

Lubnau: Facts needed on 'take back Wyoming land' slogan

- By TOM LUBNAU
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This election season more than any others, candidates have been arguing that Wyoming should "take our land back!" While local control is a laudable goal, and a goal toward which many elected officials have been striving for a long time, knowing where we stand before we pick the fight seems like a good idea. It is also important to know legislators have been working diligently on this issue for a long time.

The unfortunate truth is the state of Wyoming never had the lands in the first place, so to say we are "taking them back" is a nice political rallying cry, but has little to do with the law as it has existed for many years. Instead of engaging in mystical thinking perpetuated by bloggers, an analysis of the history and property laws might be helpful.

Ignoring the Native American claims to the North American Lands (which would take up space far greater than this column), analyzing how the United States and the state of Wyoming acquired the rights to the lands they now own is important to understanding the political debate.

Title to the Wyoming lands began with European conquest of North America, and then was solidified by purchase of lands and treaties with other countries.

The bulk of Wyoming lands were acquired by the United States government from France in the Louisiana Purchase of 1803. The lands east of the Continental Divide were purchased from France, who claimed they had conquered the territory prior to 1803. The northwestern portion of Wyoming was acquired from England in the Oregon Treaty of 1846, which gave the lands north of the 49th parallel to Canada, and the lands south to the United States. The remainder of Wyoming was acquired by the United States government in the Texas Annexation of 1845, and the Mexican-American War and the Mexican Cession of 1848. At that point, the United States government owned all of Wyoming.

Then, the United State government began transferring lands to people and companies. The most notable transfer of lands was the Railroad Act of 1862, which transferred five alternate sections within ten miles of the Union Pacific Railroad to the railroad companies, thus creating the checkerboard of lands across the southern part of Wyoming. Additionally, the federal government, in the act of admission, granted to Wyoming certain lands for the operation of government facilities (Capitol, prison, university and state hospital), plus every section 16 and section 36 for the operation of schools. The act of admission also contained the following language in Section 12: "The State of Wyoming shall not be entitled to any further or other grants of land for any purpose that as expressly provided in this act.

To encourage people to settle in the western United States, the federal government transferred lands to individual persons through the various homestead acts. The early homestead acts granted the surface of the lands and all of the minerals. Later, homestead acts reserved coal, and ultimately reserved all of the minerals to the United States. Ultimately, with the passage of the Federal Land Policy Management Act in 1976, homesteading was stopped altogether.

The final result of all of these transfers of land, and some other minor transfers, is the federal government still owns 48 percent of the surface and 75 percent of the minerals in the state of Wyoming. The federal government

has had title since before statehood, and neither the individual citizens of the State of Wyoming or the Wyoming government had title to the lands.

As a matter of fact, in Article 21, Section 26 of the Wyoming Constitution, as a condition of statehood, the people of the state of Wyoming acknowledged: "The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries [of Wyoming] ..." In other words, the state of Wyoming promised the federal government the lands the federal government had at statehood could remain federal lands.

Other states such as Hawaii and Utah have mounted legal challenges to federal ownership in their states, but the constitutions of those states are different. Their constitutions do not contain the same disclaimer of lands and the right to lands the Wyoming constitution has. As a result, the legal claims are different.

Many intelligent people, in many states, have been working diligently to address the land management and control issue. The truth of the matter is one cannot wave a magic wand and somehow make the history and the law vanish. Empty promises made without the context of history do little to advance a cause which is ultimately winnable, but only in a political sphere.

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