PUBLIC LANDS FOUNDATION
For America's Heritage

Position Statement

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UTAH PUBLIC LANDS
STATE OF UTAH PETITION TO SUPREME COURT

EXECUTIVE SUMMARY

The State of Utah on August 20, 2024 filed a petition with the Supreme Court of the United States asserting that the perpetual federal retention of 18.5 million acres of "unappropriated" public land in Utah is unconstitutional. The State of Utah is seeking a judgment from the Supreme Court that would order the United States to begin the process of complying with the asserted obligation to dispose of these lands. The BLM manages some 23 million acres of public land in the State. The State has identified 18.5 million acres of "unappropriated" public lands that include lands that have not been "formally reserved for any specific purpose, such as a National Park or National Conservation Area, or being used to execute any of the BLM's constitutionally enumerated powers".

BACKGROUND

It is uncertain as to whether the Supreme Court will hear a case on BLM management of public lands in Utah. Although the State of Utah is attempting to invoke the court's jurisdiction over disputes between the states, the justices could decline to take up the case. The State of Utah asserts in the petition to the Supreme Court that Article I of the Constitution limits the United States' power to hold land and that the Property Clause of Article IV of the Constitution authorizes the federal government only to regulate and "dispose of" public lands, not to indefinitely retain lands within a State. However, when Utah became a state in 1896, the Utah Constitution "forever disclaimed all right and title to the unappropriated public lands". Other legal scholars also assert that the Property Clause makes it clear that Congress, and not the states, determine the use or transfer of public

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The Public Lands Foundation advocates and works for the retention of America's Public Lands in public hands professionally and sustainably managed for responsible common use and enjoyment.

lands, whether for conservation, military purposes, transfer to private or state ownership, or for economic purposes.

John Leshy, former Department of the Interior Solicitor, authored an article in 2018 in the Hastings Law Journal titled "Are U.S. Public Lands Unconstitutional". This article is posted on the PLF website. The article clearly shows that the arguments for unconstitutionality reflect an incomplete and defective understanding of U.S. legal and political history, a selective and skewed reading of numerous Supreme Court decisions and federal statutes, a misleading assertion that the states have very limited governing authority over activities taking place on the public lands, and even a misuse of the term to "dispose of" the public lands. For the Supreme Court to determine how much land the U.S. may own in any state would be a breathtaking departure from more than 230 years of practice during which Congress has made that determination through the political process and from a century and a half of Supreme Court precedent deferring to Congress.

PUBLIC LANDS FOUNDATION POSITION

1. Section 102 of the Federal Land Policy and Management Act of 1976 (FLPMA) clearly states that "Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in the Act, it is determined that disposal of a particular parcel will serve the national interest".
2. Any departure from the legal precedents and history regarding the ownership of public lands would have a significant impact on the future management of some 245 million acres of public lands managed by the BLM for all Americans. These impacts would include the management of not only the 18.5 million acres of "unappropriated" public lands in Utah, but also an estimated 144 million acres of "unappropriated" public lands throughout the west and an additional 66 million acres of "unappropriated" public land in Alaska.

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