Disposal and Taxation of Public Lands Act

WHEREAS, in 1780, the United States Congress resolved that “the unappropriated lands that may be ceded or relinquished to the United States, by any particular states, pursuant to the recommendation of Congress of the 6 day of September last, shall be granted and disposed of for the common benefit of all the United States that shall be members of the federal union, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states: . . . and that upon such cession being made by any State and approved and accepted by Congress, the United States shall guaranty the remaining territory of the said States respectively. . . . That the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them”; and

WHEREAS, under these express terms of trust, the land claiming states, over time, ceded their western land to their confederated Union and retained their claims that the confederated government dispose of such lands to create new states “and for no other use or purpose whatsoever” and use the proceeds of any sales of such lands only for the purpose of paying down the public debt; and

WHEREAS, by resolution in 1790, the United States Congress declared “That the proceeds of sales which shall be made of lands in the Western territory, now belonging or that may hereafter belong to the United States, shall be, and are hereby appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or by virtue of this act may be holden, and shall be applied solely to that use, until the said debt shall be fully satisfied”; and

WHEREAS, in 1833, referring to these land cession compacts which arose from the original 1780 congressional resolution, President Andrew Jackson stated, “These solemn compacts, invited by Congress in a resolution declaring the purposes to which the proceeds of these lands should be applied, originating before the constitution, and forming the basis on which it was made, bound the United States to a particular course of policy in relation to them by ties as strong as can be invented to secure the faith of nations”; and

WHEREAS, with respect to the disposition of the federal territorial lands, the Northwest Ordinance of July 13, 1787 provides, “The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers”; and

WHEREAS, the United States Supreme Court, in Downes v. Bidwell, 182 U.S. 244, 1901, stated, “The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them”; and
WHEREAS, the territorial and public lands of the United States are dealt with in Article IV, section 3, clause 2 of the United States Constitution, referred to as the Property Clause, which states, “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

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

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

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

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

WHEREAS, the Enabling Act states further “That five per centum of the proceeds of the sales of 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 the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State”; and

WHEREAS, at the time of the Enabling Act the course and practice of the United...
States Congress with all prior states admitted to the Union had been to fully dispose, within a reasonable time, all lands within the boundaries of such states, except for those Indian lands, or otherwise expressly reserved to the exclusive jurisdiction of the United States; and

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

WHEREAS, the 1934 Taylor Grazing Act declared that “In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska [and other territorial exclusions]) . . . Nothing in this subchapter shall be construed . . . as limiting or restricting the power or authority of any State as to matters within its jurisdiction”; and

WHEREAS, in 1976, after nearly 200 years of trusting history regarding the obligation of Congress to dispose of western lands to create new states and use the proceeds to discharge its public debts, the United States Congress stated in the Federal Land Policy Management Act, “By this Act, Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership, unless . . . it is determined that disposal of a particular parcel will serve the national interest”; and

WHEREAS, in a unanimous 2009 decision, the United States Supreme Court, in Hawaii v. Office of Hawaiian Affairs, stated, “. . . [a subsequent act of Congress] would raise grave constitutional concerns if it purported to ‘cloud’ Hawaii’s title to its sovereign lands more than three decades after the State’s admission to the Union. We have emphasized that ‘Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State.’ . . . ‘[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event . . . to suggest that subsequent events somehow can diminish what has already been bestowed’. And that proposition applies a fortiori [with even greater force] where virtually all of the State’s public lands . . . are at stake;” and

WHEREAS, from 1780 forward it is unmistakable that the federal government only held bare legal title to the western public lands as a trustee in trust to dispose of them to create new states and to use the proceeds to pay the public debt; and

WHEREAS, the Federal Government abided by these express trust obligations to the eastern edge of Colorado and then with Hawaii; and
WHEREAS, the Federal Government has failed to abide by the terms of its preexisting obligations from the eastern edge of Colorado to the west coast and Alaska; and

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

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

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

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

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

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

WHEREAS, in light of these circumstances, the United States Congress disposed of lands within the boundaries of Hawaii directly to the state of Hawai'i pursuant to it enabling act; and

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of {insert state} strongly urges the Federal Government to use proceeds from the sale of lands not disposed directly to the state only to pay the public debt pursuant to the Congressional
Resolutions of 1780 and 1790 and the language of the Andrew Jackson veto of the lands bill that sought to use proceeds for some other purpose than this solemn compact obligation over the western public lands.

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

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

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

**BE IT ENACTED:**

Section 1. Definitions. As used in this chapter:

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

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

1. lands to which title is held by a person who is not a governmental entity;
2. lands owned or held in trust by this state, a political subdivision of this state, or an independent
3. lands reserved for use by the state system of public education
4. school and institutional trust lands
5. national parks
6. lands ceded to the United States
7. lands, including water rights, belonging to an Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States

Section 2. Disposal and taxation of public lands.

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

(B) The United States shall pay to this state 5 percent of the net proceeds of the sale of public lands.
(C) The amounts described in Subsection (B) shall be deposited into the permanent State School Fund.

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

Section 3. Federalism Subcommittee study.

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

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

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

(a) easements;

(b) geothermal resources;

(c) grazing;

(d) mining;

(e) recreation;

(f) rights of entry;

(g) special uses;

(h) timber;

(i) water; or

(j) other natural resources;

(3) the determination of what constitutes expenses incident to the sale of public lands; and

(4) issues related to [National Parks, National Monuments, National Recreation Areas, etc].

(B) The Federalism Subcommittee may study any other issue related to the disposal and taxation of public lands as determined by the subcommittee.

(C) The Federalism Subcommittee shall report its findings and recommendations