

# Federal Lands

On June 2, 1979, Nevada's then-governor, Bob List, signed into law AB 413<sup>1</sup> – encoded today as NRS 321.596–321.599, inclusive. AB 413 laid out clearly the unconstitutionality of federal control over 87% of the lands in Nevada. The charges raised by List and Silver State lawmakers lit a spark in states across the American West, illuminating the increasing burdens of federal land control.

Today that movement – known as the “Sagebrush Rebellion” – continues to gain strength. In 2011, Utah Governor Gary Herbert signed HJR 39, calling on the U.S. Congress to transfer control of many public lands to that state. In 2015, Nevada lawmakers followed suit, passing SJR 1 which requests a transfer of lands to state control according to a planning schedule developed by the Nevada Land Management Task Force.<sup>2</sup>

## Key Points

**Federal land control runs afoul of the “equal footing” clause and doctrine.** The 1864 enabling act by which Congress granted Nevada statehood declared that Nevada “shall be admitted into the Union upon an equal footing with the original states, in all respects whatsoever.”

However, the act then attached conditions to Nevada's statehood to which the original states were never subject, including the reservation of most land within the state's boundaries for federal ownership. In 1845 the U.S. Supreme Court had declared an almost identical provision contained in the enabling act for the State of Alabama unconstitutional, because it ran afoul of the equal footing doctrine. Said the Court, “the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes.”<sup>3</sup> As soon as new states were formed, said the Court, “the power of the United States over these lands as property was to cease.”<sup>4</sup>

List and Nevada lawmakers concluded that, “the attempted imposition upon the State of Nevada by the Congress of the United States of a requirement in the enabling act that Nevada ‘disclaim all right and title to the unappropriated public lands lying within said territory,’ as a condition precedent to acceptance of Nevada into the Union, was an act beyond the power of the Congress of the United States and is thus void.”<sup>5</sup>

**Nevadans overwhelmingly oppose federal land control.** In the mid-1990s, Nevada lawmakers went further, with a proposal to amend the state constitution and remove the disclaimer of interest in public lands. After securing unanimous support in both chambers of the legislature, the measure went to the ballot in 1996, where it garnered 56.3% of the popular vote. Despite this action, however, and due to the requirement in the state's enabling act, the amendment cannot become effective without congressional consent or a judicial determination that consent is unnecessary.

**The disclaimer of interest originally held a different meaning.** At the time Nevada entered the union, it was widely understood that the reason for requiring a disclaimer of interest in public lands was so that federal authorities could clear title to all lands within the state and more quickly dispose of those lands via private auction. Congress, however, later reneged on this obligation.<sup>6</sup>

**Sale or lease of federal lands could provide a fiscal boon and lead to economic development.** If Nevada could gain title to its own lands, it could generate massive public revenues through the sale or lease of those lands. During the 2013–2015 legislative interim, Nevada's Land Management Task Force calculated that state and local governments could net up to an additional \$205.8 million annually by managing 7.2 million acres of BLM lands directly, or \$1.3 billion annually by managing 45 million acres of BLM-held land.<sup>7</sup> In addition, the new availability of land would ease

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<sup>1</sup> Nevada Legislature, 60th Session, Assembly Bill 413.

<sup>2</sup> Nevada Legislature, 78th Session, Senate Joint Resolution 1.

<sup>3</sup> Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845).

<sup>4</sup> Ibid.

<sup>5</sup> NRS 321.596(5).

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<sup>6</sup> Steven Miller, “Broken Compact: The Hollowing Out of Nevada Statehood,” NPRI Policy Study, August 2013.

<sup>7</sup> Nevada Legislature, Interim Legislative Committee on Public Lands, Land Management Task Force, “Congressional Transfer of Public Lands to the State of Nevada,” July 2014.

congestion in Nevada's urban areas and prompt new development and job creation.

## Recommendations

**Congress has ignored SJR 1 and Nevada should pursue its legal remedy.** The Nevada constitution currently conflicts with the federal enabling statute for statehood. The attorney general should file suit to resolve this conflict in federal court. Lawmakers can direct the attorney general to do so through a resolution.

