purchasers”; and
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42 **WHEREAS**, the United States Supreme Court, in *Downes v. Bidwell*, 182 U.S. 244,
43 1901, stated, “The question of territories was dismissed with a single clause, apparently
44 applicable only to the territories then existing, giving Congress the power to govern and
45 dispose of them”; and
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47 **WHEREAS**, the territorial and public lands of the United States are dealt with in
48 Article IV, section 3, clause 2 of the United States Constitution, referred to as the
49 Property Clause, which states, “The Congress shall have power to dispose of and make
50 all needful rules and regulations respecting the territory or other property belonging to the
51 United States.” And

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53 **WHEREAS**, with this clause, the Constitutional Convention agreed that the
54 Constitution would maintain the “status quo” that had been established with respect to the
55 federal territorial lands being disposed of only to create new states with the same rights of
56 sovereignty, freedom, and independence as the original states; and

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58 **WHEREAS**, in 1828, United States Supreme Court Chief Justice John Marshall, in
59 American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511, 1828 said, “At the time the
60 Constitution was formed, the limits of the territory over which it was to operate were
61 generally defined and recognised (sic). These limits consisted in part, of organized states,
62 and in part of territories, the absolute property and dependencies of the United States.
63 These states, this territory, and future states to be admitted into the Union, are the sole
64 objects of the Constitution; there is no express provision whatever made in the
65 Constitution for the acquisition or government of territories beyond those Limits;” and

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67 **WHEREAS**, in Shively v. Bowlby, 152 U.S. 1, 1894, the U.S. Supreme Court confirmed
68 that all federal territories, regardless of how acquired, are held in trust to create new
69 states on an equal footing with the original states when it stated, “Upon the acquisition of
70 a territory by the United States, whether by cession from one of the states, or by treaty
71 with a foreign country, or by discovery and settlement, the same title and dominion
72 passed to the United States, for the benefit of the whole people, and in trust for the
73 several states to be ultimately created out of the territory;” and

74
75 **WHEREAS**, the Enabling Act of {insert state} states, in part, that until the title to the
76 unappropriated public lands lying within the state's boundaries, and to all land owned or
77 held by any Indian or Indian tribes “shall have been extinguished by the United States,
78 the same shall be and remain subject to the disposition of the United States, and said
79 Indian lands shall remain under the absolute jurisdiction and control of the Congress of
80 the United States; that no taxes shall be imposed by the State on lands or property therein
81 belonging to or which may hereafter be purchased by the United States or reserved for its
82 use”; and

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84 **WHEREAS**, the Enabling Act states further “That five per centum of the proceeds of the
85 sales of public lands lying within said State, which shall be sold by the United States
86 subsequent to the admission of said State into the Union, after deducting all the expenses
87 incident to the same, shall be paid to the said State, to be used as a permanent fund, the
88 interest of which only shall be expended for the support of the common schools within
89 said State”; and

90
91 **WHEREAS**, at the time of the Enabling Act the course and practice of the United

92 States Congress with all prior states admitted to the Union had been to fully dispose,
93 within a reasonable time, all lands within the boundaries of such states, except for those
94 Indian lands, or otherwise expressly reserved to the exclusive jurisdiction of the United
95 States; and

96
97 **WHEREAS**, the state of {insert state} did not, and could not have, contemplated or
98 bargained for the United States failing or refusing to dispose of all lands within its
99 defined boundaries within a reasonable time such that the State of {insert state} and its
100 Permanent Fund for its Common Schools could never realize the bargained-for benefit of
101 the deployment, taxation, and economic benefit of all the lands within its defined
102 boundaries; and

103
104 **WHEREAS**, the 1934 Taylor Grazing Act declared that “In order to promote the highest
105 use of the public lands pending its final disposal, the Secretary of the Interior is
106 authorized, in his discretion, by order to establish grazing districts or additions thereto
107 and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands
108 from any part of the public domain of the United States (exclusive of Alaska [and other
109 territorial exclusions]) . . . Nothing in this subchapter shall be construed . . . as limiting or
110 restricting the power or authority of any State as to matters within its jurisdiction”; and
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112 **WHEREAS**, in 1976, after nearly 200 years of trusting history regarding the obligation
113 of Congress to dispose of western lands to create new states and use the proceeds to
114 discharge its public debts, the United States Congress stated in the Federal Land Policy
115 Management Act, “By this Act, Congress declares that it is the policy of the United
116 States that the public lands be retained in Federal ownership, unless ... it is determined
117 that disposal of a particular parcel will serve the national interest”; and
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119 **WHEREAS**, in a unanimous 2009 decision, the United States Supreme Court, in
120 *Hawaii v. Office of Hawaiian Affairs*, stated, “. . . [a subsequent act of Congress] would
121 raise grave constitutional concerns if it purported to ‘cloud’ Hawaii’s title to its sovereign
122 lands more than three decades after the State’s admission to the Union. We have
123 emphasized that ‘Congress cannot, after statehood, reserve or convey submerged lands
124 that have already been bestowed upon a State.’ . . . [T]he consequences of admission are
125 instantaneous, and it ignores the uniquely sovereign character of that event . . . to suggest
126 that subsequent events somehow can diminish what has already been bestowed’. And that
127 proposition applies a fortiori [with even greater force] where virtually all of the State’s
128 public lands . . . are at stake;” and
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130 **WHEREAS**, from 1780 forward it is unmistakable that the federal government only held
131 bare legal title to the western public lands as a trustee in trust to dispose of them to create
132 new states and to use the proceeds to pay the public debt; and
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134 **WHEREAS**, the Federal Government abided by these express trust obligations to the
135 eastern edge of Colorado and then with Hawaii; and
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137 **WHEREAS**, the Federal Government has failed to abide by the terms of its preexisting
138 obligations from the eastern edge of Colorado to the west coast and Alaska; and

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140 **WHEREAS**, {insert state} has been damaged by more than 115 years of federal
141 entanglements to its lands; and

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143 **WHEREAS**, {insert state} should have had control over its lands from 1896, plus a
144 reasonable time for disposition; and

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146 **WHEREAS**, {insert state} has been substantially damaged in its ability to provide
147 funding for education because the federal government has unduly retained control of
148 nearly 70 percent of land within its borders; and

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150 **WHEREAS**, {insert state} has been damaged in lost property tax revenues to which the
151 state was entitled; and

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153 **WHEREAS**, {insert state} has been damaged in mineral lease revenues and severance
154 taxes, which the Federal Government usurped without authority and in breach of its
155 express trust obligations; and

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157 **WHEREAS**, {insert state} has been damaged by the uncertainty regarding the sovereign
158 control of its land and damaged by the loss of the economic multiplier effect over the use
159 of its lands; and

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161 **WHEREAS**, in light of these circumstances, the United States Congress disposed of
162 lands within the boundaries of Hawaii directly to the state of Hawaii pursuant to its
163 enabling act; and

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165 **WHEREAS**, because of these entanglements and the breach of the Enabling Act and the
166 damage resulting from it, the United States Congress should engage in good faith
167 communication, cooperation, coordination, and consultation with the state of {insert
168 state} to dispose directly to the state certain public lands where the public has developed
169 a reasonable expectation of multiple use; and

170
171 **WHEREAS**, in the past, the Federal Government disposed of lands to persons with a
172 logical nexus to the lands, including homestead claims, mining, timber, and grazing
173 claims, the state of {insert state} expects that the United States Congress will do the same
174 with respect to any lands not ceded directly to the state; and

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176 **WHEREAS**, the Federal Government has an obligation, to present and all future
177 generations, to pay the public debt, yet has demonstrated an inability to reduce the
178 growing national debt even as it continues to worsen at an exponential rate.

179
180 **NOW, THEREFORE, BE IT RESOLVED** that the Legislature of the state of {insert
181 state} strongly urges the Federal Government to use proceeds from the sale of lands not
182 disposed directly to the state only to pay the public debt pursuant to the Congressional

183 Resolutions of 1780 and 1790 and the language of the Andrew Jackson veto of the lands
184 bill that sought to use proceeds for some other purpose than this solemn compact
185 obligation over the western public lands.

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187 **BE IT FURTHER RESOLVED** that the Legislature of the state of {insert state} urges
188 the United States Congress in the most strenuous terms to engage in good faith
189 communication, cooperation, coordination, and consultation with the state of {insert
190 state} regarding those lands wherein the public has developed a reasonable expectation of
191 multiple use that must be disposed of directly to the state.

192
193 **BE IT FURTHER RESOLVED** that the United States Congress should only dispose of
194 lands not ceded to the state to persons with a logical nexus to the lands, including
195 homestead claims, mining, timber, and grazing claims.

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197 **BE IT FURTHER RESOLVED** that a copy of this resolution be sent to the United
198 States Department of the Interior, the Majority Leader of the United States Senate, the
199 Speaker of the United States House of Representatives, the members of the congressional
200 delegation of {insert state}, and the Governors, Senate Presidents, and Speakers of the
201 House of the 49 other states.

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203 **BE IT ENACTED:**

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205 Section 1. Definitions. As used in this chapter:

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207 (A) "Net proceeds" means the proceeds from the sale of public lands, after
208 subtracting expenses incident to the sale of the public lands.

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210 (B) "Public lands" means lands within the exterior boundaries of this state except:

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212 (1) lands to which title is held by a person who is not a governmental
213 entity;

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215 (2) lands owned or held in trust by this state, a political subdivision of this
216 state, or an independent

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218 (3) lands reserved for use by the state system of public education

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220 (4) school and institutional trust lands

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222 (5) national parks

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224 (6) lands ceded to the United States

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226 (7) lands, including water rights, belonging to an Indian or Indian tribe,
227 band, or community that is held in trust by the United States or is subject to a
228 restriction against alienation imposed by the United States

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230 Section 2. Disposal and taxation of public lands.

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232 (A) On or before December 31, 2014, the United States shall sell public lands.

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234 (B) The United States shall pay to this state 5 percent of the net proceeds of the sale of
235 public lands.

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229

230 (C) The amounts described in Subsection (B) shall be deposited into the permanent State
231 School Fund.

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233 (D) Beginning on January 1, 2015, public lands that the United States has not sold as of
234 December 31, 2014, are subject to property taxation.

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236 Section 3. Federalism Subcommittee study.

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238 (A) the legislature creates a Federalism Subcommittee to study:

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240 (1) procedures and requirements for subjecting public lands that the
241 United States has not sold as of December 31, 2014, to property taxation,
242 including the creation of a lien and the seizure and sale of the public lands;

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244 2) the definition of "public lands", including whether to address as part of
245 the definition interests, rights, or uses related to:

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