Disposal and Taxation of Public Lands Act

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 6 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. . . . That the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them"; 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 to create new states "and for no other use or purpose whatsoever" and use the proceeds of any sales of such lands only for the purpose of paying down the public debt; and

WHEREAS, by resolution in 1790, 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, in 1833, referring to these 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"; and

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, the United States Supreme Court, in Downes v. Bidwell, 182 U.S. 244, 1901, stated, "The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them"; and

WHEREAS, the territorial and public lands of the United States are dealt with 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 of only to create new states with 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 said, "At the time the Constitution was formed, the limits of the territory over which it was to operate were generally defined and recognised (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 Shively v. Bowlby, 152 U.S. 1, 1894, the U.S. 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 Enabling Act of {insert state} states, in part, that until the title to the unappropriated public lands lying within the state's boundaries, and to all land owned or held by any Indian or Indian tribes "shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use"; and

WHEREAS, the Enabling Act states further "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"; and

WHEREAS, at the time of the Enabling Act the course and practice of the United

States Congress with all prior states admitted to the Union had been to fully dispose, within a reasonable time, all lands within the boundaries of such states, except for those Indian lands, or otherwise expressly reserved to the exclusive jurisdiction of the United States; and

WHEREAS, the state of {insert state} did not, and could not have, contemplated or bargained for the United States failing or refusing to dispose of all lands within its defined boundaries within a reasonable time such that the State of {insert state} and its Permanent Fund for its Common Schools could never realize the bargained-for benefit of the deployment, taxation, and economic benefit of all the lands within its defined boundaries; and

WHEREAS, the 1934 Taylor Grazing Act declared that "In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska [and other territorial exclusions]) . . . Nothing in this subchapter shall be construed . . . as limiting or restricting the power or authority of any State as to matters within its jurisdiction"; and

WHEREAS, in 1976, after nearly 200 years of trusting history regarding the obligation of Congress to dispose of western lands to create new states and use the proceeds to discharge its public debts, the United States Congress stated in the Federal Land Policy Management Act, "By this Act, 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 national interest"; and

WHEREAS, in a unanimous 2009 decision, the United States Supreme Court, in Hawaii v. Office of Hawaiian Affairs, stated, ". . . [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. We have emphasized that 'Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State.' . . . '[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;" and

WHEREAS, from 1780 forward it is unmistakable that the federal government only held bare legal title to the western public lands as a trustee in trust to dispose of them to create new states and to use the proceeds to pay the public debt; and

WHEREAS, the Federal Government abided by these express trust obligations to the eastern edge of Colorado and then with Hawaii; and

WHEREAS, the Federal Government has failed to abide by the terms of its preexisting obligations from the eastern edge of Colorado to the west coast and Alaska; and

WHEREAS, {insert state} has been damaged by more than 115 years of federal entanglements to its lands; and

WHEREAS, {insert state} should have had control over its lands from 1896, plus a reasonable time for disposition; and

WHEREAS, {insert state} has been substantially damaged in its ability to provide funding for education because the federal government has unduly retained control of nearly 70 percent of land within its borders; and

WHEREAS, {insert state} has been damaged in lost property tax revenues to which the state was entitled; and

WHEREAS, {insert state} has been damaged in mineral lease revenues and severance taxes, which the Federal Government usurped without authority and in breach of its express trust obligations; and

WHEREAS, {insert state} has been damaged by the uncertainty regarding the sovereign control of its land and damaged by the loss of the economic multiplier effect over the use of its lands; and

WHEREAS, in light of these circumstances, the United States Congress disposed of lands within the boundaries of Hawaii directly to the state of Hawaii pursuant to it enabling act; and

WHEREAS, because of these entanglements and the breach of the Enabling Act and the damage resulting from it, the United States Congress should engage in good faith communication, cooperation, coordination, and consultation with the state of {insert state} to dispose directly to the state certain public lands where the public has developed a reasonable expectation of multiple use; and

WHEREAS, in the past, the Federal Government disposed of lands to persons with a logical nexus to the lands, including homestead claims, mining, timber, and grazing claims, the state of {insert state} expects that the United States Congress will do the same with respect to any lands not ceded directly to the state; and

WHEREAS, the Federal Government has an obligation, to present and all future generations, to pay the public debt, yet has demonstrated an inability to reduce the growing national debt even as it continues to worsen at an exponential rate.

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of {insert state} strongly urges the Federal Government to use proceeds from the sale of lands not disposed directly to the state only to pay the public debt pursuant to the Congressional

Resolutions of 1780 and 1790 and the language of the Andrew Jackson veto of the lands bill that sought to use proceeds for some other purpose than this solemn compact obligation over the western public lands.

BE IT FURTHER RESOLVED that the Legislature of the state of {insert state} urges the United States Congress in the most strenuous terms to engage in good faith communication, cooperation, coordination, and consultation with the state of {insert state} regarding those lands wherein the public has developed a reasonable expectation of multiple use that must be disposed of directly to the state.

BE IT FURTHER RESOLVED that the United States Congress should only dispose of lands not ceded to the state to persons with a logical nexus to the lands, including homestead claims, mining, timber, and grazing claims.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United States Department of the Interior, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of the congressional delegation of {insert state}, and the Governors, Senate Presidents, and Speakers of the House of the 49 other states.

BE IT ENACTED:

Section 1. Definitions. As used in this chapter:

(A) "Net proceeds" means the proceeds from the sale of public lands, after subtracting expenses incident to the sale of the public lands.

(B) "Public lands" means lands within the exterior boundaries of this state except:

(1) lands to which title is held by a person who is not a governmental entity;

(2) lands owned or held in trust by this state, a political subdivision of this state, or an independent

(3) lands reserved for use by the state system of public education

(4) school and institutional trust lands

(5) national parks

(6) lands ceded to the United States

(7) lands, including water rights, belonging to an Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States

Section 2. Disposal and taxation of public lands.

(A) On or before December 31, 2014, the United States shall sell public lands.

(B) The United States shall pay to this state 5 percent of the net proceeds of the sale of public lands.

(C) The amounts described in Subsection (B) shall be deposited into the permanent State School Fund.

(D) Beginning on January 1, 2015, public lands that the United States has not sold as of December 31, 2014, are subject to property taxation.

Section 3. Federalism Subcommittee study.

(A) the legislature creates a Federalism Subcommittee to study:

(1) procedures and requirements for subjecting public lands that the United States has not sold as of December 31, 2014, to property taxation, including the creation of a lien and the seizure and sale of the public lands;

2) the definition of "public lands", including whether to address as part of the definition interests, rights, or uses related to:

(a) easements;
(b) geothermal resources;
(c) grazing;
(d) mining;
(e) recreation;
(f) rights of entry;
(g) special uses;
(h) timber;
(i) water; or
(j) other natural resources;

(3) the determination of what constitutes expenses incident to the sale of public lands; and

(4) issues related to [National Parks, National Monuments, National Recreation Areas, etc].

(B) The Federalism Subcommittee may study any other issue related to the disposal and taxation of public lands as determined by the subcommittee.

(C) The Federalism Subcommittee shall report its findings and recommendations

Resolution in Support of the Keystone XL Pipeline

WHEREAS, The United States relies – and will continue to rely for many years – on gasoline, diesel and jet fuel despite the recent focus on renewable and alternative sources of energy. In order to fuel our economy, the United States will need more oil and natural gas while also requiring additional alternative energy sources such as ethanol and other renewable energy sources; and

WHEREAS, The United States currently depends on foreign imports for more than half of our petroleum usage. As the largest consumer of petroleum in the world, our dependence on overseas oil has created difficult geopolitical relationships with damaging consequences for our national security; and

WHEREAS, oil shale deposits in the Bakken Reserves in Montana and North Dakota and South Dakota are an increasingly important crude oil resource, with an estimated 11 billion barrels of recoverable crude oil, and there is not enough pipeline capacity for crude oil supplies from Montana, North Dakota, South Dakota, Oklahoma and Texas to American refineries; and

WHEREAS, Canadian oil reserves contain an estimated 173 billion barrels of recoverable oil. Canada is the single largest supplier of oil to the United States at 2.62 million barrels per day and has the capacity to significantly increase that rate; and

WHEREAS, the Keystone XL pipeline will, when completed, carry 700,000 barrels of North American oil to American refineries in the Gulf Coast region and construction of the project will create 120,000 jobs nationwide, create $20 billion in economic growth and generate millions of dollars worth of government receipts; and

WHEREAS, A recent study by the U.S. Department of Energy found that increasing delivery to American refineries from Montana, North Dakota, South Dakota and Alberta, as well as Texas and Oklahoma to American refineries has the potential to substantially reduce our country's dependency on sources outside of North America; and

WHEREAS, Canada sends more than 99 percent of its oil exports to the United States, the bulk of which goes to Midwestern refineries. Oil companies are investing huge sums to expand and upgrade refineries in the Midwest and elsewhere to make gasoline and other refined products from Canadian oil derived from oil sands. The expansion and upgrade projects will create many new construction jobs over the next five years and, in {insert state} substantially add to our state's gross state product; and

WHEREAS, The same money used to buy North American oil will likely later be spent directly on U.S. goods and services in contrast with the money sent to hostile oil-producing governments that is later used to further anti-democratic agendas. Supporting the continued shift towards reliable and secure sources of North American oil is of vital interest to the United States and the state of {insert state}.

NOW THEREFORE BE IT RESOLVED, That we, the members of the {insert legislative body} of the state of {insert state}, support continued and increased development and delivery of oil derived from North American oil reserves to American refineries, urge Congress to support that continued and increased development and delivery, and urge Congress to ask the U.S. Secretary of State to approve the Keystone XL pipeline project that has been awaiting a presidential permit since 2008 to reduce dependence on unstable governments, improve our national security, and strengthen ties with an important ally; and

BE IT FURTHER RESOLVED, That the Clerk of the {insert legislative body} transmit duly authenticated copies of this resolution to the Speaker and Clerk of the United States House of Representatives, to the President Pro Tempore and Secretary of the United States Senate, to the members of the {insert state) Congressional delegation, and to the news media of {insert state}.

Resolution in support of modernizing the federal Toxic Substances Control Act of 1976

WHEREAS, American consumers deserve to have confidence that the products they buy, when used for their intended purposes, are safe; and

WHEREAS, a federal chemical management program should place protecting the public health – including children's health -- as its highest priority, and should include strict government oversight; and

WHEREAS, the federal chemical management program should preserve America's role as the world's leading innovator and employer in the manufacture, processing, distribution in commerce and use of chemicals; and

WHEREAS, the current chemical management law, the Toxic Substance Control Act (TSCA) was signed into law in 1976, and is now nearly 35 years old; and

WHEREAS, since the enactment of the law, our ability to understand the impact chemicals have on the human body and the environment has advanced significantly; and

WHEREAS, those advancements in science and technology need to be integrated into the federal chemical management program; and

WHEREAS, momentum for modernization of the federal chemical regulatory system is growing in Congress; and

WHEREAS, a robust federal chemical management system will obviate the need for state governments to adopt different – at times conflicting – state regulatory programs that have the potential for negative impacts on the national economy.

NOW, THEREFORE be it resolved by **{enter state legislature}**,

Section 1. The **{enter state legislature}** encourages the 112th Congress of the United States to enact federal legislation to modernize the Toxic Substances Control Act of 1976. Amendments to TSCA should strengthen chemicals management to:

(A) Ensure that chemicals are safe for their intended use;
(B) Require EPA to systematically prioritize chemicals for the purpose of assessing their safe use;
(C) Require that EPA act expeditiously and efficiently in assessing the safe use of chemicals;
(D) Require companies that manufacture, import, process, distribute, or use chemicals to provide EPA with relevant information to the extent necessary for EPA to make safe use determinations;
(E) Assure that the potential risks to children from exposures to chemicals are

considered in the assessment of safe use;

(F) Empower EPA to impose a range of risk management controls to ensure that chemicals are safe for their intended use;

(G) Encourage companies and EPA to work together to enhance public access to chemical health and safety information;

(H) Require that EPA rely on scientifically valid data and information, regardless of its source, including data and information reflecting modern advances in science and technology;

(I) Enable EPA to have the staff, resources, and regulatory tools it needs to ensure the safety of chemicals; and

(J) Ensure that TSCA remains a vehicle to promote and encourage technological innovation, and the maintenance of a globally competitive industry in the United States.

Section 2. The **{enter state legislature}** hereby directs that copies of this resolution be sent to all the members of the Congressional delegation of **{enter state}**.

Resolution on Sustainable Resource Development

WHEREAS, Over the past several years American consumers have benefited from substantially lower and more stable natural gas prices due to the development of technologies that allow energy producers to access significant supplies of domestic natural gas from shale formations and other unconventional reservoirs; and

WHEREAS, Responsible development of this new natural gas supply will further benefit consumers, provide new jobs, and lead to lower net emissions of carbon dioxide, nitrogen oxide and sulfur dioxide. These benefits will be realized through the increased use of natural gas for such direct use applications as cooking, space heating and water heating, as well as increased use of natural gas for generating electricity, powering industry and fueling vehicles.; and

WHEREAS, The reservoirs that produce oil and gas are highly variable geologically and separated geographically across the oil and gas producing States such that State regulatory agencies are best suited by local expertise and experience to effectively regulate production inside their individual borders; and

WHEREAS, Recently, the completion practices required to produce natural gas, specifically from shale formations, have attracted considerable attention in both the media and public policy circles; and

WHEREAS, There have been significant and important efforts by public and private groups to take steps to reduce adverse environmental impacts associated with the development of natural gas shale; and

WHEREAS, on August 11, 2011, the *Shale Gas Subcommittee of the Secretary of Energy Advisory Board* issued its Ninety-Day Report, which presented recommendations that if implemented will reduce the environmental impacts from shale gas production. These detailed recommendations support a process of continuous improvement in shale gas production, support the implementation of best practices, support increased measurement and disclosure and improved public information about shale gas operations, support improved communication among state and federal regulators, and call for continuing annual support to *STRONGER (the State Review of Oil and Natural Gas Environmental Regulation)* and the *Ground Water Protection Council* for expansion of the *Risk Based Data Management System* and similar projects that can be extended to all phases of shale gas development. These recommendations cover improvements in air quality, protection of water quality, disclosure of hydraulic fracturing fluid composition, reduction in the use of diesel fuel, and managing short-term and cumulative impacts on communities, land use, wildlife and ecologies. In organizing for best practices, the Secretary's subcommittee also calls for the creation of a shale gas industry production organization dedicated to continuous improvement of best practice;

THEREFORE BE IT RESOLVED, That the American Legislative Exchange Council, convened at its 2011 State and Nations Policy Summit, encourages sustainable resource development practices, balanced efforts to ensure reliable U.S. energy resources, and supports continued jurisdiction of the States to appropriately regulate oil and gas production in their unique geological and geographical circumstances.

Resolution on the Reduction of Invasive Species

WHEREAS, The conservation of the nation's natural resources negatively impacting economic and land assets should be enhanced by efficient management of invasive species thus curtailing the associated harm, and

WHEREAS, Through state and federal leadership, ALEC supports legislation and appropriations that improves private, local, state, and federal land managers' capabilities with on-the-ground control tools. Critical is the development of effective state invasive species laws patterned on existing programs demonstrating success, and

WHEREAS, Invasive Species are responsible for loss of wildlife and fish by causing impaired ecosystem health and diversity, and

WHEREAS, Invasive Species have harmful effects on endangered species, and

WHEREAS, Invasive Species cause soil erosion with diminished water quality and quantity, and

WHEREAS, Invasive Species reduce land values, recreational opportunities and tax revenues while increasing wildfires, flood events and energy disruption, and

WHEREAS, Lack of control of Invasive Species create loss of commerce opportunities due to excessive Federal regulation, reduced agricultural yield and quality of forage and crop production, reduced livestock health with increased mortality and cost, and declining public health from pest outbreaks and disease transmission. Both agricultural producers as well as consumers see increased costs.

THEREFORE BE IT RESOLVED the American Legislative Exchange Council supports the following action:

Section 1. Over five years, Federal land management agencies shall increase their on-the-ground control obligation by five-fold and decrease current infested acres by 25 percent. Critical to this process improvement will be the need to streamline the NEPA process.

Section 2. Federal agencies shall provide a state pass through fund assessed at 25 cents on each state's federally managed acre. A State entity shall submit a request for this critical pool of money based upon a consistent set of criteria with a measurable control strategy to reduce current infestation levels or stop new invasions on any land in the state. Federal funds may be passed to the Governor annually. At least fifty percent of the funds shall be utilized for on-the-ground control efforts for taxa prioritized by the state. Money may be appropriated directly to state IS programs to maximize impact and avoid costly overhead.

Section 3. Each state should develop and implement an invasive species plan, with control tactics, and law to receive and manage invasive species funding. Critical to

success will be the implementation of EDRR, Control & Management efforts on new and existing pest populations. Additionally, focused control efforts on water and highway corridors that are primary conduits of spread should be funded.

Section 4. States are encouraged to work in regional and national concert to educate the public through television and social media methods, particularly in metro areas. To reduce redundancy, all natural resource management agencies, state/local governments, universities, nonprofit organizations, industry, and the private sector should collaborate to form partnerships to protect land and water assets and natural resources.

Resolution Requesting that the Obama Administration Confer and Consult with the States on Management of Public Lands and Energy Resources

Whereas, Management of public lands and energy resources has a direct fiscal impact on state economies and state budgets; and

Whereas, Public lands should be managed to encourage environmentally responsible energy development and further restrictions to energy development on public lands are not only unnecessary, but also increase the United States' reliance on foreign energy sources; and

Whereas, State governments and regulatory agencies are best positioned to address the unique management needs of local resources; and

Whereas, Cost-benefit and job-impact analyses are required in many states before new state rules or regulations are adopted; and

Whereas, Regulations and federal mandates are stifling the economy, resulting in lost opportunities to create jobs; and

Whereas, Court settlements between the Obama Administration and environmental groups are severely limiting the ability for states to manage lands and resources within their borders; and

Whereas, Seventeen Governors have voiced their concerns to President Obama about the over-reaching nature of proposed rules and draft guidance that erodes traditional state authority;

Therefore be it resolved: The American Legislative Exchange Council requests Congress and the Administration to acknowledge and respect the role of states in a federal constitutional republic.

The United States Congress, which represents the interests of the states individually and collectively, is the appropriate public body to determine management of resources within a state's borders.

ALEC further calls on Congress and the Administration to commit to greater consultation with the states and to recognize cost-benefit and job-impact analyses must be addressed in order to understand how federal regulations impact states and their respective citizens.