



Grand Staircase-Escalante National Monument | Photo by Flickr user caddymob, used under a Creative Commons License.

Some things never seem to change, including the (interior) West's frustration over the extensive federal land holdings in the region. If you're old enough, you might recall the Sagebrush Rebellion, which peaked about 1980 with the election of Ronald Reagan, a self-declared sagebrush rebel. (If you want to bone up, the Forest History Society offers a good concise [timeline](#).) In the 1990s there was the County Supremacy movement, which ended when the [U.S. successfully sued Nye County, Nevada](#), winning a declaration that the U.S. does indeed own and have authority to manage the federal lands in Nevada.

These efforts had two things in common: 1) they sought to win state or local control of vast swaths of federal land in the West; and 2) they were doomed to legal failure from the start.

Two years ago, Utah tried to fire up a new version of the argument, passing a state law [authorizing the acquisition of federal lands by eminent domain](#). That doesn't seem to have gone anywhere — apparently Utah's attorney general, despite [describing the mission of his Natural Resources Division](#) on its web site as "**Protecting Utah's Natural Resources From Federal Intrusion**," is not anxious to bring a quixotic condemnation action against the U.S.

The state's legislature and governor, however, are not giving up. The latest twist is the [enactment of a new state law](#) demanding that the U.S. turn over ownership of most federal lands within Utah to the state by the end of 2014. (The Grand Staircase-Escalante National Monument, pictured above, [is a prime target](#) of the new law.) The legislature has [reportedly appropriated \\$3 million](#) to be used to force Washington to give in.

Must be nice to have state money to burn. Like the earlier efforts, this one is going nowhere as a legal matter. It's backed by a new legal argument, but not one that adds any heft.

States and local governments have so far been unable to overcome the U.S. Constitution's Property Clause, which gives Congress plenary power over federal

property including the public lands, and Supremacy Clause, which gives federal law primacy over conflicting state law.

The new argument is that the [Utah Statehood Enabling Act](#) required the U.S. to divest itself of federal lands within Utah's borders. Supporters of the state's argument point to Section 9 of the Act, which reads:

That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

The most natural reading of that provision seems to me to be not that the U.S. will sell off all its Utah lands but that if it chooses to sell any of those lands after the state's admission it will give 5% of the proceeds to the state. That reading fits with Section 3 of the statehood act, which provides among other things:

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States[.]

In any case, even under the most favorable reading of Section 9 the U.S. would be under no duty to convey its lands to Utah. And it would seem a little late for the state to enforce any claims it thinks it gained from the statehood act, which after all was passed in 1894.

Like the earlier versions of the Sagebrush rebellion, this one is surely meant to produce political rather than legal results. Utah's governor and legislature hope to put pressure on federal land managers to appease state interests, on the President to forego designation of new national monuments, and on the Congress to voluntarily cede to the states or sell some federal lands.