

# Federal land ownership battle heads for court

## Utah plans court battle to loosen Uncle Sam's grip on public land

By JOHN O'CONNELL  
Capital Press

SALT LAKE CITY — Utah state Rep. Ken Ivory is on the front line of an approaching legal battle to wrestle millions of acres of land from federal control, and legislators in other Western states are intently watching his progress.

The Republican says Western economies have long been held hostage by the federal government — roughly 47 percent of the land in the 11 Western states and 61 percent of Alaska are under federal control, compared with 4 percent in the other states. Sixty-five percent of Utah is federal land.

"We have an opportunity that is akin to a modern-day Louisiana Purchase," said Ivory, founder of the American Lands Council, which aims to sue the U.S. government seeking the transfer of federal lands to state control. "We're prepared to do whatever it takes."

Ivory wants to take Utah's legal case to the U.S. Supreme Court before the end of this year.

He said the armed occupation of Eastern Oregon's Malheur National Wildlife Refuge demonstrated the level of discontent with current federal land management and the need for change. Discontent with federal ownership of land in the West may be widespread, but uncertainty remains about just what to do about it. Ivory believes that Utah's coming legal battle could provide the key to a solution, but others say alternatives are already available that give state and local governments more say in how federal land is managed.

Lawmakers in Idaho and other states say they plan to let Utah "test the waters" in court and to move forward with a similar lawsuit if their neighbor prevails.

### Utah's fight

In March 2012, the Utah Legislature passed Ivory's Transfer of Public Lands Act, which set a Dec. 31, 2014, deadline for the federal government to turn over 20 million acres of federal land to the state. Congress ignored Utah's demands, prompting the state to form a Legal Consulting Services team to analyze the legal landscape.



Utah state Rep. Ken Ivory poses outside the Pocatello field office for the U.S. Forest Service and Bureau of Land Management. Ivory is leading the effort to force the federal government to turn over its public lands to state control.

The team published a report in December outlining the major arguments the state will use in court.

The report concluded, "Legitimate legal theories exist to pursue litigation in an effort to gain ownership or control of the public lands."

The authors also warned that litigation is costly and the outcome is uncertain, and sure to be vigorously opposed by the federal government. The report estimates the state will require nearly \$14 million for the legal battle.

But skeptics abound. One of them, University of Utah associate law professor John Ruple, has co-authored three papers on the topic, all concluding the state's planned lawsuit has virtually no chance of success.

Ruple said the 11 Western states have disclaimer clauses in their enabling acts, promising to forever give up federal lands.

Ruple initially brushed off Utah's strategy as inconsequential, until it began "spawning a movement."

"The fact that it was getting legs and traction when it was so legally suspect had to be pointed out," Ruple said. "Somebody needed to say, 'The emperor has no clothes.'"

Some Western lawmakers consider Ivory a

trailblazer, putting his foot down against policies that have rendered their states "second-class citizens."

Ivory isn't ruling out a congressional remedy, having found strong support for his cause from a Republican presidential candidate.

That candidate, U.S. Sen. Ted Cruz of Texas, introduced legislation prohibiting the federal government from owning more than half of the land in any state.

"I've been working with him to make it 50 percent in any county," Ivory said.

### The history

As the national debt continues to snowball, Ivory emphasizes the federal government loses 27 cents for every dollar it spends on managing public lands, while states average \$14.51 in profits per acre on the public lands they own.

"If you have a garden outside your back door, are you going to be more effective at managing that garden, or is someone who is 2,000 miles away and has a book?" Ivory asked.

Current land ownership distribution dates back to colonial times, when the original colonies reluctantly ceded land to a centralized federal government under the Articles of Confederation. In the mid- to late 1880s, Congress passed

several laws, such as the Homestead Act, to encourage settlement of the West.

In the 20th century, the nation's emphasis shifted from disposal of public lands to retention and management. Congress declared in the Federal Land Policy and Management Act of 1976 that the remaining federal lands would generally stay in federal ownership.

Ivory and his backers believe they're picking up the mantle of Thomas Hart Benton, a U.S. senator from Missouri who opposed federal ownership of 90 percent of his home state. He started a campaign in 1823 to get federally owned public land transferred to the states of Missouri, Illinois, Arkansas, Louisiana and Florida.

"They've already done the exact same thing as we're doing today and won," Ivory said, though Ruple points out they achieved their goals by winning over Congress.

According to a Congressional Research Service report, the government has remained active both in land acquisition and disposal, reducing its total land holdings by 3.6 percent between 1990 and 2013.

### The legal argument

Utah's team of experts will rely on three main legal principles in the state's case.

First, the U.S. Constitution mandates that states be equal in sovereignty. The team argues Utah isn't treated equally given that it has no control over nearly two-thirds of its land, thereby limiting the state's economic potential.

Second, under the Constitution's Equal Footing Doctrine, the team notes newly admitted states to the Union were guaranteed "all incidents of sovereignty enjoyed by the 13 original states."

"Dominion over land has historically been viewed as a key incident of sovereignty, and denial of that dominion negatively impacts sovereignty in a variety of ways," the team's report reads.

Third, they argue under the "compact theory" that the timely disposal of federal lands within the state's borders was implicit in the compact establishing Utah.

They further argue that the intent of the Constitution's Property Clause was to dispose of public lands. The clause reads, "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

Sand to Snow National Monument east of Los Angeles in Southern California  
Bob Wick/BLM



# Stop

**9-1-WHAT?**  
THE BEST OF THE WORST CALLS TO ASTORIA 911 DISPATCH

OK. OK. We know rush hour can be bad in Warrenton. But did the old dude really have to try and rip the crosswalk sign out of the ground?

Follow reporter Kyle Spurr on his 9-1-What? Twitter watch, where a few of the sometimes head-scratching calls to area dispatch take center stage. The full feed is at [www.twitter.com/9\\_1\\_WHAT](http://www.twitter.com/9_1_WHAT).

9-1-WHAT? @9\_1\_WHAT Following

{2/9 @ 4:24 p.m.} Report of an elderly man trying to rip the crosswalk sign out of the ground. #Warrenton

RETWEETS 2 LIKES 1

9-1-WHAT? @9\_1\_WHAT Following

{2/10 @ 2:43 p.m.} Report of an intoxicated man yelling and a baby crying. #Astoria

11:14 AM - 15 Feb 2016

9-1-WHAT? @9\_1\_WHAT Following

{2/12 @ 4:35 p.m.} Caller reported his child being slapped by another student while getting off the bus. #Astoria

2:35 PM - 16 Feb 2016

9-1-WHAT? @9\_1\_WHAT Following

{2/15 @ 1:16 p.m.} Burglary alarm was set off by a realtor and photographer who had permission from the homeowner to be there. #Gearhart

1

9-1-WHAT? @9\_1\_WHAT Following

{2/15 @ 10:27 a.m.} Two cows at large on U.S. Highway 101.

2:37 PM - 16 Feb 2016

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