

ALEC | American
Legislative
Exchange
Council
LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

the SEPTEMBER 2015
**STATE
FACTOR**

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Federally Managed Lands in the West: The Economic and Environmental Implications for the States

Executive Summary

While the transfer of limited federal public lands to state control is an idea that is almost as old as the Republic itself, misconceptions about the policy are common, and the rationale underpinning the transfer is not widely understood. Below are answers to many questions surrounding this contentious issue, as well as clarification on what transfer of public lands petitions seek to do and what is not included in the proposals.

- There is strong historical precedent for the transfer of control of select lands to the states: there was a time when the federal estate included large swathes of Midwestern states such as Illinois and Missouri. After being petitioned by the states, the federal government transferred control of much of the territory within their borders to the respective states.
- The federal government's control over so much land in the western states is inconsistent with America's longstanding doctrine of the inherent equality of all states. This important principle is violated by allowing the eastern states jurisdiction over the vast majority of their lands but denying the same to the western states.

- National parks, Congressionally-designated wilderness areas, tribal lands, and military installations are typically excluded from land transfer proposals.
- States that have petitioned or plan to petition the federal government for control over the federal lands within their boundaries have conducted exhaustive studies to determine if transfer is economically feasible.

To learn more about how the **American Legislative Exchange Council** helps develop innovative solutions in partnership with lawmakers and business leaders, or to become a member, please visit www.alec.org.

American Legislative Exchange Council
2900 Crystal Drive, Suite 600
Arlington, VA 22202
Tel: 703.373.0933
Fax: 703.373.0927
www.alec.org



“Transferring select public lands from federal to state control is right from a historical, economic, environmental and constitutional perspective.”

- There is ample evidence that the states would serve as superior environmental stewards of the lands within their borders. By all accounts, the federal government is not managing the federal estate well – leading to wildfires and lower leasing fees. While lower leasing fees benefit the lessee, they translate into less revenue for the lessor. The federal government is leasing the land at below market rates. In addition, the states are permitted to lease their public lands to environmental organizations for restoration, something the federal government is prohibited from doing with the public lands under its purview.
- The states would be better economic stewards of their lands than the federal government. Revenues from the lands would increase, and regulatory redundancy would be reduced.
- Subsidies to the states through programs such as Payments in Lieu of Taxes (PILT) and the Secure Rural Schools and Community Self-Determination Act (SRS) could be decreased, if not eventually eliminated, reducing the Western states’ dependence on federal dollars.
- Canada has already begun transferring the federal lands in its territories from national to territorial control in a process called devolution. Yukon was the first territory to be awarded jurisdiction over its federal lands in 2003, and devolution has been successful. Devolution became official

for Northwest Territories in 2014, and Alaskans have noted that devolution has made it more difficult for Alaskan extractive firms to compete with Canadian ones that can offer greater certainty.

Transferring select public lands from federal to state control is right from a historical, economic, environmental and constitutional perspective. The Federal Land Policy and Management Act (FLPMA) holds that the federal estate should remain in federal ownership unless, “disposal is in the national interest.” Disposal is in the interest of the nation and states, as jurisdiction over the lands within its boundaries is state sovereignty at its most basic level.

Introduction

The amount of land the federal government controls in any given state is a function of geography and history. In the 12 states from Colorado westward (Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming), the federal government administers, on average, more than 50 percent of the land mass within each state’s borders. The amount of federal control ranges from a high of over 80 percent in Nevada to less than 30 percent in Montana. This contrasts sharply with an average 4 percent federal administration rate in the remaining 38 states – states that with the exception of Hawaii are largely east of Colorado.¹ Federal control of so much territory within their borders has profound economic and environmental implications for the 12 western states, and a number of them have petitioned Congress to transfer these public lands to state authority. Typically, the legislative requests exclude national parks, tribal lands, military installations and Congressionally designated wilderness areas.

Support for transferring select federal lands to state control is increasing, and legislation requesting land transfers is proliferating at both the state and federal levels. In 2015, more than 50 transfer of public lands bills were pending or adopted in state legislatures, and legislation was introduced in both houses of Congress that would give the western states the authority to develop energy resources on the federal lands inside their boundaries. The federal government should transfer control of much of the Western land in the federal estate as the states would be better economic and environmental stewards.

Historical Overview and Current Landscape

The disparity between federal land administration in the eastern and western states traces its roots to the first years of the Republic. The states joining the Union subsequent to the original 13 were compelled to cede excess lands to the federal government for the general welfare. Ownership of these public lands strengthened the federal government, enabling it to pay off the considerable debts incurred during the Revolutionary War. Lands were typically sold for immediate revenues or granted for specific purposes, such as state educational institutions. The land was often sold inexpensively to encourage western settlement.

In their enabling acts, the “new” states reluctantly relinquished their rights to federal lands, however, it was generally understood that the federal government would dispose of the federal estate, not hold it in trust in perpetuity. The relinquishment language in enabling acts for eastern and western states is strikingly similar.

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, . . .

This language is found in the enabling acts for both North Dakota and Utah. More than one century since statehood, the federal government controls less than 4 percent of North Dakota’s territory but more than 66 percent of Utah’s territory.

Article 18 of Utah’s State Constitution, which was adopted two years after Congress passed its enabling act, states, “The Legislature shall enact laws to prevent the destruction of and to preserve the Forests on the lands of the State, and upon any part of the public domain, the control of which may be conferred by Congress upon the State.”² Clearly, Utahns, like North Dakotans, expected that the lands would ultimately be transferred to their control.

In the states east of Colorado, the government ultimately honored this implicit pledge, although multiple demands to Congress were often required. During the nineteenth century,

public lands in the West were transferred from federal control via homestead initiatives, however, those slowed considerably as the twentieth century approached when the focus reversed from disposal of the public domain to preservation. Codification of this shift occurred in 1976 with the enactment of the Federal Land Policy and Management Act (FLPMA) by Congress, which affirmed that the remaining public domain lands would stay in federal ownership.



Currently, the federal government owns 635-640 million acres (28 percent) of the 2.27 billion acres of the United States of America’s total land mass.³ This federal land is administered by several different agencies. The Bureau of Land Management controls the greatest amount of territory (248 million acres), followed by the U.S. Forest Service (193 million acres), the Fish and Wildlife Service (89 million acres not including 217 million acres of marine refuges and monuments) and the Department of Interior’s National Park Service (80 million acres).⁴ With more than 80 percent, Nevada has the greatest percentage of federally controlled territory;⁵ Alaska’s and Utah’s federally-managed lands account for more than 60 percent of their total land masses.⁶

“Currently, the federal government owns 635-640 million acres (28 percent) of the 2.27 billion acres of the United States of America’s total land mass.”



“The disproportionate western federal land ownership has far-reaching effects on the states’ ability to grow and diversify economically and to fund vital public services such as education, infrastructure maintenance and construction, law enforcement, and social services.”

The disproportionate western federal land ownership has far-reaching effects on the states’ ability to grow and diversify economically and to fund vital public services such as education, infrastructure maintenance and construction, law enforcement, and social services. There is ample evidence that the states would serve as superior economic and environmental stewards of the public lands inside their borders.

Laying the Foundation for the Transfer of Public Lands

The western states approach the prospect of managing millions of acres of newly transferred federal lands with the utmost seriousness. Many have conducted exhaustive feasibility studies to explore their ability to manage the lands once they obtain possession, ensuring that they are comparable to the subsequent legislation petitioning Congress for land transfer. The petitions do not contemplate the transfer of national parks, Congressionally designated wilderness areas, tribal lands or military installations; nor do the studies. The analyses presume that the state will hold transferred lands under the management of state land trusts. State land trusts have highly restrictive guide-

Percentage of Land Owned by the Federal Government, 2010

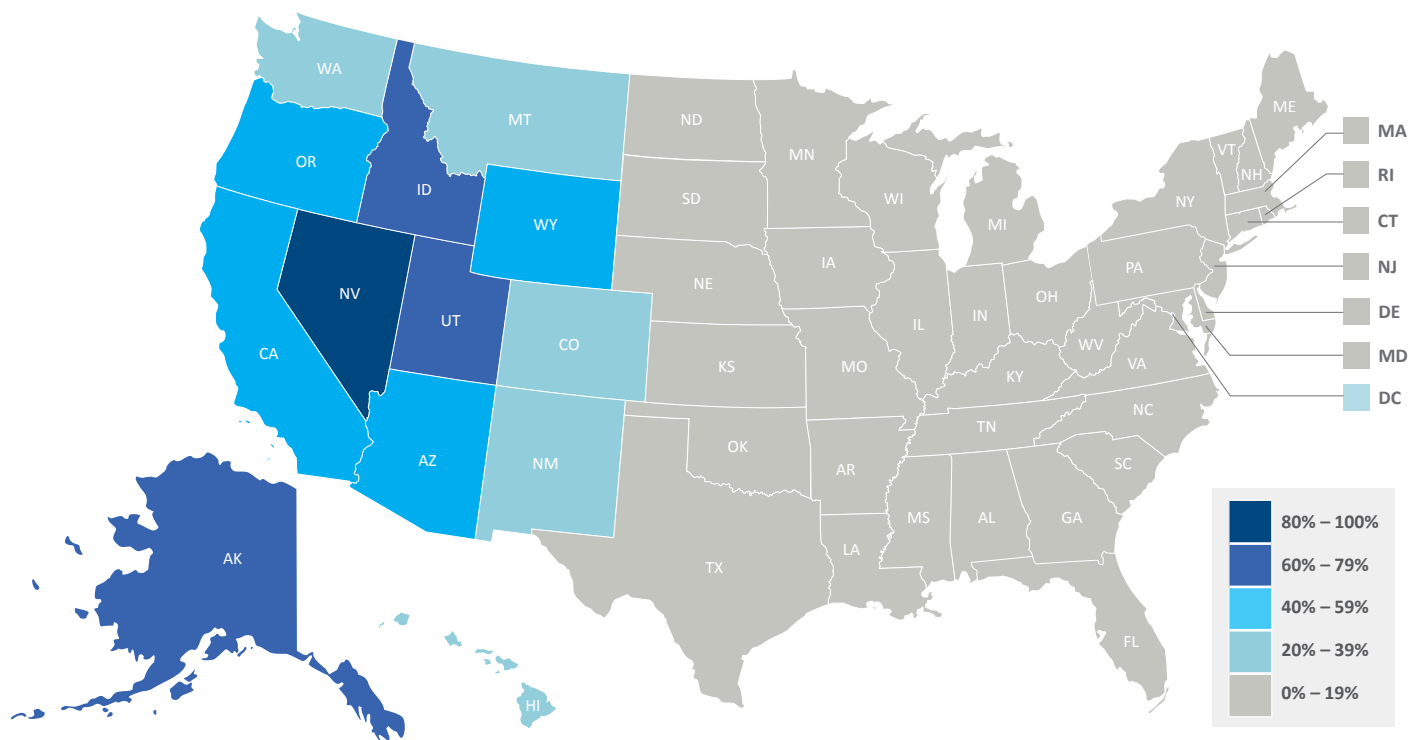


Table 1: Federal Land by State, 2010

	Total Federal Land Acreage ^a	Total Acreage in the State	% of State
Alabama	871,232	32,678,400	2.7%
Alaska	225,848,164	365,481,600	61.8%
Arizona	30,741,287	72,688,000	42.3%
Arkansas	3,161,978	33,599,360	9.4%
California	47,797,533	100,206,720	47.7%
Colorado	24,086,075	66,485,760	36.2%
Connecticut	8,557	3,135,360	0.3%
Delaware	28,574	1,265,920	2.3%
District of Columbia	8,450	39,040	21.6%
Florida	4,536,811	34,721,280	13.1%
Georgia	1,956,720	37,295,360	5.2%
Hawaii ^b	833,786	4,105,600	20.3%
Idaho	32,635,835	52,933,120	61.7%
Illinois	406,734	35,795,200	1.1%
Indiana	340,696	23,158,400	1.5%
Iowa	122,602	35,860,480	0.3%
Kansas	301,157	52,510,720	0.6%
Kentucky	1,083,104	25,512,320	4.2%
Louisiana	1,330,429	28,867,840	4.6%
Maine	209,735	19,847,680	1.1%
Maryland	195,986	6,319,360	3.1%
Massachusetts	81,692	5,034,880	1.6%
Michigan	3,637,965	36,492,160	10.0%
Minnesota	3,469,211	51,205,760	6.8%
Mississippi	1,523,574	30,222,720	5.0%
Missouri	1,675,400	44,248,320	3.8%
Montana	26,921,861	93,271,040	28.9%
Nebraska	549,346	49,031,680	1.1%

	Total Federal Land Acreage ^a	Total Acreage in the State	% of State
Nevada	56,961,778	70,264,320	81.1%
New Hampshire	777,807	5,768,960	13.5%
New Jersey	176,691	4,813,440	3.7%
New Mexico	27,001,583	77,766,400	34.7%
New York	211,422	30,680,960	0.7%
North Carolina	2,426,699	31,402,880	7.7%
North Dakota	1,735,755	44,452,480	3.9%
Ohio	298,500	26,222,080	1.1%
Oklahoma	703,336	44,087,680	1.6%
Oregon	32,665,430	61,598,720	53.0%
Pennsylvania	616,895	28,804,480	2.1%
Rhode Island	5,248	677,120	0.8%
South Carolina	898,637	19,374,080	4.6%
South Dakota	2,646,241	48,881,920	5.4%
Tennessee	1,273,974	26,727,680	4.8%
Texas	2,977,950	168,217,600	1.8%
Utah	35,033,603	52,696,960	66.5%
Vermont	453,871	5,936,640	7.6%
Virginia	2,358,071	25,496,320	9.2%
Washington	12,173,813	42,693,760	28.5%
West Virginia	1,130,951	15,410,560	7.3%
Wisconsin	1,865,374	35,011,200	5.3%
Wyoming	30,043,513	62,343,040	48.2%
Total	628,801,639	2,271,343,360	27.7%
Territories	161,967 ^c	not applicable	

Source:

Congressional Research Service. *Federal Land Ownership: Overview and Data: February 8, 2012: Table 1. Federal Land by State 2010.*

Notes:

- Understates total; includes lands of the four major federal land management agencies and the Department of Defense, but excludes lands administered by other federal agencies (e.g., Agricultural Research Service, Bureau of Reclamation, Department of Energy, National Aeronautics and Space Administration).
- Excludes Papahānaumokuākea Marine National Monument (88,647,881 acres) administered by FWS.
- Excludes marine refuges and monuments administered by FWS totaling 122,575,609 acres.

lines governing how revenues earned from land in the trust can be used, usually dedicating funds for public services such as education, social services, law enforcement and infrastructure maintenance. State trusts also prohibit or severely limit the sale of lands held by the trust. This territory is viewed as a long-term asset to be managed for revenue creation and not subject to disposal. After sober analysis of the costs and benefits, many of these studies conclude that state governments would be better fiduciary and environmental managers of the federal lands in the states.

Some of the analyses, such as Nevada's, include elaborate transfer plans where land is gradually ceded to the state by the federal government. This affords the state adequate time to establish regulatory structures to oversee the land. Nevada requests that transfers for the most lucrative parcels occur first, in order to establish the revenue stream needed to support the less-profitable lands scheduled for later transfer.

The methodical consideration exhibited by current western states on assuming control over the federal lands within their borders contrasts sharply with previous "frontier" states. Illinois and Missouri did not commission exhaustive economic feasibility studies before demanding a transfer of their federal lands in the early 1800s, yet the fact that these states presently exercise control over 99 percent and 96 percent respectively of their territory is taken for granted by most Americans. The states that petition Congress for a transfer of public lands today are cognizant of the consequences, and no state is obligated to assume authority over its federal lands. This is an option for states that have determined that transfer is in their best interest.

In February of 2015, both the U.S House and the U.S Senate introduced the Federal Lands Freedom Act, which would give states the authority to administer leasing, permitting, and regulatory programs for development of all energy resources on federal lands. Consistent with state requests, the Congressional bills exempt national parks, military installations, tribal lands and Congressionally designated wilderness areas. As Senator James Inhofe, the sponsor of the Senate bill, notes, the Act "takes a necessary step toward restoring the Constitution's trust in the states."⁷

Senator Inhofe's statement underscores the federalism aspect

of the public lands debate and America's longstanding doctrine of the inherent equality of the 50 states. By transferring federal lands to state control in the eastern states but denying the western states the same sovereignty over their public lands, the federal government violates this important principle highlighted in the U.S. Supreme Court decision *W.H. Coyle, Plff. In Err., v. Thomas P. Smith, Secretary of State of the State of Oklahoma, et al* (1911). Justice Horace Harmon Lurton delivered the Court's majority opinion: "This Union was and is a union of states equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself."⁸ The unequal distribution of federal lands clearly erodes the western states' "power, dignity and, authority."



"In February of 2015, both the House and Senate introduced the *Federal Lands Freedom Act*, which would give states the authority to administer leasing, permitting, and regulatory programs for development of all energy resources on federal lands."

Economic Stewardship of Public Lands

>> Natural Resource Development

There is mounting evidence that the states would maximize the economic potential of the lands inside their boundaries better than the federal government. Currently, the Bureau of Land Management (BLM) and the National Forest Service (NFS) manage most of the lands, issuing leasing permits for development of energy, minerals, and timber resources, as well as grazing permits. The leases result in royalty sharing arrangements that generally involve remitting 49 percent to the state, 11 percent to the U.S. Treasury, and 40 percent to the federal reclamation fund.⁹ The public lands controlled by the states are held in state land trusts, and these state trusts contribute more to state budgets on a per acre basis than federal public lands revenue sharing programs. States keep all of the royalties earned from state trust land leases. According to the Government Accountability Office (GAO), the loss to American taxpayers due to federal land agency mismanagement of the federal estate totals \$2 billion annually.¹⁰ There are several possible reasons for this that go beyond royalty sharing arrangements.

A cumbersome and redundant bureaucracy governs energy development on federal lands, a fact that is openly acknowledged by officials in the agencies charged with managing this territory. At an oversight hearing before the Subcommittee on Forests and Forest Health, then Chief of the USDA Forest Service likened the decision-making process in his agency to the Greek Myth of Sisyphus where the condemned endlessly pushes a rock up a hill only to watch it roll down upon reaching the summit. He observed that “The [Greek] gods had never envisioned the For-

est Service’s decision-making process ... Too little value returns to the public with the resources that we are supposed to be managing and protecting.” “Gordian knot” and “gridlock” were other terms peppered throughout the testimony.¹¹ The current system of overlapping and sometimes conflicting regulations and review processes results in missed opportunities to capitalize on resources.

Because approvals and reviews are tied up in a bureaucracy that rewards process over outcome, the federal agencies lack the flexibility to respond to market forces. The federal government generally leases land rights at below-market rates, many of which have not gone up in years despite steep price increases in the open market. State land trusts, however, mandate fiscal responsibility in all leasing agreements and require the trusts to ensure that expenses do not exceed revenues. A study by the Property and Environment Research Center (PERC) that compares public lands in Arizona, Idaho, Montana and New Mexico under both federal and state control finds that for every dollar spent managing federal lands, the federal land agencies earn 73 cents. During the same time period, state land trusts earned \$14.51 for each dollar spent.¹² The U.S. government is uncompetitive with its global trading partners, receiving one of the lowest shares of revenue from oil and gas production in the world. The federal government’s take (total revenue as a percentage of the value of the oil and natural gas produced, received by government resource owners) lags far behind the states and several countries, such as Norway and the UK.¹³

U.S. government regulatory redundancy creates inefficiencies without conferring readily identifiable benefits. In Oklahoma, it takes 700 times longer to get a drilling permit on federal lands than on private lands.¹⁴ Not surprisingly, the state’s oil production on federal lands has dropped 6 percent and production of natural gas has dropped 28 percent since 2009, a period of significant growth in energy development on private lands.¹⁵ According to the Congressional Research Service, oil production on federal lands across the nation has fallen by 9 percent, while at the same time increasing by 61 percent on state and private lands since 2009.¹⁶

Lack of accountability is another possible reason for the federal government’s mismanagement of the lands that it administers. Because the state trusts must earn more than they spend with

“U.S. government regulatory redundancy creates inefficiencies without conferring readily identifiable benefits. In Oklahoma, it takes 700 times longer to get a drilling permit on federal lands than on private lands.”

resulting revenues directly funding services vital to public welfare, the public immediately notices failures and is not so far removed from the officials responsible to hold them accountable. In contrast, the agencies charged with oversight of the federal estate have a disincentive to underspend, as funds remaining in their budgets at the end of the fiscal year will likely not be included in their budgets the following year. The Government Accountability Office (GAO) has identified oil and gas management on federal lands as being at high risk of fraud, waste, abuse and mismanagement in part because of this situation.¹⁷

Further, North Dakota's three percent seasonally-adjusted unemployment rate is the envy of every state except Nebraska.²⁰ The entire country has benefitted from the economic growth spurred by this energy revolution. However, as long as the federal government controls vast acreage in the western states, they cannot fully take advantage of their own natural resources. Forty-three percent of proven U.S. crude oil reserves are on federal lands²¹ and GAO estimates that the recoverable oil in the federal lands on the Green River Formation, located at the intersection of Colorado, Utah, and Wyoming, may equal the rest of the world's proven reserves.²²

Table 2: 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.

Divided Lands: State vs. Federal Management in the West By Holly Fretwell and Shawn Regan, March 2015.

Overall, the twelve Western states in which the federal government administers more than 50 percent of the land have above average unemployment rates. California has the ninth-highest and Nevada the second-highest unemployment rates in the country.¹⁸ A 2014 study commissioned by the Nevada Land Management Task Force concluded that the state could generate significant net revenue were it afforded the opportunity to manage an expanded state land portfolio.¹⁹ Since America's energy sector grew 40 percent even during the worst parts of the nation's recent economic downturn (2007-2012), it is likely that those unemployment rates might have been lower if the states had been permitted to administer the federal lands within their borders. Excessive federal land ownership also prevents states from diversifying their economies. Nevada's 81.1 percent federal control leaves little territory left for economic diversification.

North Dakota serves as an excellent case study of the possible economic windfall for a state that is permitted to develop its resources. Because of innovation in hydraulic fracturing technology, North Dakota could finally access the oil locked within the Bakken Formation. The state now produces more than one million barrels of oil daily; has cut income and property taxes; and still has funds available to build new roads and schools.

“Overall, the twelve Western states in which government administers more than 50 percent of the land have above average unemployment rates. California has the second-highest and Nevada the fifth-highest unemployment rates in the country.”



>> Federal Compensation Programs

Because state and local governments are prohibited from taxing federal public lands, the federal government has created programs to compensate states for lost revenues. The Payments in Lieu of Taxes (PILT) program is the most wide-ranging of the compensation plans. Established in 1976 by Congress and administered by the U.S. Department of the Interior, the PILT program covers 94 percent of all federal land.²³ PILT payments are calculated using a complex formula making it difficult, if not impossible, to determine a precise dollar figure in advance of each year's remittance. This makes the contemplation of PILT revenues in state budgets a challenge. These payments can comprise a considerable portion of a state's anticipated revenues. For Fiscal Year (FY)2014, New Mexico and Utah received almost \$40 million in PILT payments; Arizona and Colorado more than \$30 million; and Alaska, Idaho and Wyoming more than \$25 million.²⁴ Congress included a measure authorizing FY2015 payments in late June 2015.

Many western states also receive Secure Rural Schools and Community Self-Determination Act (SRS) payments. Enacted by Congress in 2000, SRS was established to provide temporary assistance to western counties that had engaged in timber revenue sharing arrangements with the federal government and needed funds to offset the reduction in royalty revenues occasioned by a sharp decline in timber sales. SRS is administered by the U.S. Forest Service and is currently on an annual reauthorization schedule. SRS funds due to be remitted were reauthorized in April 2015.

PILT and SRS payments have become increasingly unreliable because they often fall victim to Congressional budget battles and the Budget Control Act, otherwise known as Sequestration. This creates undue hardship for the states counting on these revenues. In 2013 PILT payments withheld from the states because of the Sequester were finally remitted, but only after a bipartisan group of western Congressional lawmakers argued that withholding the funds was unwarranted because royalty payments are in effect a pass through, not part of the budget. As U.S. Representative Cynthia Lummis (WY) aptly pointed out, "... until we cut the middle man out of these transactions, we will always be vulnerable to the federal sharks swimming around Wyoming's revenue."²⁵

The western states face many of the same obstacles when it comes to the federal government's disbursement of SRS funds. If SRS had not been reauthorized, more than \$300 million in anticipated SRS payments would have been reduced to \$50 million.²⁶ This amounts to substantial reductions in revenue for small, western county budgets. Rather than luring the western states and governmental subdivisions into a dependence on unreliable federal government subsidies, it would be preferable to give them the freedom to develop their own revenue streams from the lands within their borders.



"The federal model of land management is failing Montana. Access is decreasing, catastrophic wildfire conditions are escalating, our environment is suffering, and economic productivity has sadly slipped to an all-time low."

— Montana State Senator Jennifer Fielder

Environmental Stewardship of Public Lands

Opponents of the transfer of select federal public lands to state authority often base their objections on environmental concerns, worrying that the states will sell newly transferred lands to extractive industries resulting in wholesale environmental degradation. However, states are more familiar with their land's unique qualities and vulnerabilities, giving them expertise in maintaining the land that their federal counterparts often lack. This is a view held by many western lawmakers who consider the federal government the problem – not the solution – to preserving the land. Montana State Senator Jennifer Fielder is one of them, observing, "The federal model of land manage-

ment is failing Montana. Access is decreasing, catastrophic wildfire conditions are escalating, our environment is suffering, and economic productivity has sadly slipped to an all-time low.”²⁷

Opponents of the transfer of public lands to the states also voice concerns about the states’ ability to assume the costs of fighting wildfires. Most of the western states’ studies exploring the question highlight fire prevention and suppression as a significant consideration in the decision to request a transfer of public lands. Firefighting during a particularly active wildfire season can run into many millions of dollars, and increasing fuel loads have led to greater numbers of catastrophic wildfires over the past decade. Large wildfires on federal lands increased by 75 percent from 140 fires between 1980-1989 to 250 fires between 2000-2009.²⁸ Federal mismanagement of these lands is widely believed to be one of the driving factors behind the increase. The Congressional Research Service attributes the increase to, “poor logging practices, overgrazing and [excessive] fire control which eliminated natural degradation of some biomass” leading to more flammable biomass in the western forests.²⁹ The Union of Concerned Scientists even acknowledges that, “federal fire management is disproportionately skewed toward suppressing wildfire at the expense of proactively reducing wildfire risks and maintaining healthy forests.”³⁰ State officials predict that the fuel loads on federally administered lands could lead to even greater numbers of catastrophic blazes and complain that federal policies have prohibited roads in some forest regions that make firefighting difficult, if not impossible. A Montana bill illustrative of western lawmakers’ frustration over mismanagement of the federal estate would have allowed the state’s Department of Environmental Quality to fine the federal government for fires on federal lands that contribute to exceedance of air quality standards. The bill was introduced this year but failed.

Many of the state-commissioned feasibility studies have come up with proposals to reduce the number of fires and decrease firefighting costs. Utah’s analysis suggests that state-inspired fire suppression and mitigation alternatives could reduce firefighting expenses.³¹ Other studies’ recommendations include better zoning, fire-resistant building construction, concerted efforts toward fuel load reduction and improved fire mitigation policies. The current situation where the federal government assumes the costs of firefighting increases the risk of moral haz-

“The federal government’s own assessment of its ability to manage the federal estate is bleak. The Department of the Interior, plagued by decades of funding shortfalls, estimates that deferred maintenance for the lands it administers runs into the billions of dollars. The National Park Service announced that it delayed \$11.5 billion in maintenance in 2014 alone, and the backlog has expanded almost 13 percent since 2009.”

ard. There will be greater incentive to enact strict policies to prevent wildfires if the states take on firefighting responsibilities and expenses themselves.

Montana State Senator Jennifer Fielder notes that the “catastrophic wildfire condition has grown on [the federal government’s] watch. So keeping the federal government on the hook for helping with fire suppression is something we ought to look at.”³² A practical option would be an approach where the federal and state governments work together to combat wildfires. State foresters currently protect two-thirds of the nation’s forests and are responsible for managing 75 percent of all wildfires, so the states already have significant experience in this area. Federal and state agencies work closely together now to fight fires under the auspices of the National Cohesive Wildland Fire Management Strategy, which prioritizes resilient landscapes and fire-adapted communities.

The federal government’s own assessment of its ability to manage the federal estate is bleak. The Department of the Interior, plagued by decades of funding shortfalls, estimates that deferred maintenance for the lands it administers runs into the billions of dollars. The National Park Service announced that it delayed \$11.5 billion in maintenance in 2014 alone, and the backlog has expanded almost 13 percent since 2009.³³ Federal grazing lands face similar problems. According to the BLM, more

than 21 percent of BLM grazing allotments are not meeting or making significant progress toward meeting the agency's own standards for land health. This helps to explain why, on average, the state land trusts for Arizona, Idaho, Montana and New Mexico earn \$4.89 for each dollar spent on grazing leases compared to the federal government's 15 cents for each dollar spent.³⁴

State residents recognize the importance of preserving their natural wonders and view outdoor recreational opportunities as a substantial enhancement to their quality of life. They also know that tourism and recreation are vital to their state economies and destruction of their landscapes could prove economically catastrophic. Utahns are keenly aware that their state earns \$16.9 billion from recreation and tourism.³⁵ Utah's feasibility study emphasizes that, "... transfer of public lands can be ... accomplished without sacrificing the beauty of our State, the quality of our life, or the attraction of Utah to tourists and recreationists from around the country and the world."³⁶

There is a trend in the West for environmental organizations to lease public lands in order to restore and prevent development on them. The states have laws in place that require them to accept conservation leasing offers as long as they are economically competitive, and much state public land has been leased for this purpose. However, in a stunning example of missed opportunity born of bureaucratic inflexibility, the federal government is not permitted to lease lands to conservation groups for restoration.

Eastern States Are Stakeholders in the Debate

Easterners are often unaware of the disparity in federal land ownership between East and West and of the economic toll it takes on their western counterparts, but neither ignorance nor geographical distance protects them from the consequences of federal land mismanagement. U.S. tax dollars collected from all 50 states are allocated for the SRS and PILT payments to the western states that would arguably be reduced or unnecessary if these states were allowed to become self-sufficient by being permitted to develop their own resources. Tax dollars also go to fund the leasing programs on federal lands that earn on average 73 cents for every dollar spent while state land trusts earn \$14.51 per dollar spent from their leases.³⁷ U.S. public lands policy has national security implications as well. A subset of elements called rare earths are used in the manufacture of a wide range of high-tech items from mobile phones to cutting-edge fighter jets. The U.S. currently imports 95 percent of its rare earths from China in spite of the fact that the U.S. has abundant reserves located on federal lands.

South Carolina State Representative Alan Clemmons understands the stakes and has sponsored successful legislation expressing solidarity with the western states. He explains,

It makes no sense that people in the east are paying billions for federal mismanagement of western lands that is restrict-

Table 3: Forest Management: Success vs. Federal Failure

	Washington		Montana		Idaho	
	Department of Natural Resources	USFS	Department of Natural Resources and Conservation	USFS	Department of Lands	USFS
Total Forest Acres	2.2 million	9.3 million	559,000	17.1 million	971,678	20.5 million
Average Harvested Volume (million board feet)/Year	567.3	79.9	52.1	82.8	232.7	93.7
State volume per acre over Forest Service	30X more volume/acre than USFS		19X more volume/acre than USFS		52X more volume/acre than USFS	
Average Revenues/ Year	\$169 million	\$589,926	\$8.9 million	\$1.6 million	\$53.8 million	\$1.2 million
Revenues/Acre	\$77	\$0.06	\$16	\$0.09	\$55	\$0.06
State value per acre over Forest Service	1283X more revenue/acre than USFS		178X more revenue/acre than USFS		917X more revenue/acre than USFS	
Average Price Bid for Timber Sale (dollar/thousand board foot)	\$310	\$6	\$172	\$19	\$231	\$16

Source:

House Committee on Natural Resources, *State Forests Management Superior to Federal Forests for Job Creation, Revenue Production, Local Economies and Fire Prevention*, February 26, 2013.

ing recreational access; burning up millions of acres of national forests (and with it millions of animals, polluting the air and destroying habitat and watersheds for decades); and locking up literally hundreds of trillions of dollars in mineral values essential for national security, electronics technology, and economic productivity that fund schools, roads and public safety. There is a simple solution big enough to solve our serious national problems – compel Congress to honor the same statehood terms already kept with states east of Colorado and transfer federal multiple use lands to the western states!³⁸

The U.S. risks compromising its economy, environment, and national security, in order to maintain a bloated federal estate in the western states.

Canada's Answer: Devolution

Canada offers a glimpse into the United States' post-public lands transfer future. In sharp contrast to U.S. western states, Alberta and Saskatchewan received control over their federal lands during the first half of the twentieth century – a mere 25 years after becoming provinces. However, the Canadian federal government still administered large portions of the territories (Yukon, Northwest Territories [NWT] and Nunavut). In 2003 Yukon became the first territory to be awarded jurisdiction over its territorial lands and resources in a process the Canadians call “devolution.” The transfer included authority over lands and associated surface and subsurface resources – water rights as well as many federal properties and assets.

Before devolution the situation in the Canadian territories was strikingly similar to the one in the U.S. West today. Not unlike the budgetary challenges our western states face, with unreliable PILT and SRS payments, Canada's federal government unilaterally revised agreements and reneged on commitments. Canada retained a modified version of federal compensation payments after devolution, which is an option that should be considered for America's post transfer future. Ottawa's geographical distance from the lands it administered and bureaucratic redundancy untenably lengthened the land permitting process, but for decades Canada's federal government gradually transferred control of sectors to the territories. For example,

a territory would be given the authority to manage road construction, airports, and forest maintenance. Ultimately, comprehensive authority was determined to be more effective as the ability to manage lands is intertwined across the sectors. As one Canadian scholar noted, “On a practical level, bundling successfully brought together central functions thus resulting in economies of scale.”³⁹

Nine years on, scholars at Wilfrid Laurier University in Waterloo, Ontario determined “that devolution has generally had a positive effect on the territory and in particular has led to more efficient and responsive land use and mining permit processes.”⁴⁰ From 2003-2008, Yukon's mining industry expanded at an average annual rate of 10.5 percent exceeding the 3.1 percent figure in other industries. Manitoba and Yukon were the only Canadian jurisdictions to experience positive GDP growth in 2010 and this was attributed to mining activity, which in Yukon's case was spurred by devolution.⁴¹ For the first nine years of devolution, Yukon's real GDP growth exceeded the national rate; private sector contributions to the economy increased substantially. Yukon's unemployment rate also continues to be below the national average.⁴²

Understanding the importance of tourism – especially eco-tourism – to the economy, Yukon has protected its land. Yukon's devolution act called for the creation of the Yukon Environmental and Socio-Economic Assessment Board (YESAB) which is responsible for conducting environmental and socio-economic assessments. According to the YESAB President, a “significantly higher” number of environmental assessments has been conducted since devolution,⁴³ and the territory has been rewarded by tourism revenues of \$200 million annually.⁴⁴ NWT seems to be following the same path and has laid out its vision for land management in its Land Use and Sustainability Framework. NWT has a stated commitment to policies that are balanced, sustainable and “protect and conserve the condition, quality, diversity and abundance of land values.”⁴⁵ More than 12 million hectares (almost 9 percent) of NWT is designated as “protected” land. Environment Canada maintains five migratory bird sanctuaries, and while there were no National Wildlife Areas before devolution, a number of candidate sites are currently being evaluated.⁴⁶

Emboldened by Yukon's experience, devolution became of-

ficial for NWT on April 1, 2014. NWT Premier Stephen Kakfwi explained the importance of this step as a way to drive “development that brings jobs, a better standard of living and the kind of security that can help maintain our cultures and ways of life.”⁴⁷ The NWT discovered how vast its untapped resources were once preparation for devolution began. The territory is estimated to have 37 percent of Canada’s marketable light crude and 35 percent of its marketable natural gas.⁴⁸ One year on, devolution in NWT has been considered a success, a fact highlighted by Canada’s Minister of Aboriginal Affairs and Northern Development at the one-year anniversary of NWT’s devolution.

Devolution has given Northerners more control over their own economic and political destiny by placing decision making about land and resources in Northerners’ hands. It is increasing the prosperity of the NWT by giving the territorial government the power to collect and share in resource revenues.⁴⁹

As further evidence of devolution’s success, Nunavut, the only territory without control of its public lands, is seeking a devolution agreement as early as the fall of 2015. Alaskan officials have noted that territorial sovereignty has made it more difficult for Alaskan extractive companies to compete with Canadian ones that can now offer more certainty. As former Alaska Lt. Governor Mead Treadwell observed, “For Alaskans and other western states, it is harder to compete when mineral-rich public lands elsewhere in the Arctic are more immediately accessible for exploration, and are under the control of regional governments more understanding of what’s necessary to attract investment and protect the environment.”⁵⁰

Conclusion

The transfer of public lands is a sensible economic and environmental policy underpinned by extensive study. The states have conducted feasibility reviews to examine all aspects of a potential land transfer, and only those states that determine they are ready will petition Congress for control over the federal lands within their state. These lands will not be sold for development but will be turned over to state land trusts which are required to manage them for long term economic viability. In fact, the legislation proliferating in the state legislatures typically includes prohibitions on selling the transferred lands.

The state land trusts have better records of maintaining and profitably developing resources on the lands that they administer – largely because they have the flexibility to increase lease pricing in accordance with market forces. The state land trusts also have the latitude to lease their land for alternative uses. State land trusts can and do lease their public lands to conservation groups for restoration. The Nevada Land Management Task Force report suggested setting aside one million acres of the transferred land for solar and geothermal development.⁵¹

There is historical precedent for the transfer of federal lands to the states. The U.S. not only has the current Canadian experience on which to draw, but America’s own during the first half of the nineteenth century when Illinois and Missouri were considered “western” states, and the federal government controlled more than 90 percent of their land. These frontier states petitioned Congress to transfer public lands from federal to state management using many of the same arguments that today’s western states advance. They insisted that federal mismanagement was “highly injurious” putting them at an economic disadvantage⁵² and pointed out that the “extraordinary powers” the federal government was assuming were inconsistent with its Constitutional authority under the Tenth Amendment to the U.S. Constitution.⁵³

The Federal Land Policy and Management Act (FLPMA) instructs that the lands should remain in federal ownership unless “disposal is in the national interest.”⁵⁴ Arguably, disposing of much of the federal estate is in the national interest. The federal government is mismanaging the lands under its control at a huge cost to the American taxpayer. The U.S. relies on imports to supply rare earths essential to America’s aerospace industry when the elements exist domestically. American taxpayers remit hundreds of millions of dollars to the western states to compensate them for the tax revenues that they are prohibited from collecting. There is evidence that the federal government does not exercise environmental stewardship responsibly. Awarding the western states control over the lands within their borders makes sense economically, and exemplifies state sovereignty at its most basic form.



MODEL POLICY

Resolution on Transfer of Public Lands

Summary

This resolution expresses support to the western states of the United States of America for the transfer of public lands to the western states, and urges the United States Congress to engage in good faith communication and cooperation to coordinate the transfer of title to the western states.

Model Policy

Whereas, under Article IV, Section 3, of the United States Constitution, “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, the Constitutional Convention intended this provision of the Constitution to maintain the status quo that had previously been established to transfer western public lands only to create new states with the same rights of sovereignty, freedom, and independence as the original states; and

Whereas, under these express terms of trust, over time the states claiming western lands ceded them to the confederated Union to allow the confederated government to dispose of the lands only to create new states and apply the net proceeds of any sales of the lands, if any, only to pay down the public debt; and

Whereas, the United States Constitution contains no expression of intent to authorize the federal government to indefinitely exercise control over western public lands beyond the duty to manage the lands pending the disposal of the lands to create new states, and therefore the lands should be now transferred to the western states; and

Whereas, States such as Illinois, Missouri, Arkansas, Alabama, Louisiana, and Florida had as much as 90% federally controlled lands for decades but they were successful in joining with other states and compelling Congress to transfer title to their public lands; and

Whereas, in 1959, the United States granted directly to the State of Hawaii, “the United States’ title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union.”

Whereas, in order to promote legitimate federal interests, the western states should upon transfer of the public lands directly to the state where the public land is located agree to affirmatively cede lands for the national park system, the national wilderness preservation system, and lands reserved for federal military use, military parks, and military reservations to the federal government under Article I, Section 8, Clause 17, of the United States Constitution, on condition that the lands permanently remain national park lands,

and that they not be sold, transferred, left in substantial disrepair, or conveyed to any party other than to the state where the land is located; and

Whereas, limiting the ability of western states to access and utilize the abundant natural resources within their borders locked up in federally controlled lands is having a negative impact upon the economy of the western states and therefore the economy of the entire United States; and

Whereas, in order to provide a fair, just, and equitable remedy for the federal government's past and continuing breaches of its solemn promises to the western states, the [INSERT STATE LEGISLATIVE BODY]: (1) calls on the federal government to transfer title to all federally managed public lands within the western states to the state where the land is located; (2) calls upon the members of the [INSERT STATE] Congressional Delegation to exert their utmost abilities to compel the federal government to transfer title to all federally managed public lands to the western states wherein it is located; (3) urges the United States Congress to engage in good faith communication, cooperation, and consultation with the western states to coordinate the transfer of the public lands, and supports the western states in these efforts; (4) calls upon the western states to agree, upon transfer of the public lands, to affirmatively cede to the federal government all lands currently designated as part of the National Park System under 16 U.S.C. Section 1a-1, the National Wilderness Preservation System under 16 U.S.C. Section 1131, or for military use, military parks, or military reservations; (5) urges that if any public land in the western states be sold to private owners 95% of the net proceeds be paid to the Bureau of the Public Debt to pay down the federal debt; and (6) calls on all other states of the United States to pass a similar resolution in support of the transfer of the federally managed public lands to the western states. Now, therefore,

Be it resolved by [INSERT STATE LEGISLATIVE BODY]:

That the members of the [INSERT LEGISLATIVE BODY] of the State/Commonwealth of [INSERT STATE], by this resolution, express support to the western states of the United States of America and the federal transfer of public lands to the western states, and urges the United States Congress to engage in good faith communication and cooperation to coordinate the transfer of title to the western states.

Be it further resolved that upon its adoption copies of this resolution be forwarded 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 [INSERT STATE] Congressional Delegation, and the Governors, Senate Presidents, and Speakers of the House of Representatives of the 49 other states.

[End Notes]

1. Congressional Research Service, "Federal Land Ownership: Overview and Data," February 8, 2012.
2. Report on Utah's Transfer of Public Lands Act: H.B. 148 presented to the Utah State Legislature Interim Committees Natural Resources, Agriculture and Environment, and Education by the Constitutional Defense Council, November 14, 2012.
3. Op. Cit. "Federal Land Ownership: Overview and Data."
4. Ibid.
5. Nevada Land Management Task Force, "A Report of the Nevada Land Management Task Force to the Nevada Interim Legislative Committee on Public Lands: Congressional Transfer of Public Lands to the State of Nevada," July 18, 2014.
6. Op. Cit. "Federal Land Ownership: Overview and Data."
7. Press Release from Senator James Inhofe, "Inhofe Introduces the Federal Lands Freedom Act (FLFA) of 2015," February 13, 2015.
8. W.H. Coyle, Plff. In Err., v. Thomas P. Smith, Secretary of State of the State of Oklahoma, et al. 221 U.S. 559 (1911).
9. Tubb, Katie & Nicola D. Loris, "The Federal Lands Freedom Act: Empowering States to Control Their Own Energy Futures," The Heritage Foundation, February 18, 2015.
10. Fretwell, Holly & Shawn Regan, "Divided Lands: State vs. Federal Management in the West," The Property and Environmental Research Center (PERC), March 2015.
11. Oversight Hearing before the Subcommittee on Forests and Forest Health of the Committee on Resources, "Conflicting Laws and Regulations: Gridlock on the National Forests," U.S. House of Representatives, December 4, 2001.
12. Op. Cit. Fretwell March 2015
13. Op. Cit. Fretwell March 2015
14. Op. Cit. Inhofe Press Release
15. Op. Cit. Inhofe Press Release
16. Congressional Research Service, "U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas," Humphries, Marc, April 10, 2014.
17. Op. Cit. Fretwell March 2015
18. Bureau of Labor Statistics, "Unemployment Rates for States," July 2015.
19. Op. Cit. Nevada Land Management Task Force
20. Hough, Michael, "Innovate: Policy for the Future," American Legislative Exchange Council, February 2015.
21. Op. Cit. "U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas."
22. Mittal, Anu K., "Unconventional Oil and Gas Production: Opportunities and Challenges of Oil Shale Development," Government Accountability Office, May 10, 2012.
23. Corn, Lynne M., "PILT (Payments in Lieu of Taxes): Somewhat Simplified," Congressional Research Service, December 10, 2014.
24. Department of the Interior, PILT Payments by State, http://www.doi.gov/pilt/state-payments.cfm?fiscal_yr=2014&as_sfid=AAAAAWMS-motEHRhqpH9halmDCjOnAix5h1otp6fHcYDQU4sME5TzqJJScFFZDtoQ6AnhN55mqAAVItMqz3YaXOsXalTehGR86yi_NJFir2oenKi-g%3D%3D&as_fid=ocGATTjz6BW9oh_uuo4H
25. Roerink, Kyle, "Wyoming to finally get \$40 million in mineral lease fees from the federal government," Star Tribune, August 27, 2013.
26. Zaffos, Joshua, "Rural counties dealing with loss of fed dollars," High Country News, January 23, 2015.
27. Fielder, Jennifer, "Exploring public land transfers," www.dailyinterlake.com, January 31, 2015.
28. Cleetus, Rachel & Kranti Mulik, "Playing with Fire: How Climate Change and Development Patterns Are Contributing to the Soaring Costs of Western Wildfires," Union of Concerned Scientists, July 2014.

29. Op. Cit. "Federal Land Ownership: Overview and Data"
30. Op. Cit. Cleetus July 2014
31. Public Lands Policy Coordinating Office, "Pathway to a Balanced Public Lands Policy: A Review of Recommendations Based on an Analysis of a Transfer of Federal Lands to the State of Utah," November 28, 2014.
32. Flathead Beacon, "State Senator Leads Debate on Federal Lands in Montana," January 19, 2015.
33. Hicks, Josh, "National Park Service delayed \$11 billion in maintenance last year because of budget challenges," Washington Post, March 25, 2015.
34. Op. Cit. Fretwell March 2015
35. Op. Cit. Public Lands Policy Coordinating Office
36. Ibid.
37. Op. Cit. Fretwell March 2015
38. Correspondence from South Carolina Rep. Alan Clemmons, April 1, 2015.
39. Alcantara, Christopher, Kirk Cameron, Steven Kennedy, "Assessing Devolution in the Canadian North: A Case Study of the Yukon Territory," Wilfrid Laurier University, September 1, 2012.
40. Ibid.
41. Ibid.
42. Pasloski, Darrell, "You say you want a devolution? In Yukon, it's reality," The Globe and Mail, March 25, 2013.
43. Op. Cit. Alcantara September 2012
44. Ibid.
45. Devolution of Lands and Resources in the Northwest Territories, "Managing the Land after Devolution," March 2014, <http://devolution.gov.nt.ca>
46. Environment Canada, "Northwest Territories," <https://www.ec.gc.ca/ap-pa/>
47. Kakfwi, Stephen, "How devolution will start a new chapter for the Northwest Territories," The Globe and Mail, March 28, 2014.
48. "N.W.T. opens land for first oil exploration auction since devolution," The Canadian Press, January 30, 2015.
49. Statement by Minister Valcourt and Premier Bob McLeod on First Anniversary of Northwest Territories Devolution, Canadian Newswire, April 1, 2015.
50. Correspondence from former Alaskan LTG Mead Treadwell, April 16, 2015.
51. Op. Cit. Nevada Land Management Task Force
52. Ivory, Ken, "Missouri: Transfer of Public Lands Champion," Breitbart, February 5, 2015.
53. Ivory, Ken, "Illinois Won the First Sagebrush Rebellion," Breitbart, February 5, 2015.
54. French, Brett, "Estimates: State management of federal lands could cost Montana \$500M," Billings Gazette, September 1, 2014.

2900 Crystal Drive, Suite 600
Arlington, VA 22202

the **STATE
FACTOR**
A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

To learn more about how the American
Legislative Exchange Council helps develop
innovative solutions in partnership with
lawmakers and business leaders, or to become a
member, please visit www.alec.org.

American Legislative Exchange Council
2900 Crystal Drive, Suite 600
Arlington, VA 22202
Tel: 703.373.0933
Fax: 703.373.0927
www.alec.org