



WYOMING TASK FORCE ON THE TRANSFER OF PUBLIC LANDS

DATE November 19, 2013

TO Joint Agriculture, State and Public Lands and Water Resources Committee
Joint Minerals, Business and Economic Development Committee
Select Federal Natural Resource Management Committee

FROM The Wyoming Task Force on the Transfer of Public Lands

SUBJECT Task Force Recommendations

The Wyoming Task Force on the Transfer of Public Lands held two meetings on the topic of transferring federal public lands (hereinafter "public lands") to the state. The Task Force heard testimony on the following issues:

- The history of state and public land in Wyoming.
- The efforts of Utah and other states concerning the transfer of public land.
- Legal issues surrounding the topic of the transfer of public land including treating the State act of admission (26 Statutes at Large 222, Ch. 664.) as a contract and looking to history to determine the intent of the parties related to the disposition of the public lands.
- Challenges related to mineral development and agriculture activities on public land and possible impacts to Wyoming's economy and environment as a result of federal management of the lands.
- Costs and revenues related to management of state lands compared to costs and revenues from the management of federal lands.

Specifically, the legislation creating the Task Force (2013 House Bill 228) required the Task Force to look a three overall areas: the loss of revenues to the state due to federally managed lands; the legal recourses available to the state; and the possibility of making an offer to purchase the lands. As to loss of revenues, the Task Force heard from state agencies and industry that permitting delays caused by federal management has caused mineral developers to move resource development to other states and countries where delays are minimal or non-existent. In addition, the timing of development caused by permitting delays has caused developers to miss higher commodity prices which reduces the amount of revenue received by the state and also has an impact on employment within those industries. The Task Force also received a report on the results of a study by Dr. Considine indicating that the process of development of minerals on federal land is much slower than on private land and indicating that the costs of the delay to the

state can have large revenue consequences. As to making an offer to purchase the land, the Task Force was not in a position to consider that option fully, but it would be something that the Task Force would recommend be further discussed by a select committee as discussed in the Task Force recommendations below.

The Task Force did spend some time considering the possible legal resources available to the state. Particularly, the Task Force heard from Mr. Tony Rampton, Utah Assistant Attorney General on that issue. The argument, as laid out by Mr. Rampton and others, focuses on the following language:

The people inhabiting this 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...

Wyoming Constitution Article 21 Section 26. Mr. Rampton, and others, argues that the phrase "until the title thereto shall have been extinguished by the United States" can be read in one of two ways. The word "shall" can be read as mandatory, creating a duty that the United States extinguish title to the land. While an alternate reading of that provision could be forwarded that the word "shall" as used in that section is permissive and does not provide a duty to extinguish title, the argument then becomes that the section is ambiguous. Relying on several cases that treat the acts of admission as contracts, Mr. Rampton then argues that as with any contract when there is an ambiguity the court should look to surrounding circumstances to determine the intent of the parties. Mr. Rampton says that until the enactment of the Federal Land Policy and Management Act of 1976 the Federal government had always adhered to a policy of disposing of the public lands. He argues that because these are contracts between the states and the Federal government, the Federal government cannot unilaterally change the contracts by later acts of Congress. Mr. Rampton also stated that this same language is present in the enabling acts of most states east of Wyoming where the majority of the lands were not retained by the Federal government. Mr. Rampton noted that the argument is not a sure thing and there are other issues to consider including what is the appropriate remedy, but the Task Force was persuaded that there is potential merit in the legal argument and that it is worth pursuing further.

A more in depth look at the topics covered by the Task Force can be found in the minutes of the Task Force available on the LSO website:

<http://legisweb.state.wy.us/LegislatorSummary/InterimComm.aspx?strCommitteeID=O25&Year=2013>

Recommendations

As a result of the information gathered by the Task Force, the Task Force is convinced that this topic is an extremely important one to pursue for the future of Wyoming and failure to act could have some significant consequences both on Wyoming's economy and environment. However, the Task Force also recognizes that it is a complex issue which could span multiple years, which would involve many potential interested parties including the other Western states and which may require the development of a comprehensive legislative and political strategy in order to move forward.

Because of both the importance and complexity of the task, the Task Force is recommending the creation of a Select Committee which would be responsible for looking into the issues surrounding the transfer of public lands to the State. A copy of proposed legislation (14LSO-0203.W1) is included with these recommendations. Further, the Task Force recommends that if a Select Committee is not created in accordance with the recommendations of the Task Force, the topic of the transfer of public lands be assigned to another Committee for further actions consistent with these recommendations.

Sincerely,

Senator Eli Bebout, Chairman

Representative Dave Miller, Chairman