

MINUTES
JOINT MEETING

**SENATE RESOURCES & ENVIRONMENT COMMITTEE
HOUSE RESOURCES & CONSERVATION COMMITTEE**

DATE: Monday, February 29, 2016

TIME: 1:30 P.M.

PLACE: Lincoln Auditorium WW02

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Heider, Nuxoll, Hagedorn, Stennett and Lacey

Chairman Raybould, Vice Chairman Gestrin, Representatives Moyle, Andrus, Shepherd, Boyle, Vander Woude, Gibbs, Miller, Bateman, Burtenshaw, Mendive, VanOrden, Youngblood, Pence, Erpelding, Rubel

ABSENT/ EXCUSED: Senator Bayer and Representative Wood

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Raybould** called the joint meeting of the House Resources and Conservation Committee and the Senate Resources and Environment Committee (Committees) to order at 1:30 p.m. **Chairman Raybould** announced that this meeting is for information only and no public testimony will be taken, only questions from the legislators.

WELCOME: **Chairman Raybould** welcomed George Wentz, Attorney and moderator for today's presentation; Utah Representative Keven Stratton; and Utah Senator David Hinkins. Representative Stratton and Senator Hinkins are co-chairs for the Utah Commission for the Stewardship of Public Lands (Utah Commission).

PRESENTATION: **Mr. Wentz** said the title of the presentation was "Is Permanent Federal Ownership of the Majority of the Land in the State of Idaho Constitutional?" He is a partner in the Davillier Law Group in New Orleans, Louisiana, has lived in Idaho for five years and is an adjunct professor at the College of Law, University of Idaho. **Mr. Wentz** said that he and his family are proud Idahoans even though his office is in Louisiana. He then asked Representative Stratton to provide an overview of the proceedings regarding Utah's stewardship of public lands, to be followed by Senator Hinkins.

Representative Stratton said the Utah Commission was established because of the concern for their public lands. He said they have tremendous resources in terms of beauty and pristine environment and there is a challenge going on with the federal counterparts of managing public lands. **Representative Stratton** said Utah feels they can do a much better job if they can control their public lands.

Representative Stratton stated that Utah's legislature established a commission to study, make recommendations, work with the Governor, Attorney General and the federal delegation as they deal with these important issues. He said the Utah Constitution provides ways to address concerns. At the core of the God-given rights is the responsibility and the stewardship to control property. **Representative Stratton** said he is not talking about the sale of public lands to the private sector. He is referring to the preservation of what they value.

Utah has five national parks plus pristine wilderness and that is what they want to protect. However, the message often gets misconstrued. There were some pieces of property, as stated in the 1976 Federal Public Land Management Act (FPLMA), that codified the sale of land. Utah has an \$8 billion tourist industry and they are doing their best with their public lands. The Utah Commission recognizes they have the economic vitality that is so important to transfer and control the public lands in Utah.

Senator Hinkins said there is a powerline being built through Utah that is coming from wind generation in Wyoming and going to California, with no on or off ramps for power in Utah. In the process, they are condemning private property and Utah basically has no say because the federal government owns 66 percent of the land. **Senator Hinkins** stated that he represents six counties in southeastern Utah and they feel they are not being treated equally due to the tax structure and the federally owned lands.

Mr. Wentz said the issue before the Committees today is that the majority of the land in the West is owned by the federal government, and in the East it is not. Looking at history, the 12 Western states are treated differently than the other 38 states.

Mr. Wentz said he wanted to talk about the equality of the states, the sovereignty of the states and how the states and the federal government interact. The U.S. Constitution was designed to protect the life, liberty and property of people. The founders did not want a central government that would become tyrannical. In the case of *Shelby County versus Holder*, the Supreme Court in 2013, Chief Justice Roberts said "not only do States retain sovereignty under the Constitution, there is also a fundamental principle of equal sovereignty among the States. Over a hundred years ago, this Court explained that our nation was and is a union of States, equal in power, dignity and authority. Indeed, the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. The fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States."

Mr. Wentz stated that the equal sovereignty principle makes perfect sense when we consider that our nation is indeed a federation of states. The central government was created by independent sovereign states that had won their independence from the King and was not about to go into a new organization where they were going to be less than equal. In the past, when this issue has been raised, the government has always argued that a state's dominion, the land within its borders, has nothing to do with sovereignty.

Six Eastern states had claims to Western land, while seven states did not. There were landlocked states and states with extensive Western holdings. This was during the Revolutionary War. With conflicting land claims among the states, it started to turn the states against one another at a time when they had to unite to fight the British. To make matters worse, under the 1609 Charter, Virginia claimed land all the way to the Pacific Ocean. Maryland refused to join the Union and insisted that the states with Western land claims give those claims up. Maryland posed a simple solution. The new central government that the states were forming would need to hold the lands in trust until they could be formed in the new totally equal members of the union. On October 10, 1780, Congress agreed in passing the following resolution: "That the unappropriated lands that may be ceded or relinquished to the United States, by any particular state.... shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, and have the same rights of sovereignty, freedom and independence as the other states."

Mr. Wentz said that history dictates that the states must be equal in sovereign power, and the states saw that as dominion of their land. In the federal system, the states create the central power. He then posed the question: Is Idaho weaker than New York because Idaho doesn't have dominion over all its land? **Mr. Wentz** said Idaho is weaker. Two rights that the U.S. Supreme Court recognizes that are fundamental sovereign states' rights are taxes and self government. Taxes are the fuel of self government and Idaho cannot tax 61 percent of its land. It gets a check from the federal government called 'payment in lieu of taxes.' **Mr. Wentz** feels that places political pressure on states that receive these payments and the citizens of "weak states" will never be equal to the citizens of "strong states."

Mr. Wentz said that state sovereignty is not just an end in itself; rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power. Because the police power is controlled by 50 different states instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The framers thus ensured that powers that "in the ordinary course of affairs, concern the lives, liberties, and properties of the people" were held by governments more local and more accountable than a distant federal bureaucracy. The independent power of the states also serves as a check on the power of the federal government: "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power." (Chief Justice Roberts, Supreme Court, 2012).

Mr. Wentz asked if Idaho got the same sovereignty that the original 13 states got. **Mr. Wentz** then made five statements regarding sovereignty.

1. Ownership of the unappropriated public lands historically always rests with the sovereign as an inherent incident of sovereignty.
2. The crown owned all the unappropriated public lands of the 13 colonies as an inherent incident of sovereignty.
3. Upon independence, the original 13 states succeeded to ownership of the unappropriated public lands within their borders as an inherent incident of sovereignty.
4. New states are admitted as equal sovereigns with the original 13 states.
5. Idaho has been denied ownership of the same exact category of lands the original states got as an inherent incident of sovereignty.

Mr. Wentz questioned why the 12 Western states were denied ownership. In 1845, the U.S. Supreme Court said that "whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states, will be upon an equal footing, in all respects whatever."

In closing, **Mr. Wentz** said that in 1913, the 16th Amendment was passed and it had an income tax; all interest was lost in liberating the Western lands. Congress discovered that instead of holding all that land in trust for the newly admitted states, it was theirs and they wanted to keep it forever. The federal government reached a compact violating the equal sovereignty principle and the equal footing doctrine and that is a result that the Constitution doesn't allow.

Time was allowed for a few questions from the Committee.

ADJOURNED: **Chairman Raybould** thanked the presentees, then adjourned the meeting at 3:00 p.m.

Senator Bair
Chair

Juanita Budell
Secretary