No. 22O160, Original

In the Supreme Court of the United States

STATE OF UTAH,
Plaintiff,
v.

UNITED STATES OF AMERICA,
Defendant.

On Motion for Leave to File Bill of Complaint

BRIEF OF *AMICUS CURIAE* LEGISLATURE OF THE STATE OF UTAH IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the Legislature of the State of Utah. The Utah Legislature has significant interest in seeking the fulfillment of express and implied promises related to land disposal made by the United States at the time of Utah's admission to the Union. The federal government's perpetual retention of unappropriated land in Utah makes the federal government the *de facto* policymaker over a wide range of issues that are properly the province of the Utah Legislature. In contrast to the legislatures of other states without significant federal landholdings, federal control of unappropriated land in Utah deprives the Utah Legislature of its full ability to shape policy for the benefit of those closest to the land: the people of the State of Utah.

Plaintiff has provided the legal reasons why the Court should accept original jurisdiction in this case and grant the State of Utah leave to file its bill of complaint. The Utah Legislature agrees with Plaintiff's reasoning and supports the bill of complaint. Here, *amicus* offers real-world examples for the Court's consideration of how the federal government's indefinite retention of unappropriated land in Utah diminishes and interferes with the ability of the elected representatives of the people of Utah to advance policy for the benefit and welfare of the people.

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[1] *Amicus* affirms that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission. All counsel of record received timely notice of the intent to file this amicus brief under Rule 37.2.

INTRODUCTION AND SUMMARY OF ARGUMENT

The federal government claims ownership of approximately 18.5 million acres of unappropriated land in Utah—more than one-third of the State's total area. As a result of federal control over such a vast portion of the State, it is the federal government, not the Utah Legislature, that effectively establishes state policy over a wide range of issues in the State. This kind of federal usurpation of a state legislature's prerogatives can hardly be what the Founders had in mind when they established a federal government of limited and enumerated powers and provided for all other powers to be retained by the states or the people.

The burdens imposed on Utah from federal control of unappropriated land are not imposed on other states where the federal government has minimal landholdings. States east of the Rocky Mountains may have difficulty even conceiving of these burdens. Yet, if the federal government controlled as much land in every state as it does in Utah, the obviousness of the injustice would likely spark intense nationwide pressure to change the federal approach to land ownership.

In Utah, those burdens and the effects of those burdens are real and ever-present. In this brief, *amicus* highlights some of the real-world effects of the federal government's perpetual retention of unappropriated land in Utah. These effects extend beyond questions of constitutional interpretation and concern the "lives, liberties, and property" of the people of Utah. THE FEDERALIST NO. 45, at 292–93 (James Madison) (Clinton Rossiter ed., 1961).

Amicus first presents examples of how the federal retention of a vast amount of land in the State impairs the Utah Legislature's ability to shape policy for the entire State. These examples illuminate restrictions on the Legislature's ability to shape state energy policy, meet state transportation needs, and promote the sound management of grazing land.

Second, *amicus* addresses how federal control over unappropriated land impairs the Legislature's ability to shape policies concerning even land *owned and managed by the State*. This example highlights the Utah Legislature's diminished ability to shape policies that maximize the value of school trust land for the benefit of Utah's school children.

These examples represent just a handful of the myriad ways that federal control over unappropriated land in Utah diminishes the Utah Legislature's ability to shape policy for the benefit of the people of the State. These burdens underscore the importance of the Court's review of the unconstitutional nature of the federal government's land retention policies. The issues raised by Plaintiff's bill of complaint implicate Utah's sovereign authority to shape policy related to "all the earth and air within [the state's] domain." *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). These "quasi-sovereign interests" possess the "seriousness and dignity" necessary to merit the Court's review. *Id.*; *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992).

ARGUMENT

I. Federal retention of unappropriated land in Utah restricts the Utah Legislature's ability to shape policy for the benefit and welfare of the people of Utah.

In this section of its brief, *amicus* provides examples in three areas of state policy where the federal government's indefinite retention of unappropriated land in Utah restricts the Utah Legislature's policy-making ability. Those areas are the shaping of the State's energy policy, meeting state transportation needs, and promoting the sound management of grazing land.

A. The federal government's indefinite retention of unappropriated land impairs Utah's ability to implement the State's legislatively established energy policy.

The Utah Legislature has established the State's energy policy in statute. Utah Code Ann. § 79-6-301 (West 2024). That policy contemplates the development of the State's energy resources "with a focus on human well-being and quality of life, recognizing that reliable access to energy is vital for human health, adaptation, economic growth, and prosperity." *Id.* § 79-6-301(1)(a)(i). The policy includes a requirement that energy resources be adequate, reliable, dispatchable, affordable, sustainable, secure, and clean. *Id.* § 79-6-301(1)(a)(ii).

The entities tasked with implementing the Utah Legislature's energy policy must comply with the requirements of the regulatory framework established under that policy. Those requirements include adherence to local zoning laws, state

environmental laws, county and agency permitting, and county and state resource management plans. Utah Office of Energy Dev., *Siting Renewable Energy in Utah: Identifying Locations Compatible with Department of Defense Operations* 41 (July 31, 2019). Because the State's regulatory framework is shaped by policies debated and passed by the Utah Legislature and local governments, the people of Utah have a greater ability to hold those officials accountable if the regulations are harmful or overly burdensome.

In addition to the State's regulatory framework, the implementation of the State's energy policy is subject to complex federal regulations administered by federal agencies. These additional federal regulations apply to Utah as well as all other states, regardless of the level of federal landholdings within the state.

However, unlike other states with minimal federal landholdings, Utah faces additional hurdles in implementing its energy policy. Those additional hurdles include requirements specific to land controlled by the Bureau of Land Management (BLM). Because the BLM controls nearly 42% of federal land in Utah, BLM requirements will likely apply to any project seeking to implement the State's energy policy.

Use of BLM-controlled land requires rigorous land use planning and environmental review under the National Environmental Policy Act (NEPA) to determine the specific, allowable uses of unappropriated land. *Id.* at 42–44. BLM requirements are unnecessarily cumbersome and cause substantial delays for energy projects involving unappropriated land. Navigating BLM land-use planning

requirements and NEPA review for an energy project often adds years to a project's timeline. Kevin Robinson-Avila, *Transmission traffic jam threatens clean energy transition,* Albuquerque Journal, June 23, 2023. Moreover, BLM requirements are established and enforced by federal officials who do not have the same accountability to the people of Utah as state and local officials do.

Utah is limited in its ability to implement the State's legislatively established energy policy not because of the federal government's constitutional authority, but because the federal government has decided to exercise control over a vast amount of land in the State. Thus, as landowner—not lawmaker—the federal government, through the BLM, restricts Utah's sovereignty with complex and sometimes capricious land use requirements that can conflict with and often override the State's legislatively established energy policies.

Two examples of how federal control of unappropriated land in Utah restricts the State's ability to implement the Legislature's energy policy relate to (1) the establishment of utility corridors for the construction of transmission lines and (2) the management of energy production.

1. Federal retention of unappropriated land restricts the Utah Legislature's ability to shape policy for the timely establishment of new utility corridors in the State.

Adequate transmission capacity is a critical component of the Utah Legislature's energy policy.

Even if the State were able to ensure sufficient electricity generation to meet present and future demand, that generation capacity would be useless without facilities to transmit the electricity where it needs to go.

Electric transmission lines often run through a utility corridor, which is land set aside for the transport of resources and energy on above- or below-ground infrastructure. The process of developing a new utility corridor is lengthy, difficult, and expensive, even if the corridor runs through only non-federal land.

A proposed utility corridor on state or private land must comply with state laws and regulations, which are shaped by the Utah Legislature. A proposed utility corridor on private land requires negotiation with individual landowners to establish specific conditions, recordable easements, and financial compensation. If negotiations fail, the State may exercise its eminent domain authority to acquire rights-of-way necessary for the corridor.

The process becomes lengthier and more burdensome in Utah if a proposed utility corridor crosses unappropriated land controlled by the BLM. Utility corridor development on federally controlled land is subject to the Federal Land Policy and Management Act of 1976 (FLPMA). FLMPA requires the completion of a resource management plan for unappropriated land intended for use as a utility corridor. *See* 43 U.S.C. § 1712 (2023). Additionally, a proposed utility corridor crossing unappropriated land must comply with NEPA, which requires a detailed environmental review. *See* National Environmental Policy Act, 43 U.S.C. §§ 4321–4370m-11 (2023). By some estimates,

if a project triggers NEPA review, the project's timeline is delayed by an average of 4.5 years. Council on Envtl. Quality, Exec. Office of the President, *Environmental Impact Statement Timelines (2010-2018)* (June 12, 2020). These delays have practical implications for implementing the Legislature's energy policy.

For example, in 2007 the State's major electrical utility submitted a request to the BLM for a right-of-way over BLM-controlled land to establish a utility corridor for the construction of a transmission line from Carbon County, Wyoming, to Juab County, Utah, to deliver 1,500 megawatts of electricity. A decade later, after years of delay, the BLM finally approved the right-of-way. Construction of the transmission line is expected to be completed in 2024, 17 years after the utility first submitted its BLM right-of-way application. *See* PacifiCorp, Energy Gateway.[2]

Utility corridor projects from other states that cross unappropriated land in Utah face a similar fate. Arizona's TransWest Express (TWE) project was envisioned to establish a utility corridor for the creation of a transmission line from southern Wyoming to Nevada with the potential to deliver up to 3,000 megawatts of renewable energy. The proposed corridor would necessarily cross unappropriated land within Utah, triggering a NEPA-required Environmental Impact Statement (EIS). Following several rounds of scoping and a lengthy EIS process, the BLM formally approved the selected route through Utah, eight years after the initial right-of-way application. After Federal Energy Regulatory Commission approval in 2021,

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[2] https://www.pacificorp.com/transmission/transmission-projects/energy-gateway.html (last visited Oct. 18, 2024).

the BLM issued its Final Notice to Proceed in 2023—15 years after the TWE began applying for rights-of-way across federally controlled land—with construction expected to finish in 2029.

In both examples, if the proposed project had not crossed federally controlled unappropriated land, the State of Utah would have accommodated the project without a nearly decade-long delay. This kind of delay has real-world impacts that affect the State's ability to furnish adequate, reliable, and affordable electrical service to all parts of the State in fulfillment of the Utah Legislature's energy policy. *See* Utah Code Ann. § 79-6-301 (West 2024). Other states without significant federal landholdings do not face these delays, and their legislatively established energy policies are not similarly undermined.

The Utah Legislature's ability to shape the State's energy policy is vital to the health, safety, and welfare of the State's citizens. That shaping often involves rapidly adapting to changing conditions. The future need for new electricity transmission in Utah is likely to exceed the capacity of projects in current utility corridors, especially considering the future demand for renewable energy development and transmission. Utah Office of Energy Dev., *Utah Transmission Study* 21–27 (2021). Any new utility corridor in Utah will almost certainly involve unappropriated land, triggering the need for a lengthy BLM approval process. The State's ability to timely implement the Legislature's energy policy should not be subject to sometimes capricious land use regulations of federal agencies and decisions by unaccountable federal land officials who can substitute their policy judgments for

those of the elected representatives of the people of Utah.

2. Federal retention of unappropriated land restricts the Utah Legislature's ability to shape policy relating to energy production in the State.

As *amicus* has demonstrated, by itself federal retention and control of unappropriated land impedes the State's ability to implement the Legislature's energy policy. That energy policy is further impeded by the BLM's recent adoption of a solar development plan for western public land.

In August 2024, the BLM published a final programmatic environmental impact statement (PEIS) for solar development on western public lands. Bureau of Land Mgmt., DOI-BLM-HQ-3000-2023-0001-RMP-EIS, *Utility-Scale Solar Energy Dev.* (Oct. 17, 2024). This PEIS amended the BLM's land use plan to "improve initial siting of utility-scale solar energy development proposals by identifying 'solar application areas,' which are broad areas of BLM-controlled lands where proposals for solar energy projects are anticipated to encounter fewer resource conflicts." *Notice of Availability of the Final Programmatic Envtl. Impact Statement for Utility-Scale Solar Energy Dev. and Proposed Res. Mgmt. Plan Amendments*, 89 Fed. Reg. 70660, 70661 (Aug. 30, 2024).

Despite indicating that Utah's share of the BLM's acreage goal for utility-scale solar development would be 40,000 acres, in practice the BLM's plan reserves more than five million acres for that use. Utah Pub. Lands Policy Coordinating Office, *Response Letter to the Draft PEIS for Utility-Scale Solar Energy*

(Apr. 18, 2024).[3] That means over 25% of all unappropriated land in Utah is affected by the BLM's solar development plan. Anastasia Hufham, *Feds want to open 1/10th of Utah for solar energy development. The state and environmentalists aren't so sure*, The Salt Lake Tribune, Sept. 18, 2024.

The BLM's solar development plan puts restraints on Utah's ability to consider those five million acres of land as the State seeks to implement the Legislature's energy policy. Utah's energy policy speaks of the need for a "reliable" and "secure" energy portfolio. Utah Code Ann. § 79-6-301(1)(a)(ii) (West 2024). That portfolio includes a variety of different energy sources that may be found only in certain areas of the State. If land within the BLM-designated solar application areas contains energy resources the State needs to help implement the Legislature's energy policy, Utah must face the additional complication and delay presented by the presence of those solar application areas.

Large-scale federal solar development may also consume a significant share of transmission capacity, leaving less room for transmitting electricity generated by other energy sources. This may impair the State's ability to achieve the goals of the Legislature's energy policy by leaving the State more vulnerable to energy shortages, higher costs, or dependency on

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[3] https://eplanning.blm.gov/public_projects/2022371/200538533/20117675/251017655/Comment%20Submittals%20D-S.pdf. *See also* 89 Fed. Reg. 3687 (Jan. 19, 2024)

neighboring states for energy imports during periods when solar output is low.

Other states without extensive federal landholdings do not face similar restrictions on the implementation of their energy policies. Moreover, those states may use eminent domain to acquire land needed to implement their policies. That is not possible in Utah, where the State is precluded from exercising eminent domain to acquire unappropriated federal land, even if that land is the only site suitable for energy production in accordance with legislatively established energy policy.

The BLM's PEIS places further restrictions on the State's ability to implement the State's energy policy enacted by the Utah Legislature. In effect, unelected and unaccountable federal officials are establishing the energy policy for the State, displacing the elected representatives of the people of Utah.

B. Federal retention of unappropriated land restricts the Utah Legislature's ability to plan for and authorize construction of needed transportation infrastructure.

The development of transportation infrastructure is a complex process in Utah. Transportation needs are assessed and prioritized by the Utah Department of Transportation (UDOT) pursuant to a legislatively established process that requires collaboration and coordination with local governments. *See* Utah Code Ann. § 72-1-304 (West 2024); *id.* § 72-2-124; Utah Admin. Code R940-6. However, UDOT's efforts to implement the Utah Legislature's policy are significantly hampered

because of federal ownership of a substantial amount of land within the State.

Amicus offers two examples to illustrate this point. Those examples involve a long-overdue transportation corridor in Washington County and delays and restrictions associated with other projects on unappropriated land controlled by the BLM.

1. Federal retention of unappropriated land and the BLM's inaction and action relating to a proposed transportation corridor for Washington County have thwarted implementation of the Legislature's transportation policy.

For many years, an important piece of the Legislature's transportation policy has included the development of a corridor in Washington County in southern Utah. The proposed corridor would connect the cities of Ivins and St. George and cross unappropriated land controlled by the BLM. Development of the corridor depends on the BLM fulfilling a 2009 congressional mandate to develop a comprehensive travel management plan for Washington County. The BLM has not yet fulfilled that mandate. In addition, the BLM granted and then withdrew its approval for a necessary right-of-way. As a result, the State is unable to implement the Utah Legislature's transportation policy for Washington County.

The communities in Washington County are some of the fastest growing in Utah, increasing from a population of 13,669 in 1970 to 189,500 in 2024.

Empowering Local Voices and Stopping Federal Overreach to Improve the Management of Utah's Public Lands: *Hearing Before the Subcomm. On Federal Lands, H. Comm. On Natural Resources*, 118th Cong. (Apr. 22, 2024) (testimony of Carlos Braceras, Exec. Dir. Utah Dep't of Transp.). The transportation network in Washington County is inadequate to handle the area's growing population and increased traffic demand. The Legislature has long sought to remedy that inadequacy.

In 2009, Congress passed the Omnibus Public Land Management Act of 2009 (OPLMA) to balance the protection of the threated Mojave Desert tortoise and the transportation needs of southern Utah's growing population. *See* H.R.146, 111th Cong. (2009), Pub. L. No. 111-11, § 1977, 123 Stat. 991, 1088-91 (2009) (codified at 16 U.S.C. § 460www). Under OPLMA, Congress gave the BLM until 2012 to develop a comprehensive travel management plan that would identify a northern transportation route in Washington County. *See id*. The BLM has yet to comply with that congressional mandate and the corridor has yet to be developed.

The corridor has not yet been developed for another reason: The BLM granted and then withdrew its approval for a right-of-way. In 2018, UDOT submitted a right-of-way application to the BLM for a highway to cross 1.9 miles of BLM-controlled land. By January 2021, after completing an EIS, the BLM granted the right-of-way application. Bureau of Land Mgmt., *Record of Decision and Approved Res. Mgmt. Plan Amendments for the N. Corridor Right-of-Way, Red Cliffs Nat'l Conservation Area Res. Mgmt. Plan, and St. George Field Office Res. Mgmt. Plan* (Jan. 2021).

The Fish and Wildlife Service issued a biological opinion for the tortoise (2021 FWS BiOP), which imposed obligations on Washington County intended to offset the impacts of the construction of the transportation corridor. Bureau of Land Mgmt., *Frequently Asked Questions for the N. Corridor Project: Supplemental Env'l Impact Statement*. UDOT and Washington County invested millions of dollars to protect the tortoise, including $3.78 million for expanded tortoise habitat. Complaint at 35–38, *Washington Cty., Utah v. U.S. Dep't of the Interior*, No. 4:24-cv-00067-DN (D. Utah 2024).

After a change in the presidential administration, conservation groups sued the Department of the Interior in June 2021, challenging the right-of-way grant and land-use plan amendments. Complaint at 25, *Conserve Sw. Utah v. U.S. Dep't of the Interior*, No. 21-CV-1506 (D.C. Cir. 2021). In August 2023, the federal government settled with the conservation groups, signing a settlement agreement that committed the federal government to a supplemental EIS and new right-of-way decision. Despite investing millions of dollars in transportation planning and habitat preservation, the State was not informed of the settlement agreement until the agreement was made public. The settlement agreement allowed federal agencies to reinitiate endangered species study efforts and withdraw the 2021 FWS BiOP at great cost to the State and Washington County.

In pursuing the Washington County transportation corridor project, Utah complied with all the federal requirements that any state would be required to comply with in pursuing a similar project. The State expects to work with federal agencies when protected species and critical habitats are concerned. The

Washington County project unraveled simply because it was intended to traverse unappropriated land and the federal manager of that land—the BLM—failed to complete the congressionally mandated travel management plan and chose to revoke its previous right-of-way approval.

The State can hold no expectations when federal land is involved because the BLM is unpredictable and not locally invested. The resulting uncertainty in transportation planning and development puts Utah at a huge disadvantage compared to other states with minimal areas of unappropriated land.

2. Federal retention of unappropriated land impairs the Utah Legislature's ability to shape state transportation policy in other ways.

The Washington County transportation corridor is not the only example of federal land officials restricting the State's ability to implement legislatively established transportation policies. Other examples include delays on a fiber optic project and interference with the use of existing roads.

Federal officials have delayed and disrupted UDOT's fiber optic network installation with unnecessary demands. *Comments to the Broadband Opportunity Council in Response to the Council's Notice and Request for Comment* (June 10, 2015) (statement of Carlos Braceras, Exec. Dir. Utah Dep't of Transp.).[4] The Utah Legislature authorized UDOT to install

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[4] https://www.ntia.gov/files/ntia/utah_department_of_transportation_boc.pdf. *See also* 80 Fed. Reg. 23785 (Apr. 29, 2015).

fiber optic networks in existing highway rights-of-way through public-private partnerships. *See* Utah Code Ann. § 72-7-108 (West 2024). Federal law encourages similar public-private partnerships in fiber optic installation "to promote the innovative use of private resources in support of intelligent transportation system development." 23 U.S.C. § 514(b)(4) (2023). The proximity of fiber optic cables near roadways allows UDOT to use the cables for message signs, traffic cameras, weather sensors, traffic sensors, traffic signals, maintenance sheds, and other travel infrastructure that requires connection to the traffic network. Such projects also accomplish legislatively established policies for providing unserved and underserved areas of the state with affordable internet access. *See* Utah Code Ann. § 63N-17-301 (West 2024).

In 2015, UDOT completed a public-private installation of 100 miles of fiber optic cable. *Comments to the Broadband Opportunity Council* (statement of Carlos Braceras). During installation, the BLM notified UDOT that the private partner on the project would need to independently obtain BLM land-use permits to install any additional fiber on rights-of-way obtained by UDOT. *Id.* Installation ground to a halt. The Federal Highway Administration, which encourages public-private partnerships in intelligent transportation system development, attempted but failed to convince the BLM to recognize the public-private partnership agreement. *Id.* Ultimately, the private partner obtained the BLM land use permits, but not without significant delays and increased costs. *Id.*

Other examples extend to the use of existing, functional roads. In 2019, Congress passed the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act). John D. Dingell, Jr.

Conservation, Management, and Recreation Act, Pub. L. No. 116-9, 133 Stat 580 (2019). Among other things, the Dingell Act designated 18 wilderness areas in Emery County, Utah, including the Labyrinth Canyon Wilderness Area located within the San Rafael Desert Area. *Id.* 116-9 at § 1231, 133 Stat. at 671–72. As part of Dingell Act, Congress created an Overview Map memorializing route number SD598 as an open "State Route." *Id.* 116-9 at § 1211, 133 Stat. at 667. Nonetheless, contrary to the Dingell Act, the BLM's travel management plan for the area closed SD598. *See* Bureau of Land Mgmt., DOI-BLM-UT-G020-2018-0004-EA, Decision Record, *San Rafael Desert Travel Mgmt. Plan: Reconsideration of Routes as Required by the 2022 Settlement Agreement* (Oct. 28, 2022).

Closing roads like SD598 limits the Utah Legislature's ability to plan for travel within the State and often prevents access to state-owned land, limiting the State's ability to manage its own property. The closure of SD598 also directly contravenes congressional intent. Such actions undermine the Utah Legislature's transportation policy for the State.

C. Federal retention of unappropriated land restricts the Utah Legislature's ability to establish policies for the sound management of grazing land.

There are currently 45 million acres of grazing land in Utah. Of those grazed lands, 73% are controlled by the federal government, 9% are state owned, and 18% are privately owned. *See* Utah Pub. Lands Policy Coordinating Office, *Utah State Resource Mgmt. Plan* 14 (Jan. 8, 2024).

Recognizing the importance of grazing to the State's culture and economy, the Utah Legislature has

codified that "livestock grazing on public lands is important for the proper management, maintenance, and health of public lands in the state." Utah Code Ann. § 4-18-101(4) (West 2024). Utah's policy aligns with FLPMA, which requires the BLM to manage public lands according to multiple use and sustained yield principles to "meet the present and future needs of the American people." *See* 43 U.S.C. §§ 1701(a)(7), 1702(c) (2023). Multiple use and sustained yield principles include domestic livestock grazing, which is defined as "principal or major uses." *Id.* § 1702(c). Despite state and federal policies favoring continued grazing on unappropriated lands, the BLM finalized a rule for its management of public land (Public Lands Rule) that could allow the agency to prioritize conservation over grazing.

The Public Lands Rule would, in part, authorize the BLM to issue restoration and mitigation leases for activities, such as passive management, that would leave the land undisturbed. Conservation and Landscape Health, 89 Fed. Reg. 40308, 40310 (May 9, 2024) (to be codified at 43 C.F.R. pt. 1600; 43 C.F.R. pt. 6100). The Public Lands Rule increases the risk of environmental harm in Utah. Through the Public Lands Rule, the BLM may hand control of leased lands to individuals and entities that may refuse to coordinate with the State to manage water supply, wildfire risk, and invasive plant and animal species. This lack of coordination impairs the State's ability to implement the Utah Legislature's policy to manage environmental risk on public land and threatens environmental harm across the entire State.

The Utah Legislature has devoted considerable effort to develop grazing policies that benefit public

land and the people of Utah. For example, the Utah Grazing Improvement Program (GIP) aims to improve the health and sustainability of Utah's rangeland by providing grants and funding to ranchers for direct rangeland improvement projects. *See* Utah Code Ann. §§ 4-20-101 to -109 (West 2024). The GIP has helped local ranchers replace herd watering infrastructure, implement grazing plans that rest the land, and negotiate a streamlined permit renewal process. Taylor Payne, *The Three Creeks Allotment Consolidation: Changing Western Federal Grazing Paradigms*, Human–Wildlife Interactions 12(2):272–283 (2018). When the Legislature is allowed to develop policies for public land, the health of the land is enhanced and the people benefit.

The legislatures of other states with minimal federal landholdings are free to establish grazing policies for the benefit of the land in their states without federal interference. The Utah Legislature does not have the same freedom. The Legislature's ability to develop grazing policy for unappropriated land is undermined by the decisions of unaccountable and unelected federal land officials.

II. Federal retention of unappropriated land restricts the Utah Legislature's ability to develop policies that maximize the value of school trust land for the benefit of Utah's school children.

Previous examples in this brief illustrate how federal control of unappropriated land in Utah impairs the Utah Legislature's ability to shape state policy. In contrast to those examples, the following example demonstrates how federal ownership of land restricts Utah's ability to manage land that is fully

under state control. The federal government's decision to indefinitely retain unappropriated land ignores the guarantees that the federal government made to Utah's school children and reduces the value that Utah obtains from school trust land.

At Utah's admission into the Union, the federal government guaranteed that 5% of the proceeds of the sale of federal lands within the state would be deposited into a fund to benefit the state's public schools. Utah Enabling Act, 28 Stat. 110 (1894). Under the Organic Act of the Territory of Utah, Congress reserved two sections within each township in the state "for the purpose of being applied to schools." An Act to Establish a Territorial Government for Utah, 9 Stat. 453 § 15 (Sept. 9, 1850). The value of these guarantees has diminished over time due to federal action or inaction, but Utah still relies on these guarantees to help fund the State's public education system. *See* Utah Code Ann. § 53C-3-101(4) (West 2024).

In 1994, the Utah Legislature created the School and Institutional Trust Lands Administration (SITLA) to manage the state's 3.4 million acres of school trust land. *See* Utah Code Ann. § 53C-1-201 (West 2024); Utah const., art. XX, §§ 1, 2. School trust land is held in trust for a small group of beneficiaries designated by Congress, including public schools, hospitals, teaching colleges, and universities. School trust land was granted based on township maps and thus forms a checkerboard pattern of 640-acre (1-square mile) parcels across the State. As a result, many school trust land parcels are surrounded by vast tracts of federally controlled land, which allows federal land officials to restrict SITLA's ability to maximize the utility of the school trust land.

To be economically viable, resource development on school trust land typically requires operational areas exceeding the standard 640-acre trust lands sections. *Hearing on H.R. 5499 Before the Subcomm. on Federal Lands, H. Comm. on Natural Res. Admin.* (Mar. 20, 2024) (testimony of Michelle McConkie, Dir. Utah School and Institutional Trust Lands Admin.). If parcels of school trust land are surrounded by unappropriated land that does not permit resource development activities, it is unlikely that the school trust land can be developed for the benefit of Utah's school children. Similarly, if federal officials are unwilling to allow access to school trust land across federally controlled parcels, the economic viability of the school trust land is greatly reduced or eliminated. Accordingly, the Utah Legislature's ability to shape policy that directs SITLA to maximize value from school trust land is limited by restrictive federal control of the surrounding unappropriated land.

The federal government may regulate the method and route of access to school trust land, but that regulation cannot prevent the State from gaining access to school trust land, nor may it be so prohibitively restrictive as to render the land incapable of full economic development. *Utah v. Andrus*, 486 F. Supp. 995, 1002, 1011 (D. Utah 1979) (commonly referred to as the *Cotter* Decision). Utah faces constant threats from federal agencies that seek to close or restrict access across federally controlled land to school trust land. Utah has expended considerable time and resources to maintain necessary access to parcels of school trust land and is often forced to propose land exchanges with federal agencies to preserve access and economic viability of the school trust land.

Hearing on H.R. 5499 (testimony of Michelle McConkie). The following examples highlight how the BLM's approach to travel management planning restricts the State's ability to maximize the value of school trust land.

In 2020, the BLM initiated development of a Travel Management Plan (TMP) for the Labyrinth/Gemini Bridges area, called the Labyrinth/Gemini Bridges TMP. This area consists of approximately 303,994 acres of BLM-controlled land located in Grand County, Utah. First Amended Complaint at 1, *Utah v. Haaland*, No. 2:23-cv-00923 (D. Utah 2024). In September 2023, the BLM issued its final Decision Record for the Labyrinth/Gemini Bridges TMP (Labyrinth DR). *See* Bureau of Land Mgmt., DOI-BLM-UT-Y010-2020-0097-EA, Decision Record, *Labyrinth/Gemini Bridges Travel Mgmt. Plan* (Sept. 23, 2023). The Labyrinth DR resulted in the closure of 317.2 miles of existing motorized routes within the area governed by the Labyrinth/Gemini Bridges TMP. *Utah v. Haaland,* No. 2:23-cv-00923, at 4. Significantly, the affected area includes over 70 sections of school trust land, including at least two sections that would lose access altogether. *Id.* at 10. SITLA estimates that approximately 1,196 acres of school trust land would lose access under Labyrinth/Gemini Bridges TMP and suffer diminished return on value. *Id.* at 12.

Similarly, in 2022, the BLM issued a Decision Record for the San Rafael Desert TMP (San Rafael DR). *See* Bureau of Land Mgmt., DOI-BLM-UT-G020-2018-0004-EA, Decision Record, *San Rafael Desert Travel Mgmt. Plan: Reconsideration of Routes as Required by the 2022 Settlement Agreement* (Oct. 28, 2022). The affected area encompasses roughly 377,609

acres of land controlled by the BLM in southeastern Emery County, Utah. *Id*. The San Rafael DR proposed the closure of 195 miles of roads and would limit access to at least six sections of school trust land. Complaint at 7–8, *Utah v. Haaland*, No. 4:23-cv-00104 (D. Utah 2023). SITLA estimates that the road closures under the San Rafael DR will result in the loss of access to thousands of acres of school trust land and the loss of hundreds of thousands of dollars of revenue to Utah's public schools and other beneficiaries. *Id*. at 8.

Federal land management decisions have an outsized effect on the value of Utah's school trust land. When roads across BLM-controlled land are closed, the potential uses of and access to school trust land are diminished, reducing SITLA's ability to generate maximum value for public schools and other beneficiaries. As a result, the Utah Legislature's ability to shape policy related to land owned and managed by the State, including school trust land, is restricted.

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Federal control over unappropriated land requires Utah to seek the federal government's permission to establish and implement policies that are rightfully the responsibility of the State and the people's elected representatives in the Legislature. Relegating Utah to the necessity of asking for federal government permission just because the federal government chooses to retain a vast amount of land within the State—land that the federal government retains not out of federal necessity but simply because it has decided that it can—is inimical to the principles of federalism enshrined by the Founders in the Constitution. It also demeans Utah's rightful stature as a coequal sovereign with other states.

CONCLUSION

Amicus Utah Legislature respectfully requests the Court to accept original jurisdiction in this case and to grant the State of Utah leave to file its bill of complaint.

Respectfully submitted,

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