House Resolution 106
By: Representatives Brockway of the 102nd, Barr of the 103rd, Allison of the 8th, Teasley of
the 37th, Clark of the 98th, and others

A RESOLUTION

Encouraging Congress to Convey Title and Jurisdiction of Federal Public Lands to the States;
and for other purposes.

WHEREAS, in 1780, the United States Congress resolved that "the unappropriated lands that
may be ceded or relinquished to the United States, by any particular states, pursuant to the
recommendation of Congress of the 6th day of September last, shall be granted and disposed
of for the common benefit of all the United States that shall be members of the federal union,
and be settled and formed into distinct republican states, which shall become members of the
federal union, and have the same rights of sovereignty, freedom and independence, as the
other states: ... and that upon such cession being made by any State and approved and
accepted by Congress, the United States shall guaranty the remaining territory of the said
States respectively (Resolution of Congress, October 10, 1780)"; and

WHEREAS, under the United States Constitution, the American states reorganized to form
a more perfect union, yielding up certain portions of their sovereign powers to the elected
officers of the government of their union, yet retaining the residuum of sovereignty for the
purpose of independent internal self-governance; and

WHEREAS, the territorial and public lands of the United States are addressed in Article IV,
Section 3, Clause 2 of the United States Constitution, referred to as the Property Clause,
which states, "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."; and

WHEREAS, with this clause, the Constitutional Convention agreed that the Constitution
would maintain the "status quo" that had been established with respect to the federal
territorial lands being disposed only to create new states with the same rights of sovereignty,
freedom, and independence as the original states; and

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WHEREAS, with respect to the disposition of the federal territorial lands, the Northwest Ordinance of July 13, 1787, provides, "The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers"; and

WHEREAS, by resolution, the United States Congress declared "That the proceeds of sales which shall be made of lands in the Western territory, now belonging or that may hereafter belong to the United States, shall be, and are hereby appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or by virtue of this act may be holden, and shall be applied solely to that use, until the said debt shall be fully satisfied"; and

WHEREAS, under these express terms of trust, the land claiming states, over time, ceded their western land to their confederated union and retained their claims that the confederated government dispose of such lands only to create new states "and for no other use or purpose whatsoever" and apply the net proceeds of any sales of such lands only for the purpose of paying down the public debt; and

WHEREAS, by compact between the original states, territorial lands were divided into "suitable extents of territory" and upon attaining a certain population were to be admitted into the union upon "an equal footing" as members possessing "the same rights of sovereignty, freedom and independence" as the original states; and

WHEREAS, in 1828, United States Supreme Court Chief Justice John Marshall, in American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511 (1828), confirmed that no provision in the Constitution authorized the federal government to indefinitely exercise control over western public lands beyond the duty to manage these lands pending the disposal of the lands to create new states when he said, "At the time the Constitution was formed, the limits of the territory over which it was to operate were generally defined and recognized (sic). These limits consisted in part, of organized states, and in part of territories, the absolute property and dependencies of the United States. These states, this territory, and future states to be admitted into the Union, are the sole objects of the Constitution; there is no express provision whatever made in the Constitution for the acquisition or government of territories beyond those Limits."; and
WHEREAS, in 1833, referring to the land cession compacts which arose from the original 1780 congressional resolution, President Andrew Jackson stated, "These solemn compacts, invited by Congress in a resolution declaring the purposes to which the proceeds of these lands should be applied, originating before the constitution, and forming the basis on which it was made, bound the United States to a particular course of policy in relation to them by ties as strong as can be invented to secure the faith of nations" (Land bill veto, December 5, 1833); and

WHEREAS, the intent of the founding fathers to eventually extinguish title to all public lands was reaffirmed by President Andrew Jackson in his land bill veto message to the United States Senate on December 4, 1833, where he explained: "I do not doubt that it is the real interest of each and all the States in the Union, and particularly of the new States, that the price of these lands shall be reduced and graduated, and that after they have been offered for a certain number of years the refuse remaining unsold shall be abandoned to the States and the machinery of our land system entirely withdrawn. It can not be supposed the compacts intended that the United States should retain forever a title to lands within the States which are of no value, and no doubt is entertained that the general interest would be best promoted by surrendering such lands to the States"; and

WHEREAS, the United States Supreme Court, in State of Texas v. White, 74 U.S. 700 (1868), clarified that a state, by definition, includes a defined sovereign territory, stating that "State," in the constitutional context, is "a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed," and added, "This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established"; and

WHEREAS, in Shively v. Bowlby, 152 U.S. 1 (1894), the United States Supreme Court confirmed that all federal territories, regardless of how acquired, are held in trust to create new states on an equal footing with the original states when it stated, "Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory."; and

WHEREAS, the United States Supreme Court has affirmed that the federal government must honor its trust obligation to extinguish title to the public lands for the sovereignty of the new
state to be complete, stating once "the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states, will be upon an equal footing, in all respects."

(Polland v. Hagan, 44 U.S. 212 (1845)); and

WHEREAS, the enabling acts of the new states west of the original colonies established the terms upon which all such states were admitted into the union, and contained the same promise to all new states that the federal government would extinguish title to all public lands lying within their respective borders; and

WHEREAS, the United States Supreme Court looks upon the enabling acts which create new states as "solemn compacts" and "bilateral (two-way) agreements" to be performed "in a timely fashion"; and

WHEREAS, the federal government confirmed its trust obligation to timely extinguish title to all public lands lying within the boundaries of states by and through the 1934 Taylor Grazing Act, which declared that the act was established "In order to promote the highest use of the public lands pending its final disposal"; and

WHEREAS, in 1976, after nearly 200 years of trust history regarding the obligation of Congress to extinguish title of western lands to create new states and use the proceeds to discharge its public debts, the United States Congress purported to unilaterally change this solemn promise by and through the Federal Land Policy Management Act (FLPMA), which provides, in part, "The Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership, unless ... it is determined that disposal of a particular parcel will serve the federal interest"; and

WHEREAS, the course and practice of the United States Congress with all states admitted to the union prior to FLPMA had been to fully extinguish title, within a reasonable time, to all lands within the boundaries of such states except lands otherwise expressly reserved to the exclusive jurisdiction of the United States; and

WHEREAS, the states admitted to the Union prior to FLPMA did not, and could not have, contemplated or bargained for the United States failing or refusing to abide by its solemn promise to extinguish title to all lands within its defined boundaries within a reasonable time such that the states could never realize the bargained-for benefit of the deployment, taxation, or economic benefit of all the lands within its defined boundaries; and
WHEREAS, from 1780 forward the federal government only held bare legal title to the western public lands in the nature of a trustee in trust with the solemn obligation to timely extinguish title to such lands to create new states and to use the proceeds to pay the public debt; and

WHEREAS, Congress, by and through FLPMA, unilaterally altered its duty in 1976 to extinguish title to all public lands by committing to a policy of retention and a process of comprehensive land management; and

WHEREAS, despite the fact that the federal government had not divested all public lands by 1976, this did not alleviate the federal government from its duty to extinguish title and divest itself of federal ownership of remaining public land by ceding such land directly to the western states as it did with other states; and

WHEREAS, since the passage of FLPMA, the federal government has engaged in a persistent pattern and course of conduct in direct violation of the letter and spirit of FLPMA through disregard of local resource management plans, failure and refusal to coordinate and cooperate with the state and local governments, unilateral and oppressive land control edicts to the severe and extreme detriment of the western states and their ability to adequately fund education, provide essential government services, secure economic opportunities for wage earners and ensure a stable prosperous future; and

WHEREAS, federal land-management actions, even when applied exclusively to federal lands, directly impact the ability of western states to manage private lands, manage their state-owned lands and manage their school trust lands to meet their obligations to the beneficiaries of the trusts; and

WHEREAS, the vision and promise of agricultural production on the forest lands is the reason that the United States Forest Service was made part of the United States Department of Agriculture as opposed to the Department of the Interior; and

WHEREAS, the promise of preservation for agricultural use has been broken by the current and recent administrations; and

WHEREAS, logging, timber, and wood products operations on National Forests have been significantly suppressed, resulting in forests that are choked with old growth monocultures,
loss of aspen diversity, loss of habitat, and a threat to community watersheds due to insect infestation and catastrophic fire; and

WHEREAS, these conditions are the result of the federal government's failure to properly manage the forest lands for their intended use, which is responsible and sustained timber production, watershed protection, and grazing; and

WHEREAS, under Article I, Section 8, Clause 17 of the United States Constitution, the federal government is only constitutionally authorized to exercise jurisdiction over and above bare right and title over lands that are "purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings"; and

WHEREAS, the United States Supreme Court affirmed that the federal government only holds lands as a mere "ordinary proprietor" and cannot exert jurisdictional dominion and control over public lands without the consent of the state Legislature, stating "Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals." (Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525 (1885)); and

WHEREAS, in a unanimous 2009 decision, the United States Supreme Court, in Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009), affirmed that Congress has no right to change the promises it made to a state's Enabling Act, stating, "... [a subsequent act of Congress] would raise grave constitutional concerns if it purported to 'cloud' Hawaii's title to its sovereign lands more than three decades after the State's admission to the Union ... '[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event ... to suggest that subsequent events somehow can diminish what has already been bestowed'. And that proposition applies a fortiori [with even greater force] where virtually all of the State's public lands ... are at stake" (emphasis added, citation omitted); and

WHEREAS, the only remedy for the federal government breaches of Western States' Enabling Act Compacts and breaches to the spirit and letter of the promises of FLPMA is for the States to take back title and management responsibility of federally-managed public lands, which would restore the promises in the solemn compacts made at their statehood; and
WHEREAS, citizens of western states have a love of the land and have demonstrated responsible stewardship of lands within state jurisdiction; and

WHEREAS, the western states are willing to sponsor, evaluate, and advance locally driven efforts in a more efficient manner than the federal government, to the benefit of all users, including recreation, conservation and the responsible and sustainable management of natural resources; and

WHEREAS, because of the entanglements and rights arising over the years that the federal government has failed to honor its promise to timely extinguish title to public lands and because of the federal government's breach of western states' enabling acts and breach of FLPMA, among other promises made, and the damages resulting from such breaches, the United States Congress should imminently convey title to all public lands lying within the western states, excluding national parks, designated wilderness and national heritage sites, directly to those States that are willing to accept ownership and management responsibilities of those federal lands.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that in order to provide a fair, justified, and equitable remedy for the federal government's past and continuing breaches of its solemn promises to extinguish title of public lands, the States in making up the union of the United States encourage the federal government to imminently extinguish both its title and government jurisdiction on the public lands that are held in trust by the United States and convey title and jurisdiction to willing States in which the federal public lands are located.

BE IT FURTHER RESOLVED that the States encourage the United States Congress in the most strenuous terms to engage in good faith communication, cooperation, coordination, and consultation with each willing state regarding the conveyance of federal public lands directly to the States.