

## HOUSE JOINT RESOLUTION NO. 24

INTRODUCED BY T. MILLETT

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE STATE OF UTAH IN SEEKING A JUDGMENT DECLARING THAT THE FEDERAL POLICY EMBODIED IN 43 U.S.C. 1701(A)(1), OF PERPETUAL FEDERAL RETENTION OF UNAPPROPRIATED PUBLIC LANDS IN UTAH IS UNCONSTITUTIONAL.

WHEREAS, the State of Utah claims that the United States currently owns about 69% of the land in the State of Utah—roughly 37.4 million of Utah's 54.3 million acres. Nearly half of that federal land—roughly 18.5 million acres—is unappropriated land that the United States is simply holding, without formally reserving it for any designated purpose or using it to execute any of its enumerated powers. Those 18.5 million acres are administered by the federal Bureau of Land Management, which earns significant revenue by leasing those lands to private parties for activities such as oil and gas production, grazing, and commercial filmmaking and by selling timber and other valuable natural resources from land that the federal government retains for its own exploitation; and

WHEREAS, the State of Utah claims that, as a direct consequence of the United States' indefinite retention of unappropriated public lands within Utah's borders, Utah is deprived of basic and fundamental sovereign powers over more than one-third of its territory. Utah cannot tax the federal government's land holdings. Utah cannot exercise eminent domain over the federal land holdings as needed for critical infrastructure like public roads and transportation and communications systems. Utah cannot even exercise legislative authority over the purposes for which the land holdings may be used. In short, throughout much of Utah it is the federal government, not the State of Utah, that wields the general police power; and

WHEREAS, the State of Utah claims this state of affairs is no accident on the federal government's part. It is the express policy of the United States to indefinitely retain its millions of acres of unappropriated land in Utah, regardless of whether it needs the lands for any enumerated purposes or how doing so impacts the interests of the State of Utah and its citizens. See 43 U.S.C. 1701(a)(1). Utah's elected leaders have repeatedly urged the United States to relinquish ownership of its unappropriated lands, exemplified in Utah Code 63L-6-

1 103, but to no avail; and

2 WHEREAS, the State of Utah claims the time has come to bring an end to this patently unconstitutional  
3 state of affairs. Nothing in the United States Constitution authorizes the United States to hold vast unreserved  
4 swathes of Utah's territory in perpetuity, over Utah's express objection, without even so much as a pretense of  
5 using those lands in the service of any enumerated power. On the contrary, Article I of the United States  
6 Constitution carefully limits the United States' power to hold land, granting the federal government exclusive  
7 control over only the District of Columbia and other federal enclaves purchased with state approval, and  
8 authorizing additional property ownership only to the extent necessary and proper for the exercise of an  
9 enumerated power. The Property Clause of Article IV likewise authorizes the federal government only to  
10 regulate and "dispose of" public lands—not to indefinitely retain lands within a state—as both the plain  
11 constitutional text and the historical context make clear; and

12 WHEREAS, the State of Utah claims the United States federal government's perpetual retention of  
13 unappropriated lands in Utah, over the State of Utah's express objection, exceeds the federal government's  
14 constitutional authority and disrupts the constitutionally prescribed balance of power between the federal  
15 government and the states. Making matters worse, the retention of these lands contravenes the foundational  
16 principle that all states enjoy equal sovereignty, because the land retention improperly aggrandizes federal  
17 power at the expense of Utah's sovereign authority over the land within its own borders, diminishing Utah's  
18 sovereignty as compared to its sister states; and

19 WHEREAS, the State of Utah claims this egregious federal overreach cannot continue. To restore the  
20 balance that the United States Constitution requires, on August 20, 2024, the State of Utah filed a motion for  
21 leave to file a bill of complaint with the Supreme Court of the United States to seek a judgment declaring that  
22 the federal policy embodied in 43 U.S.C. 1701(a)(1), of perpetual federal retention of unappropriated public  
23 lands in Utah is unconstitutional and ordering the United States to begin the process of complying with its  
24 constitutional obligation to dispose of those lands; and

25 WHEREAS, the following states and entities have evidenced their support for the State of Utah by filing  
26 amicus briefs in support of the State of Utah's motion for leave to file a bill of complaint: the Coalition of  
27 Arizona/New Mexico Counties for Stable Economic Growth, the New Mexico Federal Lands Council, the New  
28 Mexico Farm and Livestock Bureau, the Pacific Legal Foundation, the Utah Association of Counties, the

1 Sutherland Institute, 26 Wyoming legislators, the states of Alabama, Alaska, Arkansas, Idaho, Iowa,  
2 Mississippi, Nebraska, North Dakota, South Carolina, South Dakota, Texas, and Wyoming, the Arizona  
3 Legislature, the Utah Legislature, the Utah Public Lands Council, the Utah Wool Growers Association, the Utah  
4 Farm Bureau Federation, the county farm bureaus of Beaver, Garfield, Iron, Kane, Piute, Sanpete, Sevier,  
5 Uintah, and Washington counties of Utah, both of Utah's United States senators, Senator Mike Lee and former  
6 Senator Mitt Romney, each of Utah's four congressional representatives, Congressman Blake Moore,  
7 Congresswoman Celeste Maloy, former Congressman and current Senator John Curtis, Congressman Burgess  
8 Owens, Wyoming Congresswoman Harriet M. Hageman, the American Lands Council, the Association of  
9 Mature American Citizens Action, Beaver County, UT, Carbon County, UT, Chaves County, NM, City of St.  
10 George, UT, Committee for a Constructive Tomorrow, Custer County, ID, Elko County, NV, Five County  
11 Association of Governments, UT, Hurricane City, UT, Idaho County, ID, Idaho Freedom Caucus; Iron County,  
12 UT, Lander County, NV, Lincoln County, NM, Lincoln County, NV, Marion County, OR, Mojave County, AZ,  
13 Montana Freedom Caucus, Piute County, UT, Santa Clara City, UT, Tri-State ATV Club, Union County, NM,  
14 United Property Owners of Montana, Utah Cattlemen's Association, Washington City, UT, and the Wizards  
15 Motorcycle Club; and

16 WHEREAS, on January 13, 2025, the Supreme Court of the United States denied the state of Utah its  
17 motion for leave to file a bill of complaint.

18  
19 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF  
20 THE STATE OF MONTANA:

21 (1) That the United States currently owns about 30% of the land in the State of Montana—roughly  
22 27 million of Montana's 93 million acres and nearly 30% of that federal land—roughly 8 million acres—is  
23 unappropriated land.

24 (2) That the federal government's policy of indefinitely retaining lands denies Montana equal  
25 statehood and representation.

26 (3) That the federal government is unconstitutionally depriving Montana of its sovereignty.

27 (4) That restricting federal land ownership would mitigate or resolve separation of powers conflicts.

28 (5) That the Legislature of the State of Montana fully supports the State of Utah in its dispute with

1 the United States and urges the State of Utah to continue to seek a judgment declaring that the federal policy  
2 embodied in 43 U.S.C. 1701(a)(1), of perpetual federal retention of unappropriated public lands in Utah is  
3 unconstitutional by filing its bill of complaint in the United States District Court for the District of Utah.

4 BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the  
5 Governor of the State of Montana, the Montana Supreme Court, the Attorney General of the State of Montana,  
6 the State Auditor, the Superintendent of Public Instruction, the presiding officers of each of the legislative  
7 houses in the several states, the Governor of the State of Utah, the Attorney General of the State of Utah, the  
8 President of the United States, the Majority Leader of the United States Senate, the Speaker of the United  
9 States House of Representatives, each member of the Montana Congressional Delegation, the United States  
10 Supreme Court, and the Clerk of the United States District Court for the District of Montana.

11 - END -