

# Local

## Transfer of public lands

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House Bill 3444, co-sponsored by Representatives Jim Weidner, Jodi Hack and Bill Post, “Requires United States to extinguish title to public lands and transfer title to public lands to state on or before December 13, 2018. Directs Department of State Lands to study issues related to land transfer required by Act and to report on study to Legislative Assembly on or before February 1, 2017. Sunsets report requirement on January 2, 2018.”

On March 2, the bill received its first reading and made its way to the Speaker’s desk.

On March 9, HB 3444 was referred to Rural Communities, Land Use, and Water. No committee meetings have been scheduled to date.

Should HB3444 even receive a hearing given the frantic pace of the current legislative session, the bill likely wouldn’t have the support on the Democratic side of the aisle to pass.

Co-sponsor Bill Post said, “I firmly believe that it is past time for federally owned lands to be returned to our state. Hopefully this bill will be a step toward more responsible management of our public land.”

State Senator Ted Ferrioli issued a document to complement and support the three-page bill that is 3444; his statement is titled Senate Joint Memorial 5.

In the document, Ferrioli writes, “That we, the members of the Seventy-eighth Legislative Assembly, urge the President and the Congress of the United States of America to transfer title to all of federal public lands within Oregon’s borders directly to the State of Oregon; and be it further Resolved, That we strongly urge the members of Oregon’s congressional delegation to do all in their power to secure the passage of legislation that transfers all public lands directly to the State of Oregon; and be it further Resolved, That a copy of this resolution shall be

sent to the President of the United States, to the Senate Majority Leader, to the Speaker of the House of Representatives, to the United States Secretary of the Interior, to the United States Secretary of Agriculture, to each member of the Oregon Congressional Delegation and to the Governors and the presiding officers of the legislatures of the 49 other states.”

Ivory claims the Federal government, including the BLM and USFS, have stopped honoring the terms of the states’ original enabling acts—the agreements under which statehoods were formed, and that have since been declared and upheld as “solemn compacts” by the U.S. Supreme Court.

Ignoring these enabling acts, Ivory says, has been particularly prevalent in the Western U.S. (See map on front page.)

Ivory says the Federal government was always only intended to act as a “trustee” to transfer title to currently controlled property at statehood to each state per their enabling acts.

“Let those whose lives and livelihoods depend on these lands manage them,” Ivory said.

As recently as the 1990s, the Supreme Court ruled unanimously that Congress did not have the authority to override the states’ original enabling acts.

At one point, several states east of Colorado were up to 90% federally controlled. However, those states exercised their rights as states, and reclaimed their lands and jurisdiction.

In 1976, Congress had enacted a policy allowing Federal control to remain over lands they had not disposed of per the enabling acts. Along with that 1976 policy, Congress implemented Payment in Lieu of Taxes (PILT), a promise to compensate the states for the taxes they weren’t able to collect on the lost lands in order to help local fund education, road maintenance, and so on. Some communities have retained less than



Kerry McQuisten / The Baker County Press

Ivory gave a breakdown of the layout and structure of the Constitution, article by article, regarding transfer of public lands in Baker City last fall.

10% of local lands as a tax base.

Ferrioli also points out these facts in his Joint Memorial, and therein lies the crux of the legal argument between those for and against the Transfer of Public Lands.

When faced with the question as to if local management of local lands is affordable or possible, Ivory cited tables of statistics showing profitability per acre hundreds of times higher when under state control than when previously under federal control.

This is where HB3444 comes in—demanding the transfer of those titles back.

Ivory states in each seminar he holds that current failed Federal policy is locking up \$150 trillion in rare earth minerals, preventing local taxation to support local schools, turning natural fires into catastrophic wildfires that leave forests with completely sterilized dirt, threatening watersheds, and closing of recreation and grazing access.

Aided by citations from court cases, Supreme Court rulings, and dozens of miscellaneous documents penned as far back as the 1700s even prior to the Revolutionary War, and statements from the Founding Fathers, Ivory has established a legal timeline to support the premise that a failed federal lands policy—think the United

States Forest Service, Bureau of Land Management, etc.—is not only responsible for turning public lands from “an asset to a liability,” but is in violation of the Constitution.

Suzan Ellis Jones, Chair of the Baker County Republican Party, says that in 2014, a Natural Resources-focused committee was formed within the Baker County Republicans after Ken Ivory’s seminar.

“We formed a committee within the group, headed by Chuck Chase who is a PCP and also a member of the Eastern Oregon Mining Association; that committee has drafted a resolution of our own in support of the Transfer of Public Lands. When and if we work the details out in our resolution to the satisfaction of our general group, and if that vote passes, we’d then present it to the Baker County Board of Commissioners in hopes that they will adopt it as other Oregon counties have.”

Most recently, Klamath County’s Board of Commissioners adopted a similar resolution in support of the movement, and other Oregon counties are reportedly considering drafting resolutions of their own. Counties across other states, such as Montana, have acted as well.

Those interested in updates on Transfer of Public Lands in Oregon can visit [www.americanlandscouncil.org/oregon](http://www.americanlandscouncil.org/oregon).

## Law enforcement agreement

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“This is a small county and that money could be significant. I see it as significant,” Southwick answers when asked about the significance of the additional \$6,500 in a \$1.2 million dollar patrol budget.

“It gives us money we don’t get otherwise for work we’re doing anyway,” Southwick responded when asked about the practical advantages to signing such an agreement.

Harvey agrees with Southwick’s assessment of the practical advantages to the cooperative agreement and states, “It pays to the County the cost they’re incurring anyway.”

At the basis of the agreement are the requirements that Sheriff’s Department personnel advise the USFS of any suspected criminal activities in connection with activities on National Forest System lands; for the County to provide additional deputies during extraordinary situations; and, for the County to provide the USFS with case reports and timely information relating to incidents/crimes in connection with activities on National Forest System lands.

The cooperative agreement specifies several situations where “the U.S. Forest Service may request to provide additional special enforcement activities. During extraordinary situations such as, but not limited to: fire emergency, drug enforcement activities, or certain group gatherings.”

In return for the Sheriff Department’s cooperation, the USFS agrees to reimburse the Sheriff’s Department for actual expenses incurred within what has in the past been the \$6,500 limit.

Southwick described several situations where the County may be called in to assist the USFS law enforcement including traffic control and road closure during forest fire fighting activities and during group gatherings where there is a likelihood of law violations, using group gathering such as those held by the Rainbow Coalition as an example.

Harvey has held off on the signing of the agreement listing several reasons in a recent interview.

First, Harvey wants to negotiate within the agreement that Baker County residents are issued County citations rather than Federal citations in the National Forest System Lands within the county. Harvey would like to see these cases heard in County court rather than the Federal court in Pendleton.

Southwick voices disagreement with Harvey’s idea of a County citation and the desire to see local residents’ cases heard in local court rather than in the Federal court. Southwick argues that Harvey’s desire to have these cases heard in local court would require the Sheriff to deputize Federal law enforcement agents under the local Sheriff’s Department, an extension of federal law enforcement of which Southwick doesn’t approve.

Before signing the agreement, Harvey also asks for the USFS to provide further explanation of some of the content within the agreement. Harvey wants a more detailed explanation from the USFS of the scope of work the county is being asked to provide.

“This is the beginning stages of a long process. I see this law enforcement agreement in conjunction with everything else the Forest Service does in Baker County, like the Blue Mountain Forest Plan and road closure issues—to dovetail these agreements together—it’s a long process,” Harvey said.

USFS Region 6 Patrol Captain Robert Fields in the Pendleton office was at a training session in Portland this week and therefore unavailable for questions and comments on this article.

## City Council: marijuana dispensary ban ordinance

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Ordinance #3336 accomplishes the same goal but is more straightforward and at the consensus of the Council does not have the repercussions that a business license may have on the community businesses in the future.

Councilors Abell, Augenfeld, Langrell and Thomas all expressed concern over a City Business License with Abell and Langrell specifically stating that they had been in contact with several city business owners who had serious concerns over the possibility of the new Business License requirement and what that requirement may mean later on down the road. Ordinance #3336 is entitled “An Ordinance Regulating Marijuana Within The City Limits of Baker City, Oregon; Declaring An Emergency” and will prohibit both medical and recreational marijuana dispensaries in our City.

The ordinance must be read three times in order

to be voted into law by the Council.

The third and final reading will take place at the next regularly scheduled meeting on March 25, 2015.

Should the council pass the ordinance, since an emergency is declared, the new ordinance would become an immediately effective law. The Ordinance reads as follows:

SECTION 1: The City of Baker City has determined that the commercial production and distribution of Marijuana within the city limits of Baker City would negatively affect the health, safety and welfare of the citizens and visitors to our community; and in addition be in violation of Federal Law.

SECTION 2: Therefore, the City of Baker City hereby places a prohibition on the establishment and location of Medical Marijuana Facilities/Dispensaries within Baker City, as described in House Bill 3460, which was approved by the Oregon Legislature in the 2013 Special Ses-

sion.

SECTION 3: Furthermore, the City of Baker City places a prohibition on the establishment and location of Recreational Marijuana Producers, Processors, Wholesalers and Retailers within Baker City as described in Ballot Measure 91, which was approved by the Oregon voters in November 2014.

SECTION 4: It shall also be unlawful within Baker City to cultivate, process or consume Marijuana, or Marijuana products, in public places or within public view.

SECTION 5: In addition, the City of Baker City places a prohibition on all sales and deliveries of recreational Marijuana within Baker City.

SECTION 6: If any provision, or portion thereof, contained in this ordinance is held unconstitutional, invalid or unenforceable, the remainder of this ordinance shall be deemed severable, shall not be affected, and shall remain in full force and effect.

SECTION 7: Any

person, agent, or representative of a person who violates any provision of this Ordinance commits a civil infraction and shall be subject to forfeiture in an amount not exceeding \$500. For each day that a person engages in the violation, a separate offense is committed.

SECTION 8: Declaration of Emergency: It is hereby determined and found that this ordinance is necessary for the immediate preservation of the public health, peace and safety of the people of the City of Baker City, and by reason of the foregoing, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon and after its passage by the City Council and signed by the Mayor of the City of Baker City.

The Ordinance then includes the first and second dates it was read aloud to the Council, and is followed by the necessary spaces for signatures.

The City still runs a risk of a lawsuit with the pass-

ing of this ordinance. The outcome of other pending lawsuit cases such as the Cave Junction case may have future bearing on this issue.

City Manager Mike Kee along with planning director Holly Kerns are still pursuing land use and development codes as an alternative way to keep dispensaries at bay by either prohibiting them completely or using Time, Place and Manner regulations.

Recently, La Grande, which allows dispensaries regulated by Time, Place and Manner rules reversed their decision that required Eagle Cap Dispensary to close between 3:00 p.m. and 4:30 p.m. each day during the school year.

Mayor Steve Clements said, “The facility is a legitimate business per Oregon law. I don’t believe we should be restricting the hours of operation of any legitimate business.” The second reading of ordinance #3337 addressing the City Business License was tabled.

In other business, YMCA CEO Heidi Dalton and Aquatics Director Paula Moe addressed Council as to the positive state of the YMCA in a slideshow presentation.

The City Council meeting was preceded by an executive session to discuss real estate transactions.

In the open regular session of the City Council meeting City Manager Mike Kee asked for permission to begin the process of accepting bids for a realtor to represent the City and advise Council on the sale of City real estate.

Council was advised on grant money received to replace windows at City Hall and told some of the grant money would be awarded to local business for the same purpose.

Fire Chief Mark John advised the council on plans to begin a new inspection program.

All City Councilors with the exception of Ben Merrill were present for the meeting.