



May 3, 2023

Mr. Michael Robinson
Bureau of Land Management, Casper Field Office
2987 Prospector Dr.
Casper, WY 82604

Dear Mr. Robinson,

I am writing to you in response to the Bureau of Land Management's (BLM) solicitation of public comment regarding the acquisition of the Marton Ranch land located in Natrona and Carbon Counties. Specifically, I am writing to inform you of the Constitutional mandate that the Wyoming Legislature be involved in the approval of this land transfer.

This letter discusses (1) the necessary involvement of the Wyoming Legislature in this transfer and (2) arguments in support of the Legislature's involvement in land sales and exchanges with the federal government based on general principles of federalism.¹

(1) The U.S. Constitution Mandates that the Wyoming Legislature Approve Transfer of the Marton Ranch to the Federal Government.

Article I of the United States Constitution limits the legislative power that Congress may exercise over property it acquires within a state. The Enclave Clause provides that Congress shall have the power to "exercise exclusive jurisdiction" over the District of Columbia and "exercise like Authority over all Places 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.*"²

The Enclave Clause requires the federal government obtain the consent of the Wyoming Legislature in order for the federal government to govern exclusively over any property the federal government acquires within the State. Absent consent of the state legislature, Wyoming law would govern to the extent that it would not be in conflict with or otherwise be preempted by federal law.³

The Supreme Court has spoken to the consequences of the federal government completing an acquisition of land within a state *without* the consent of the state legislature, declaring that, "the United States does not obtain the benefits of [the Enclave Clause] its [the federal government's] possession being simply that

¹ *Note:* This letter references research from a letter dated November 17, 2014 produced by the Utah State Legislature.

² U.S. Const. Art. 1, Sec. 8, Cl. 17.

³ Federal ownership of land alone does not automatically result in preemption of state law, as there are only two accepted ways in which federal law can preempt state law: (A) When the language of a federal law or regulation expressly states that the law or regulation preempts state law; or (B) when Congress clearly intends for a federal law or regulation to preempt state law (i.e., field preemption or conflict preemption).

of an ordinary proprietor."⁴ Without obtaining the consent of the state legislature prior to acquiring land within the state, "the State could have exercised the same authority and jurisdiction which she [the state] could have exercised over similar property by private parties."⁵ The Court goes on to say, "Where lands are acquired without such consent [of the state legislature], 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."⁶

Although the federal government may have exclusive *ownership* of a tract of land, exclusive *jurisdiction* over newly purchased land can only be given to the federal government by the state legislature.

(2) Principles of Federalism Support the State's Ability to Provide Consent to Federal Land Transfers.

The role of the Wyoming Legislature in relation to federal land transfers is based upon the fundamental principles of federalism. James Madison illustrated these principles by describing government formed by the American Constitution as a "compound republic" in which "the power surrendered by the people is first divided between two distant governments... Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."⁷

These principles are echoed by the Supreme Court in a variety of opinions dealing with issues of power sharing between the federal and state governments. In 2011 the Court noted the weight of the principles of federalism, holding that federalism concerns could satisfy an issue of standing:⁸

"The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right. But that is not its exclusive sphere of operation... Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

Unless the federal government can show a constitutional grant of authority that preempts the state's involvement, the Wyoming Legislature retains the authority to decide whether to authorize land sales and transfers to the federal government. The Legislature, as the branch closest to the people, should be the entity that decides whether the state should transfer the land.

In *National Federation of Independent Business v. Sebelius*, the case in which the Court upheld the Affordable Care Act's individual mandate, Chief Justice Roberts noted the important role of states as independent sovereigns. In describing the basic principles of federalism, he wrote, "the National Government possesses *only* limited powers; the States and the people retain the remainder."⁹ He reiterated that the federal government "can exercise only powers granted to it," and that because of the limited

⁴ *Paul v. United States*, 371 U.S. at 263 (1963).

⁵ *Ft. Lavenworth R. Co. v. Lowe*, 114 U.S. at 527 (1885).

⁶ *Id.* at 531.

⁷ James Madison, *The Federalist No. 51* (1788).

⁸ *Bond v. U.S.*, 131 S. Ct. 2355, 2364 (2011) (internal citations omitted).

⁹ *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (emphasis added).

scope of federal power, the federal government “must show that a constitutional grant of power authorizes each of its actions.”¹⁰

A federal actor must be specific in showing a constitutional grant of power authorizing its actions. Clearly, authority for exercising exclusive jurisdiction over land within the borders of a U.S. state requires the consent of that state, as mandated by the Enclave Clause. The Wyoming Legislature's involvement in state land transfers serves a necessary function as a check on the federal government.

Based on the above analysis, it should be uncontroverted that any transfer of land within the borders of the State of Wyoming to the federal government is subject to the Enclave Clause of the U.S. Constitution.

Should the BLM rescind its agreement to purchase the Marton Ranch land and re-start the acquisition process by seeking the consent of the Wyoming Legislature, the strictures of the U.S. Constitution will have been adhered to.

It appears as though the BLM will accept public comment and move forward with the land transfer. Therefore, the federal government should be legally prevented from exercising exclusive jurisdiction over the land once officially acquired, leaving the State of Wyoming to regulate the land as though it were owned by any other ordinary proprietor.

Thank you for your consideration of my comments.

Sincerely,



Senator Bob Ide
Wyoming Senate, District 29 (Natrona County)

CC:

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All Members of the 67th Legislature of the State of Wyoming

¹⁰ *Id.*