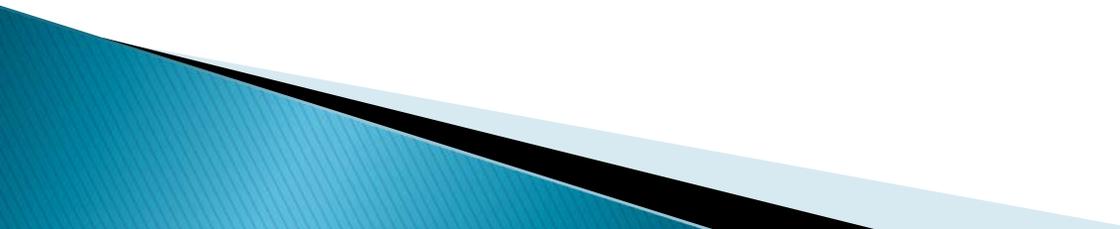


Questions Posed

- ▶ Are there any records that might shed light on the theory that Idaho relinquished its interest in the public lands because the state expected the federal government to dispose of those lands to the private sector?
 - ▶ What steps have Idaho and other States taken regarding the management and transfer of federal lands and were any conclusions drawn?
 - ▶ Would acquired federal lands be subject to the requirements of Article IX, Section 8?
- 

Mitchell Enabling Bill

- ▶ Granted sections 16 and 36 as school lands.
 - ▶ Granted 700,000 additional acres for schools, agricultural college, public buildings, penitentiary, and insane asylum.
 - ▶ Granted 6 million acres of desert lands for reclamation.
 - ▶ “That twenty–five per centum of the net proceeds of the sales of public lands lying within said State shall be paid to said State for school purposes.”
- 

Platt Enabling Bill

- ▶ Granted sections 16 and 36 as school lands “provided, that the 16th and 36th sections embraced in **permanent reservations for national purposes** shall not, at any time, be subject to the grants ... nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants . . . until the reservation shall have been extinguished and such lands be restored to and become a part of, the public domain.”

“Permanent Reservations”

- ▶ Judge William Clagett
- ▶ “Architect of the Idaho Constitution”
- ▶ President of the Constitutional Convention
- ▶ Claimed credit for creation of Yellowstone National Park



Wm. H. Clagett,

Constitutional Debates

- ▶ Oaths or affirmations for public land acquisitions.
 - ▶ Regulation of grazing on the public domain.
 - ▶ School land grants.
 - ▶ Disclaimer of public lands.
- 

Oaths and Affirmations

- ▶ Albert Hagan: “We have nothing to do with the disposal of the public lands of the United States, nor can our constitution or our statutes impose upon the subject or citizen any unnecessary oaths or affirmations in the entry of public lands . . . I know of no report that will come here concerning the disposition of public lands, because we are limited by the constitution of the United States as to that subject.”

Oaths and Affirmations

- ▶ Weldon Heyburn: “I did not suppose for a moment we would ever have any control of the public lands of the United States, but it is to be hoped that this state will possess the public school lands, the university lands and a large body of other lands such as may be donated to it “

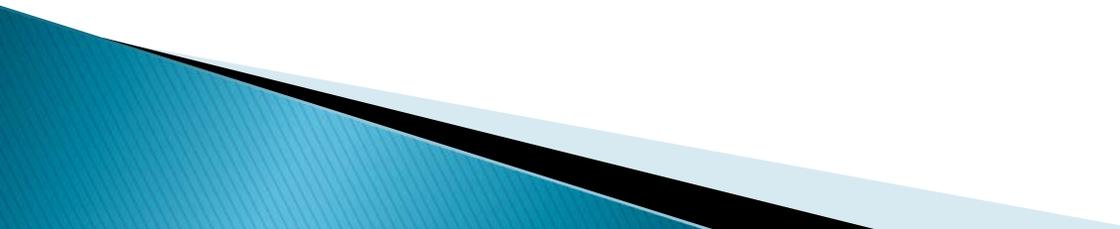
Grazing on Public Lands

- ▶ “The legislative assembly shall by law prescribe the manner, terms and conditions upon which domestic animals may be permitted to graze upon the unoccupied public lands of the state, ... to preserve so far as practicable the value of the range, and prevent injury to such lands. But nothing herein shall be so construed as to authorize the passage of any law inconsistent with the laws of the United States relating to the settlement, occupancy, use, or disposition of the public domain. “

Grazing on Public Lands

- ▶ **William Clagett:** When we get to be a state . . . [t]hen as to these public lands ... the United States becomes a private proprietor. Armed, it is true, with the power to make all needful rules and regulations respecting the territory and other property of the United States. . . . [the state] cannot in any way ... pass any law inconsistent with the laws of the United States; neither can it pass any law that will undertake to control the lands, because that would be inconsistent with the laws of the United States.

Grazing on Public Lands

- ▶ **William Clagett:** “I mean to say there are certain powers, which may be exercised by the United States, and by the states concurrently, and they do not conflict necessarily at all; and I mean to say when the United States has ceased to be the local sovereign in said state, when it is here as a landed proprietor those lands are subject to the use of the state, provided it is not in conflict with any of the laws of the United States. “
- 

Grazing on Public Lands

- ▶ **William Clagett:** “Whenever [a state law] comes in conflict with the United States on any right or title whatever, it has to be governed by the supreme authority of the United States.”

School Lands

- ▶ George Shoup: “**gifts** to the proposed state of Idaho.”
 - ▶ A.F. Parker: “I think that Congress **gave** us these lands not for ourselves, but for our children and our children’s children.”
 - ▶ Weldon Heyburn: “It is to be hoped that this state will possess the public school lands, the university lands and a large body of other lands such as may be **donated** to it.”
- 

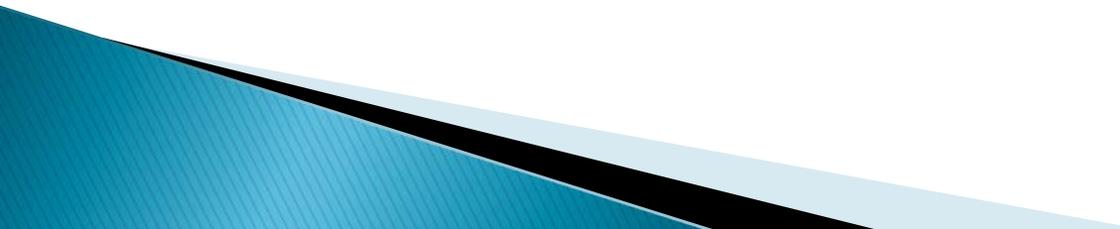
School Lands

- ▶ Aaron F. Parker:
- ▶ “T]his territory today seems so wide, and there is so much unoccupied and vacant land lying all around us, that we despise the possessions which **Uncle Sam in his liberality has given us** to hold in trust for our children.”

School Lands

- ▶ James Reid:
 - ▶ “Now when we get into the Union we are going to get more land **granted** us, if our delegate is diligent, and I know he will be, and I have examined the other enabling acts. We will get what we have, and more in addition.”
- 

Disclaimer

- ▶ George Shoup: Suggested that delegates adopt a restriction on taxation of federal lands similar to that required in other state enabling acts.
 - ▶ Weldon Heyburn: Moved to adopt a disclaimer provision.
- 

Disclaimer

- ▶ William Clagett: “I suggest to the gentleman from Shoshone that the words “irrevocable without the consent of the United States and the people of the state of Idaho” ought to be included.”
 - ▶ Weldon Heyburn: “I intended to add that to the ordinance. Section 20 here is not definite enough. “
- 

Article XXI, § 19

- ▶ [T]he people of the state of Idaho do agree and declare that we 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 Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States

Post-Statehood

- ▶ 1897
- ▶ Senator George Shoup:
- ▶ “We of the West are not opposed to forest reserves if they are well and properly located . . . we do want to protect and will protect our timber if the reserves are only established in the right place.”



Post-Statehood

- ▶ 1904
Senator Weldon Heyburn:
“I am not opposed to creating
forest reserves for proper
purposes, but I insist that
they should be created upon
the ground and not upon the maps”

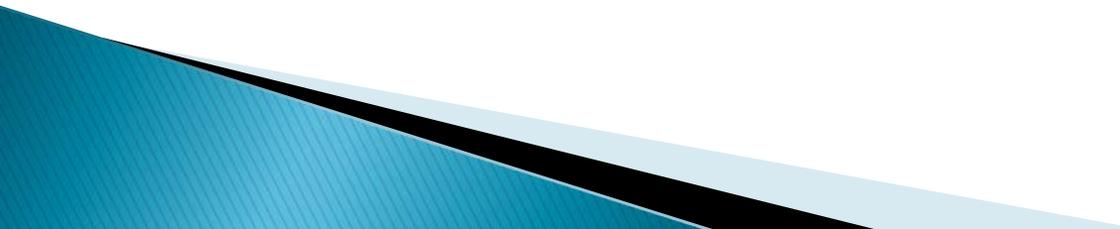


Post-Statehood

- ▶ 1905--Senator Fred Dubois: “I am a strong advocate of the policy of forest reserves, and specifically endorse the National Administration in its proposed reserves in our State.”



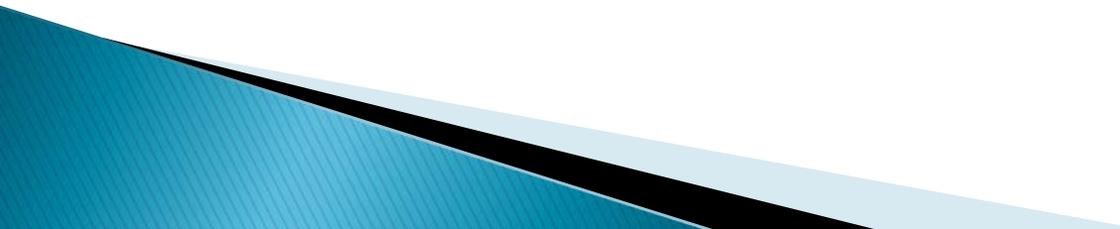
Post-Statehood

- ▶ 1899: HJM No. 7 requested that part of Priest River Forest Reserve be re-opened to settlement.
 - ▶ 1903: HJM No. 2 protested that doubling of Bitterroot Forest Reserve would “work irreparable harm and injury to the State of Idaho by effectively preventing the settlement and development of this large area”.
- 

Post-Statehood

- ▶ 1907: HJR No. 7 protested the “forest reserve policy of the federal government” because it “has resulted in the practical transfer of jurisdiction over more than one third of the State to a bureau of the government which has substituted rules and regulations inconsistent with the legal rights of the citizens of the State under the general laws by which the State presumed to be governed.”

Post-Statehood

- ▶ 1907: HJR No. 7 went on to state:
 - ▶ “That we favor the creation of forest reserves, properly located and administered, where they will best serve their purpose of future propagation of timber and conservation of a water supply where such conservation is necessary.”
- 

Post-Statehood

- ▶ 1917: SJM No. 8 urged Congress to reserve 325,760 acres in the Sawtooth Mountains as the Idaho National Park.
- ▶ 1917: HJM No. 7 urged Congress to reserve 1,120,000 acres in the Thunder Mountain region of Valley County as a national forest, to address wildfires, overgrazing, and extermination of wildlife

Post-Statehood

- ▶ 1919: SJM No. 7 urged Congress to reserve additional lands for the Nez Perce National Forest.
- ▶ 1921: SJM No. 8 SJM No. 8 urged that Moore's and Grimes Creeks watersheds be included within a National Forest.

Recap

- ▶ There is nothing to suggest that the delegates thought that Idaho would have acquired public domain lands as an aspect of state sovereignty but for Idaho's disclaimer.

Recap

- ▶ The delegates plainly anticipated that the United States would continue to dispose of public lands to bona fide settlers, although they knew that many lands would not be settled without reclamation.

Recap

- ▶ After statehood, the delegates, while often expressing concern about the size of forest reserves, never expressed concern that reservations per se violated the federal government's duty to dispose of public lands.

Past Efforts to Secure the Transfer of Federal Lands to Western States



1828-41

- ▶ Indiana, Missouri, and other western states asserted that public lands should be ceded to the western states.
 - ▶ Congress' eventual response (in 1841) was to give western states 500,000 additional acres each, then divide proceeds from sale of remaining federal lands among all states.
- 

1854

- ▶ Since 1828, western states had sought a gradual reduction in price of public lands, with unsold lands to be ceded to state after 30 years.
 - ▶ 1854 Graduation Act reduced price to 12½¢ an acre after 30 years, but did not provide for eventual cession to the states.
- 

1891

- ▶ HJM NO. 3 (1891) requested “Congress to donate to this State all the agricultural and grazing lands within its borders” in order to “unite the control of both water and land under one authority” to allow fullest development of irrigation systems needed for reclamation.

Carey Act (1894)

- ▶ In 1894 Congress responded by passing the Carey Act, which authorized the General Land Office to transfer up to one million acres each to Idaho and other western states for state-managed reclamation projects.

1902 Reclamation Act

- ▶ Two competing proposals:
 - 1. Cede all public lands to states for reclamation under state sovereign authorities;
 - 2. Retain federal ownership of public domain to allow United States to fund reclamation under Property Clause.

1929 Hoover Proposal

- ▶ President Hoover proposed to cede all unallocated federal lands to the states, except mineral rights.
- ▶ Senator William Borah: “It was like handing [the states] an orange with the juice sucked out of it.”

1947 Barrett Hearings

- ▶ Explored the possibility of transferring forest service grazing lands to states or selling them to stockmen.

SJM No. 6 (1947)

- ▶ “Whereas the Federal Government is the principal land owner in the 11 Western States . . . and is best able to promote the conservation, development and use of these lands in the general public interest; and
- ▶ Whereas there is a persistent effort on the part of certain western Congressman who appear to favor special interests wherein the public lands would be sold into private ownership;”



SJM No. 6 (1947)

- ▶ “Whereas the livestock producers, farmers, sportsmen, and businessmen of eastern Idaho . . . Demand that the public lands remain in their present ownership for the following reasons:”
- ▶ 1. Watershed protection;
- ▶ 2. Recreation;
- ▶ 3. Hunting and fishing;
- ▶
- ▶ 8. Private ownership cannot maintain adequate fire-fighting facilities.

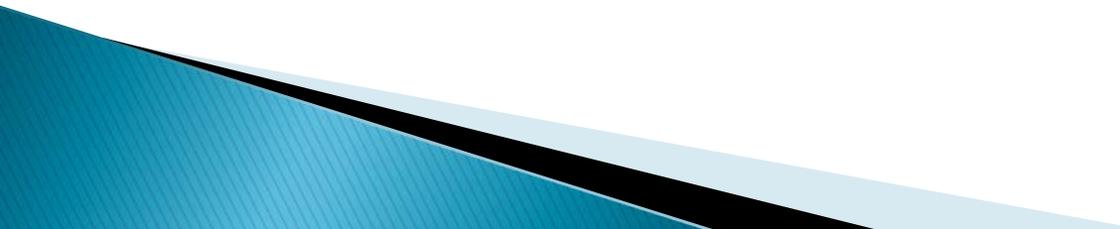
SJM No. 6 (1947)

- ▶ “Thus we respectfully urge the President and the Congress of the United States to preserve public lands in Idaho in their present ownership”

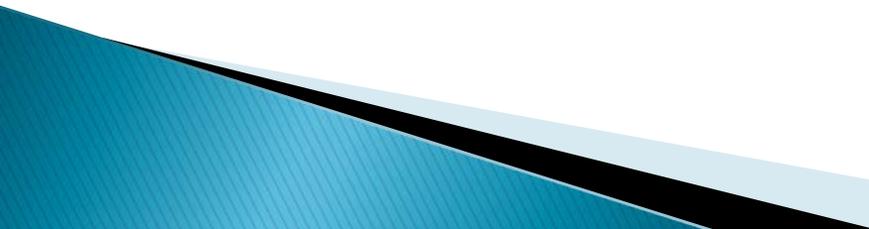
1977–1981 Sagebrush Rebellion

- ▶ 1977: Nevada passed bill establishing committee to study public land policies;
 - ▶ 1979: Nevada Assembly passed Bill 413, asserting state control of 48 million acres of BLM land;
 - ▶ WY, UT and NM passed similar bills.
- 

1977–81 Sagebrush Rebellion

- ▶ Idaho Legislature established an interim committee to “complete a study of all matters relating to the management and control of the unappropriated public lands in the State of Idaho.”
 - ▶ Committee “voted to take no stand regarding the State of Idaho taking control of the unappropriated public lands,” and recommended additional study.
- 

1977–81 Sagebrush Rebellion

- ▶ Nevada v. United States (1981).
 - ▶ Rejected Nevada's argument that "the United States holds public lands in trust temporarily, for the purpose of disposal to the State and its citizens."
 - ▶ Held that federal retention did not violate equal footing doctrine, which guarantees equality of political rights and sovereignty, not equality of property or economic matters.
- 

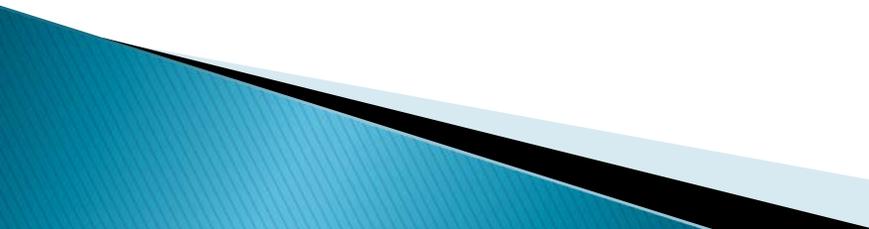
1977–81 Sagebrush Rebellion

- ▶ Orrin Hatch introduced bill to authorize states to apply for transfer of BLM and National Forest lands.
 - ▶ Applicant States were required to agree to manage lands for multiple-use.
- 

Sagebrush Rebellion . . .

- ▶ 1996: Nevada amended its constitution to remove the disclaimer to federal lands.
 - ▶ It remains uncertain whether the amendment is effective without federal concurrence.
- 

Federal Lands Task Force

- ▶ 1996: Sen. Bill 1354 authorized Land Board to enter into a joint exercise of powers agreement with the Forest Service for management of federal lands.
 - ▶ The Land Board appointed a task force to examine several models for cooperative agreements.
 - ▶ Most of the models would have required congressional action to revamp the objectives for which federal lands are managed.
- 

Federal Lands Task Force

- ▶ The stated purpose of the Task Force was not to assume control of federal lands, but to find methods to collaborate and streamline decision processes and avoid conflicts and litigation that tied the hands of federal land managers.
- 

Clearwater Basin Collaborative.

- ▶ One of the pilot projects recommended by the Task Force was a Stewardship Collaborative Project in the Clearwater Basin to restore elk habitat.
 - ▶ Such a project became possible in 2009 when Congress established the Collaborative Forest Landscape Restoration Program.
- 

Clearwater Basin Collaborative.

- ▶ Worked five years to reach agreement on a work plan.
 - ▶ Projects focus on thinning in order to reduce fire hazards, improve watersheds, improve fish and wildlife habitat, and provide economic benefits to local communities.
 - ▶ Should increase timber harvest on Nez Perce–Clearwater NF by 50%.
- 

- ▶ **Constitutional and Statutory Requirements for State Management of Transferred Federal Lands**

Article IX, § 8 (1890)

- ▶ It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or **which may hereafter be granted** to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor; . . . ”

Article IX, § 8 (Proposed 1980)

- ▶ It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount public benefit therefor and provided also that all endowment lands shall be managed to secure the maximum support for the institution to which they are dedicated.

Article IX, § 8 (1982)

- ▶ It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum ~~possible amount therefor~~ long term financial return to the institution to which granted or to the state if not specifically granted”