NO. 22O160, ORIGINAL

In the Supreme Court of the United States

UTAH,

Plaintiff,

v.

UNITED STATES,

Defendant.

On Motion for Leave to File a Bill of Complaint

BRIEF OF *AMICUS CURIAE* UTAH ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFF

J. Mark Ward
Counsel of Record
3004 W Sweet Blossom Drive
South Jordan, UT 84095
(801) 783-7643
wardjmark@gmail.com

October 22, 2024 *Counsel for Amicus Curiae*

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INTEREST OF THE AMICUS CURIAE

Amicus curiae Utah Association of Counties (UAC) submits this brief in support of Plaintiff State of Utah and its motion for leave to file a bill of complaint.[1] UAC is the official voice of Utah's county governments, many of whom are harmed by protracted Federal ownership of the 18.5 million acres of land at issue in Utah's proposed bill of complaint (the subject lands). *See* map at App. 4 to Plaintiff's Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support.

Utah's action seeks to redress its right (and the counties' derived rights) to govern and take charge, not supplicate and entreat, to determine its own jurisdictional, economic, and societal destiny, and function as a State in the full and constitutional sense of the word. Utah's action is about who gets to own and control *one-third*[2] of its land area: The State and its counties? Or a remote, unaccountable, and extra-constitutionally perpetual Federal landlord?

Utah's action is of incalculable interest to UAC. BLM grossly mismanages the subject lands, defies

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[1] For purposes of Supreme Court Rules 37.6, no counsel of a party authored this brief in whole or in part, no party nor its counsel made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than the *amicus curiae* and its members made such a monetary contribution. Counsel of record for both parties received timely notice under Supreme Court Rule 37.2 of *amicus curiae's* intention to file this brief.

[2] 18.5 million Utah BLM acres at issue, out of 54.8 million total Utah acres statewide regardless of ownership.

State and county land and resource management plans and policies for those lands, and restricts access to, environmentally degrades, and blocks traditional uses of those lands and their resources, all to the great harm of Utah and its citizens

The counties grieve a list of harms, discussed below, offered to help the Court better understand the harms caused in Utah due to protracted Federal ownership of the subject lands, in order to better understand the critical importance of Utah's action.

SUMMARY OF THE ARGUMENT

The sheer acreage of land at issue in Utah's proposed bill of complaint, over 18.5 million acres, merits this Court's acceptance of Utah's proposed action.[3] Protracted Federal ownership and occupation of this state-size land mass have and will harm Utah so badly that it shocks the conscience.

The repeated harms include: destroyed watersheds, catastrophic wildfire damage, ruined streams, fisheries and irrigation/municipal water systems, closed public roads and trails, deep cuts to livestock grazing and range improvement projects, outsized wildlife herds that rob livestock forage, undue cuts to mineral and energy production, bars to water resource development, holds on proactive land management and restoration

[3] To give a sense of scale, 18.5 million acres is 28,906 square miles. West Virginia is approximately 24,230 square miles, Maryland 12,407, Hawaii 10,931, and Massachusetts 10,554. 18.5 million acres exceeds West Virginia's size and almost equals the combined area of the other states mentioned.

practices, poor wildfire prevention strategies, refusal to resolve thousands of miles of R.S. 2477 road right-of-way claims, starved and dying wild horses, poor noxious weed control, Sheriff/BLM law enforcement conflicts, under compensation for expensive county emergency services, cuts to wood gathering and target practice shooting, and a new top-down BLM Planning Rule that stigmatizes human activity, makes man the unwelcome enemy, eliminates local land stewardship, makes non-use of land a "use," and blunts Utah's watershed restoration, recreational planning, predator control, and grazing improvement programs and initiatives.

No sovereign State in the Union should have to bear this incursion. Utah questions the protracted Federal ownership of such a vast unappropriated land mass given that Congress drew Utah's Statehood borders to completely encompass it. That question deserves this Court's review.

The BLM's defiance of the promises of the Federal Land Policy Management Act of 1976, 43 U.S.C. § 1701 *et seq*. (FLPMA), to keep BLM resource management plans fully consistent and coordinated with State and county plans, has intensified in recent years until they fully demonstrate the illicit nature of protracted vast Federal land ownership within a Sovereign State. Enough is enough. The United States with its curtailed short list of enumerated constitutional powers, should get out of the protracted land ownership business and let Utah take care of matters. The Framers were wise to reside all unenumerated rights and governmental powers with the people and the States, respectively. U.S. Const. amend. IX, X.

ARGUMENT

I. NO SOVEREIGN STATE IN THIS UNION SHOULD HAVE TO SUFFER INDEFINITELY THE LONG TRAIN OF HARMS AND USURPATIONS FROM AN EXTRA-CONSTITUTIONAL LANDLORD, THAT UTAH HAS

The history of protracted Federal ownership of the subject lands "is a history of repeated harms and usurpations," Utah's "patient sufferance" of which has reached the breaking point.[4] "The States are separate and independent sovereigns. Sometimes they have to act like it." *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 575 (2012). The State of Utah is acting like it with this historic original action.

Time and again the BLM's protracted ownership and control of the subject lands has harmed, and to this day continues to harm, the State of Utah, its counties, and their citizens. Here is a sampling of those ongoing harms, proffered to advise the Court of the seriousness and importance of Utah's case:

1. Watersheds

The BLM continually interferes with the protection of our public's watersheds, a grievous problem for the second driest State in the Union.

2. Catastrophic Wildfires

The BLM forces practices that have triggered horrific catastrophic wildfires in the subject lands, turning vibrant ecosystems into sterilized moonscapes

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[4] DECLARATION OF INDEPENDENCE (1776).

at great loss to plants, livestock, wildlife, and the humans who depend on them.

3. Catastrophic Wildfires — Streams, Fisheries and Water Systems

Catastrophic wildfires triggered by BLM mismanagement compromise watersheds for years, choking streams with eroded silt, ruining prize fisheries, and clogging agricultural and municipal water systems at great cost to farms and municipalities.

4. Motorized Transportation and Recreation

Almost yearly the BLM cuts off public access to more and more miles of long established public roads and trails across the subject lands, at great injury to Utahns. OHV recreational routes in particular have been hit hard by arbitrary closures over the strong objections of the State, the counties, and their stakeholder constituents, and despite their well-documented established historic use.

5. Livestock Grazing — Acreage and Forage Amounts

The BLM wages steady opposition and ratcheting down against active permitted livestock grazing, in terms of both acreage and animal unit month (AUM) measures of forage available for grazing.

6. Livestock Grazing — Range Improvement and Development

The BLM reflexively opposes many range development projects precisely because the projects are likely to succeed, i.e., beneficially increase livestock forage

and healthy landscapes to justify permitting more acreage and more cows and sheep on the subject lands.

7. Livestock Grazing — Wildlife and Livestock Conflicts

Conflicts between livestock grazing interests and wildlife hunting interests on BLM lands churn endlessly in Utah. The BLM is to blame, who repeatedly abdicates responsibility to cap elk and deer herds while readily cutting cow herds, even if the agency knows the oversized elk and deer herds are to blame. The BLM effectively shrugs instead of managing.

This amounts to an accountability gap that is inherent under protracted Federal ownership. A disinterested, agenda-conflicted BLM says, we're not responsible for elk and deer herd sizes the Utah Division of Wildlife Resources (UDWR) is. The UDWR says, we're not responsible for the habitat the BLM is. And on it churns while livestock interests and their dependent rural economies suffer as elk herds grow and grow, resulting in more BLM cuts to active permitted livestock herds in an attempt to protect the habitat, which habitat keeps diminishing anyway as elk and deer herds continue to expand and spread over the subject lands. This cycle will eventually collapse Utah's cherished public lands livestock industry.

Transferring the subject lands to the State will close this accountability gap. The State as the legitimate landlord will gain a unity of ownership and authority over habitat, wildlife management, and grazing management. Utah and the counties will then solve this problem quickly, justly, and fairly if the Court will just focus the Government back on to its enumerated duties.

8. Minerals, Energy, and Mining

The BLM persists in a campaign against energy, mineral and hardrock mining leases and exploration and extraction permits for natural gas, oil, oil shale, coal, geothermal, uranium, lithium and other strategic metals, rare earth metals, etc., in one of the most abundant States in the Union for such resources, and despite rigorous mitigation and reclamation guarantees post-project.

Cities and towns near the mineral and energy rich parts of the subject lands go through countless boom and bust cycles with changes in Presidential Administrations. The swings themselves impair Utah's dignity as a State as they defy the ability of State and county land and resource planners to forecast long range with predictability. Swings in expected mineral royalties to the State make State and county budgetary planning very difficult as well. All serious indignities to Utah's statehood that State ownership would solve.

9. Water Resource Development

All waters in the State of Utah, above or below the ground, belong to the public, and the Utah Legislature governs all water use in the State. Utah Code § 73-1-1. Yet Federal agencies keep hindering, delaying, and blocking proposed dams, levees, canals, pipelines and other projects on the subject lands, meant to develop Utah's precious water supply. This amounts to a taking of Utah's most vital property right by impeding Utah's water resource development.

10. Hands-Off Management

The BLM in recent years has imposed a "look, don't touch," hands-off ethic on the subject lands. This repeatedly degrades the subject lands to the great consternation of the State and counties who know from long experience, that only proven, hands-on management will work to protect and upgrade the land. It is inimical to the Sovereign State of Utah's fabric to stand back and watch one-third of its land mass deteriorate under this remotely imposed matrix.

11. Proactive Restoration

The BLM often forbids human interventions to manage ecosystems by foot dragging its approval of such time-sensitive activities as prescribed burns for fire mitigation, revegetation after a wildfire, and landscape restoration by removing invasive and encroaching plant species. State and county planners and specialists know what they are doing in this area, but are often frustrated by agenda-driven BLM counter measures.

12. Fire Prevention

The BLM through its irresponsible fire prevention strategies, inflicts fire related damage and loss on state managed sovereign lands and wildlife management areas, and on local cities, towns, unincorporated county areas, and private inholdings within BLM lands.

13. BLM 2024 Rule — Threat to the Human Environment

The BLM has attempted to blunt localized stewardship, control, and active management of BLM lands and resources (an inherent and distinguishing

Utah value) with the BLM's recently fashioned "Conservation and Landscape Health" Final Rule, Federal Register Number 2024-08821, 89 Fed. Reg. 40308 (May 9, 2024) (revising 43 C.F.R. Part 1600 - Planning, Programming, Budgeting, and adding 43 C.F.R Part 6100 - Ecosystem Resilience) (hereafter the BLM 2024 Rule). The BLM 2024 Rule dictates a new "intact landscapes" regime that preaches a dire "intact landscapes" matrix, aka a

> (j) . . . relatively unfragmented landscape free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's composition, structure, or function. Intact landscapes are large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes provide critical ecosystem services and are resilient to disturbance and environmental change and thus may be prioritized for conservation action. For example, an intact landscape would have minimal fragmentation from roads, fences, and dams; low densities of agricultural, urban, and industrial development; and minimal pollution levels.
>
> (k) Intactness means a measure of the degree to which human influences, which can include invasive species and unnatural wildfire, alter or impair the structure, function, or composition of a landscape. Areas experiencing a natural fire regime can be intact.

43 C.F.R. § 6101.4(j), (k) (emphasis added). This construct is dire and threatens to bring much of the subject land mass up for *de facto* closure consideration

or at best radical limitation of long standing multiple stewardship practices.

14. BLM 2024 Rule — Localized Stewardship

The BLM 2024 Rule takes direct aim at generations of Utahns' prudent localized stewardship of their human environment. *Amicus curiae* and its rural county members fear the collapse of long-accepted stewardship of the subject lands, such as sagebrush, pinyon-juniper and other conifer thinning and removal projects, grazing improvements, renewable energy development, mining, oil and gas exploration, road improvements, dispersed camping, and other activities. The Rule is a feared likely tool for remote bureaucrats to rein in those "Utah proletarians" from misbehaving again to "alter or impair the structure, function, or composition of a landscape." *Id.*

15. BLM 2024 Rule — Nonuse is Use

The BLM by its 2024 Rule threatens to exponentially increase *de-facto* wilderness regimes on the subject lands, through so-called "restoration and mitigation leases," 43 C.F.R. § 1602.4, another overreach at the expense of local control. This will likely harm Utah's Statehood dignity in two ways:

a. Instead of the multi-layered/multiple-use promise of FLPMA, "restoration and mitigation leases," once issued, will allow no uses that are not in line with the strict health standards hardwired by the Rule into the lease. This rigid framework will likely limit and exclude activities like wildfire mitigation,

watershed restoration, invasive species removal, livestock grazing, resource development, and motorized and non-motorized recreation, all to the great harm of *amicus curiae's* member counties and constituents.

b. Worse, the BLM 2024 Rule at 43 C.F.R. § 6102, enshrines the following nullity: It makes conservation - the act of doing nothing on the land - a land use. 89 Fed. Reg. 40308 (May 9, 2024), 89 Fed. Reg.40317 (May 9, 2024), 43 C.F.R. § 6101.5(d)). This doublespeak portends ecological disaster for the subject lands and upheaval of the land management and stewardship plans and policies of Utah and its rural counties.

16. BLM 2024 Rule — Utah's Watershed Restoration Initiative

The BLM 2024 Rule, with its intact landscapes regime and restoration and mitigation leases program, threaten to undo Utah's Watershed Restoration Initiative (WRI), in which Utah has invested over $100 million dollars to try to reverse decades of Federal neglect of ranges, slopes and hillsides to rescue watershed health and biological diversity, water quality and yield, and natural resource sustainable use opportunities. The rigorous soil disturbing and plant uprooting activities of the WRI,[5] likely cannot withstand the new Rule.

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[5] All of which are necessary to restore and improve watersheds by removing the natural succession of vast decadent sagebrush and pinyon & juniper tree colonies.

17. BLM 2024 Rule — Recreation Travel Management Planning

The BLM 2024 Rule's intact landscapes regime and restoration and mitigation leases program, threaten to embolden BLM managers to clamp down tighter in ongoing Travel Management Plan (TMP) revision processes taking place on the subject lands in the following Travel Management Areas throughout the State, where the BLM - in defiance of state and county travel plans and policies - has closed OHV motorized recreation uses on hundreds of miles of well-established trails, with thousands of miles more on the chopping block if the anti-OHV power hierarchies in the BLM get their way:

Henry Mountains Fremont Gorge
Dolores River
Dinosaur North
Nine Mile Canyon
Book Cliffs
Labyrinth Rims/Gemini Bridges
Canyon Rims/Indian Creek

18. Travel Management Planning — Broken Trust

The BLM established TMPs as directives for where citizens may use OHV vehicles on the subject lands. Utah, its public land counties, and their constituents understand some restrictions of OHV use are necessary and appropriate. But the BLM has lost the confidence and trust of OHV communities and rural counties throughout the State, as the agency in recent years has taken to severely cutting back on recreational motorized uses with no good resources-related reason provided. This has demoralized the riding population

from Utah and elsewhere, and has caused negative impacts, both economic and societal. Utah families who have enjoyed this type of recreational outing for decades, have had their lifestyles upended over the past several years, for no good reason.

19. BLM 2024 Rule — Predator Control

The BLM 2024 Rule threatens the success of Utah's predator control initiative. Utah's public lands livestock industry depends on controlling coyotes, black bear, cougar and wolves. Protecting Utah's greater sage-grouse, for example, a special status wildlife species, depends on controlling coyotes, raptors, ravens, and small mammalian predators like red foxes. Mechanically altering sagebrush plant colonies to give cover for nesting and open space for mating, is also critical to sage-grouse survival.

These predator control efforts could fall prey to the BLM 2024 Rule. Given the BLM's unfriendly track record even before passage of this latest Rule, *amicus curiae* and its public land member counties do not want to wait around to find out what the BLM will do to predator control under the Rule. The mere fact that the BLM promulgated the new Rule, is all *amicus curiae* and the counties need to know.

20. BLM 2024 Rule — Grazing Improvement Program

The BLM 2024 Rule threatens Utah's Grazing Improvement Program (GIP) authorized in Utah's Rangeland Improvement Act, Utah Code §§ 4-20-101-109. The GIP provides cost-share grants for landscape altering projects to improve rangeland health productivity and management, benefitting the subject lands

for many years. The soil disturbing projects under GIP grants could easily be deemed off limits on the subject lands under the Rule.

21. R.S. 2477 Road Rights-of-Way Claims Across the Subject Lands

For decades the BLM has refused to work cooperatively with Utah and the counties to resolve state and county right-of-way claims to thousands of miles of public roads across the subject lands, which arose and vested between 1866 and 1976 pursuant to Revised Statutes (R.S.) 2477. Congress therein

> passed an open-ended grant of "the right of way for the construction of highways over public lands, not reserved for public uses." Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, *codified at* 43 U.S.C. § 932, *repealed by* Federal Land Policy Management Act of 1976 (FLPMA), Pub.L. No. 94-579 § 706(a), 90 Stat. 2743. This statute, commonly called "R.S. 2477," remained in effect for 110 years, and most of the transportation routes of the West were established under its authority. . . .
>
> In 1976, however, Congress abandoned its prior approach to public lands and instituted a preference for retention of the lands in federal ownership, with an increased emphasis on conservation and preservation. *See* FLPMA, 43 U.S.C. § 1701 *et seq.* As part of that statutory sea change, Congress repealed R.S. 2477. There could be no new R.S. 2477 rights of way after 1976. But even as Congress repealed R.S. 2477, it specified that any "valid" R.S.

> 2477 rights of way "existing on the date of approval of this Act" (October 21, 1976) would continue in effect. Pub.L. No. 94-579 § 701(a), 90 Stat. 2743, 2786 (1976). The statute thus had the effect of "freezing" R.S. 2477 rights as they were in 1976. *Sierra Club v. Hodel*, 848 F.2d 1068, 1081 (10th Cir. 1988).

SUWA v. Bureau of Land Management 425 F.3d 735, 740-741 (10th Cir. 2005). The BLM has opposed the efforts of Utah and its counties to sensibly resolve these claims through out-of-court settlement, even though many such claimed roads are documented on pre-1976 maps and aerial photography, as well by a large collection of preserved first-hand affidavit and deposition testimony gathered under the direction of the Utah Attorney General's Office.

Utah's efforts to collect this documentation is an expensive and time consuming litigation burden. Forcing the state and counties to prove in court each of the thousands of road claims, one road at a time, will literally take until the next century and beyond. The BLM and the special interests who have captured the BLM know this, and their intent is to "wear down and wear out" the state and the counties. This is an egregious display by the United States against the people of Utah, and it is harming our valid interests. These are well established and obvious roads. The subject lands, historic maps (many of them Federal) aerial photography (United States Department of Agriculture), and satellite imagery (U.S. Geological Survey) all speak for themselves. The roads vested as public rights-of-way under controlling law. This is no way for the United States to treat a State in this Union.

It does not have to be this way. The BLM may settle these claims out of court. But no. The BLM still refuses to this day to explore meaningful alternatives for resolving these claims.

The present action by Utah challenges the United States' right to be the protracted landowner in the first place. Transferring the subject lands would bring about a unity of title between the dominant and servient estates and resolve these right-of-way claims promptly.

22. Wild and Free Roaming Horses and Burros

Between them, the BLM and Congress can't or won't solve the ecological disaster on the subject lands in Utah's west desert caused by burgeoning, mismanaged BLM wild horse herds roaming the subject lands there.

BLM wild horse populations in the herd management areas of the subject lands are unchecked and multiple times in excess of even the BLM's Appropriate Management Levels (AML). *See* 43 C.F.R. § 4710.3-1. Starving and dying horses on the subject lands are the norm and create inhumane conditions due to lack of range forage due to horse overgrazing. The forage there is simply not enough for the unchecked herds the BLM either can't or won't get under control. The BLM has spent untold millions trying to either sterilize the horses to slow down reproduction, sell them to the public, or gather and put them in rented pens throughout the country at great cost.

Meanwhile, Congress refuses to fund the only effective option authorized in the Wild and Free

Roaming Horses and Burros Act of 1971 (WFRHBA), 16 U.S.C § 1333(b), to humanely destroy some of the horses in appropriate situations.

So the problem gets worse; generations of wild horses, now, have suffered far more from starvation than from humane destruction. Humane destruction if funded would enable the BLM to regain control of the herds and bring them down to AML. Forage would return. More horses overall would be spared. Livestock operators would finally be treated right.

But that is not to be, in the extra-constitutional world of protracted Federal ownership of the subject lands. This problem has dragged on for decades. Utah has given up hope. Improvements will happen when Utah gains rightful ownership and control of the subject lands, so that the responsive and responsible state of Utah can finally solve the problem.

23. Noxious Weed Control

Even before adoption its 2024 Rule, the BLM was already recalcitrant in applying needed strategies to control noxious weeds on the subject lands. It is feared the 2024 BLM Rule will make matters worse, because controlling noxious weeds often requires altering the landscape.

Each county, assisted by its county weed board, is responsible to enforce Utah's noxious weed laws. Utah Code §§ 4-17-105, 107. A bottom-up localized approach to controlling noxious weeds has proven effective. But this is feared to be barred under the 2024 BLM Rule's hostility to localized stewardship. Noxious weeds under Utah law are any plant determined to be especially injurious to public health, crops,

livestock, land, or other property. Utah Code § 4-17-102(4). Many such species are invasive to Utah and spread rapidly on poorly managed land. On the subject lands, out-of-control noxious weeds abound due to mismanagement.

The negative impacts of noxious weeds on other resources are well known and significant: Weed infestations often create monocultures that eliminate diverse plant communities. Watersheds dominated by noxious weeds are less efficient in absorbing and storing water, resulting in increased runoff, flooding, and soil erosion. Noxious weeds are notorious for reducing livestock forage production and quality.

Many noxious weeds, such as cheatgrass, are extremely flammable and increase the risk of catastrophic wildfires.[6] After a wildfire burns a weed-infested area, the weeds often recover before native plants and dominate native species by taking over water and soil resources.

Tackling this serious issue requires an integrated approach among federal, state and private landowners. BLM, however, has fallen down in this regard on the subject lands. The BLM 2024 Planning Rule will only make matters worse, it is feared.

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[6] One cheat-grass fueled catastrophic wildfire on the subject lands, known as the Milford Flat fire, burned for weeks, sterilized the soil of native seeds across more than 600,000 acres of grazing allotments and pastures, and raised particulate air pollution to critical levels. Huge costs were incurred to re-seed these lands.

24. Law Enforcement

The promise and mandate of FLPMA, 43 U.S.C. § 1733(c)(1), was that

> [w]hen the Secretary [of Interior] determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations.

(Emphasis added.)

That promise and mandate have been dishonored and ignored by the BLM at every turn. The BLM serially does not carry out law enforcement activities relating to the subject lands with the view of achieving maximum feasible reliance upon County sheriff law enforcement officers. The BLM's reliance is minimal at best.

In the 1970s, the notion of planting a Federal law enforcement force inside Utah on the subject lands, was a daunting one when FLPMA was being contemplated. To calm these fears, Congress included the above provision, *Id.*, hopefully to assure that local County Sheriffs would still carry out the bulk of enforcing Federal laws and regulations related to the subject lands.

This ongoing violation of FLPMA has caused serious problems in Utah from time to time.

For example, a beloved and long established family medical doctor in San Juan County in southeast Utah (surrounded by some of the subject lands) took his life after his home was overwhelmingly invaded in the early morning hours by a large paramilitary force of BLM LEOs, locked, loaded, shouting, and abrupt, over the suspected possession of artifacts, when a simple knock at the door by the trusted County Sheriff would have sufficed for this upstanding gentleman. His suicide rocked the community and all of Southern Utah.

Problems became so serious, Utah in 2014 legislated that, outside of extreme (exigent) circumstances, County Sheriffs were not to recognize BLM attempts to enforce Federal, State and local felonies and misdemeanors unless BLM agents were specifically authorized to do so by a Federal statute or regulation other than the Federal Assimilative Crimes Act, 18 U.S.C. § 13, or unless expressly deputized to do so by a County Sheriff in the case of state and local offenses. Utah Code §§ 53-13-106.2, 53-13-106.3, 54-13-106.6, and 53-13-106.7.

25. Under-Compensation for County Emergency Services

As alluded to above, Utah counties spend untold sums on equipment and highly trained manpower to provide emergency search, rescue, and EMT services on and with respect to the subject lands. The need for such services never ceases.

Utah as the new owner would ensure that proceeds from the subject lands would be managed to compensate for these county expenses.

26. Noncommercial Wood Gathering; Recreational Target Shooting

Many citizens in rural Utah depend on gathering woodfall on the subject lands to get through cold winters. Likewise, recreational target shooting is often the only diversion available for many rural Utahns. These realities have been ingrained into the custom, culture and way of life in Utah's rural counties. Gathering fallen wood for personal use is a long-perceived win-win to clean and keep fire hazards low while helping to sustain the needy. Target practice, reasonably regulated, is tied deeply to the public's Second Amendment rights

BLM land management plans in recent years have arbitrarily clamped down and restricted non-commercial wood gathering and target shooting on the subject lands, to the point where it is greatly impacting the local way of life.

Utah as the new owner would solve this issue fairly and humanely, with respect for local custom, culture and heritage.

II. THE BROKEN MANDATES AND PROMISES OF FLPMA

The black-letter core of FLPMA is consistency and coordination.

The BLM must make its land and resource management plans and policies consistent as maximally possible (without violating federal law) with State and local like plans and policies. 43 U.S.C. § 1712(c)(9).

The BLM must coordinate with State and local leaders in building and formulating new and revised BLM land plans to ensure such maximum consistency.

Id., and *Id.*, § 1712(f). Under § 1712(f), Utah and its counties must be allowed to participate in the formulation[7] of plans and programs relating to the management of the public lands, not just allowed to review BLM drafts after the fact.

State and county co-formulation of BLM land plans rarely if ever has happened under the present Administration.

Mounting recent failures of consistency and coordination are a decisive stroke. The second and final stroke is the 2024 BLM Rule, a daunting threat to Utah's dignity as a State over the subject lands. The Court should avenge Utah's dignity as a State, remove the subject lands from protracted Federal ownership, and lay the whole misadventure to rest.

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion[.]

U.S. Const. art. IV § 4, cl. 1, 2. Utah's action is ripe for review and action.

III. UTAH'S STATUTORY FRAMEWORK IS READY TO RECEIVE AND MANAGE ANY AND ALL TRANSFERRED SUBJECT LANDS UPON THEIR TRANSFER

Utah is prepared and ready to exercise stewardship of the subject lands. Utah in its 2016 and 2017 general legislative sessions established the following

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[7] Formulation of a land and resource management plan to the counties means the creating, devising, structuring, and building of that plan and its components.

provisions for managing transferred federal lands, including the subject lands: the creation of a Utah Department of Land Management (UDLM) to be staffed, funded and given an appointed executive director and advisory board when the United States eventually transfers at least 250,000 acres of federal public lands to Utah, Utah Code §§ 63L-9-102-104, and to be authorized to administer and manage all such transferred lands plus any non-transferred federal lands for which the State may be given management responsibility from the Federal government, *Id.*, §§ 63L-9-105, 63L-8-102(10) .

IV. UTAH LAW ENSURES PERMANENT STATE OWNERSHIP OF ANY TRANSFERRED SUBJECT LANDS, WITH NARROW EXCEPTIONS AS TIGHT OR TIGHTER THAN FLPMA'S

Utah law binds any transferred subject lands to public ownership, as much if not more than Federal law does. Utah in its 2016 and 2017 general legislative sessions also legislated as follows:

(a) Declared that any transferred Federal lands "be retained in state ownership consistent with the provisions of this chapter for the enjoyment and betterment of the public and the state." Utah Code, § 63L-8-104(a);

(b) Declared that any transferred Federal lands may not be disposed of, *Id.*, § 63L-8-104(b), except under tight, limited conditions, explained as follows;

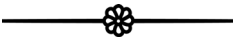
(c) Declared a State policy preference that disposal of such transferred lands be done by exchange rather than by sale, *Id.*, § 204(1)(a), and only if a proposed exchange meets all of

the following conditions: The Utah parcel to be exchanged must be no larger than 1,000 acres. The parcel to be acquired must exceed the size of or be considered of greater value in terms of defined principal public uses than the Utah parcel to be exchanged. Preferably the exchange is to be done for Utah School and Institutional Trust Land Administration owned land rather than land owned by others. The proposed exchange must be approved by two-thirds vote of the Legislature. *Id.*, §§ 63L-8-204(1)(b) , (c), and 64L-8-103;

(e) Barred the sale of such transferred lands, except if the following conditions are satisfied: Parcels to be sold must be 100-acres-or-smaller in size. An exchange of the parcel must be determined by the director to be not possible. An appropriate UDLM land use planning process must have been completed wherein it was formally determined that the parcel proposed for sale is not suitable for State long term management due to location or other characteristics and has minimal value for hunting, fishing, or other outdoor recreation. The proposed sale must be for an important public interest. The proposed sale must be consistent with county land use plans. Sufficient opportunity must first be given for public comment on the proposed sale. The proposed sale must be approved by the UDLM director and advisory board. A competitive bidding process must be used to determine the purchaser. The UDLM must post the following information on its website

> at least 30 days prior to the proposed sale: a legal description of the parcel to be sold, the governing local land use plan, the proposed purchaser, UDLM findings that the sale will further an important public objective including expansion of a local community, minutes or a recording of a meeting in which public comment was taken, and the purchase price, which may not be for less than market value. The sale must be approved by two-thirds vote of the Legislature. The sale must separately be approved by the Governor (not by veto that can be legislatively overridden, but by separate stand-alone approval). Finally all proceeds from the sale must be deposited in a Public Land Management Fund and used only to acquire more UDLM land for appropriate public purposes, improve existing UDLM land for appropriate principal public uses, and increase public utilization of other transferred lands. *Id.*, §§ 63L-8-104(1)(b), 63L-8-204.

Utah does not take a back seat to the United States in terms of keeping the subject lands public. State statutory conditions and restrictions against disposal of the transferred subject lands are as tight or tighter than comparable FLPMA conditions and restrictions on BLM land. *Compare* FLPMA, 43 U.S.C. §§ 1716-1723. Keeping the subject lands public is a safer proposition under Utah's ownership than Federal ownership. Especially when the near insolvent financial condition of the United States is considered.



CONCLUSION

The Court should grant Utah's pending motion.

Respectfully submitted,

J. Mark Ward
Counsel of Record
3004 W Sweet Blossom Drive
South Jordan, UT 84095
(801) 783-7643
wardjmark@gmail.com

Counsel for Amicus Curiae

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