

HB

8

COMMITTEE REPORT

HOUSE

2/17/81

FURTHER: JUDICIARY

(11)

Date: March 16, 1982

Mr. Speaker:

The Committee on RESOURCES has had HB 8

"An Act providing for the management and control of certain land in the state; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendations
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] NO REC
[Signature] NO REC

[Signature]
 CHAIRMAN

Teleconference Message from Nevada Senator Dean Rhoads

Speaking on the Sagebrush Rebellion (Tundra Rebellion) - March 11, 1982

Sen. Rhoads is responding to question from Rep. Fanning: "Appreciate very much your comments relative to how you feel about whether or not Alaska should proceed, - specifically, how the legislature should proceed with passage of this legislation."

Thank you very much Mr. Chairman and members of the Committee. I appreciate the opportunity to testify on such an important topic as the Tundra Rebellion. It has been a long time since Nevada passed that bill, (April 1979.) Shortly after that, I had the opportunity to come to Alaska in July to tour the state. I really fell in love with it.

I would like to go back a little bit and bring you up to date as to why we feel, not only myself or the legislators in Nevada, but all of the other legislators I have talked to; quite frankly, in the west, feel that passage of the Tundra Rebellion is so important. Much has happened since 1979. The rate of success have been unbelievable. Every western state has either passed it or considered it at one time or another.

I am sure that you are all aware, Nevada, Utah, Wyoming, New Mexico, and Arizona successfully passed very strong legislation on the Rebellion. The big campaign issue in many of the western states, and even in the presidential election in 1981, (President Reagan called me during the campaign, personally on the phone, and discussed it with me later.) Later, he called me back to Washington D.C., where I briefed him for about an hour on problems on both land and water throughout the west, and Alaska. I was very encouraged, and he was very supportive of our efforts.

Earlier in the campaign when John Connolly was running for president, Texas also called me down to Las Vegas.....(transmission break-up)..... so we got a President and a Secretary of Interior and many others to declare themselves Sagebrush Rebels. I think that was quite a success up to that point.

Really, whether you supported the goals of the Sagebrush Rebellion or not, I think much was accomplished. We certainly had a change in attitude, even before the election actually happened, (particularly in our western states), with federal land management people.

After the election, we have less rules and regulations, and a lot of executive orders were suspended. Some federal lands were transferred over for community expansion. There has been much discussion now on

land that the states have had coming from the federal agencies since they became states.

In 1980 of course, Congressman Santini introduced a bill in the house, and Senator Hatch introduced a bill in the Senate. Most important of all, I think, is that almost every household in America was exposed to the question, "why should the federal government own one-third of America, (one out of every three acres in the United States?")

Yet, as we went down the road, we were disappointed. The administration, and Secretary Watt did not pursue the cause, (particularly the goal of the Sagebrush Rebellion). They sought to de-fuse the issue. Secretary Watt told me on several occasions - that he wanted us to continue the cause - because he needed us badly so he could respond by implementing in a new direction.

The Santini/Hatch bills of course, which were introduced, enhanced our bill, and complemented our Sagebrush Rebellion legislation. It's states would comply with many of the same federal policies that exist today. Actually, that federal legislation was not really that good, which we practically had to "grandfather"; in the time and inadvisable so to speak, that we would continue managing the land in this manner. I have been back there in the last six months six times. The bills are breathing slightly; they have real problems.

The Santini legislation - (BLM land only). We must realize that we must go through two really tough committees. One chaired by Mo Udall, Utah, and John Seiberling of Ohio, both of whom are extreme environmentalists. Neither are particularly fond of the Sagebrush Rebellion. We have little chance for a hearing in that committee.

Senator Hatch's bill (including Forest Service and BLM both), had several sponsors on it when the bill was introduced. Some Senators have gone so far as to remove their names from the bill later on. I think this is the main reason this situation has worsened.

There is practically no chance of a hearing on that particular measure. There is particularly one bad feature of this Hatch bill; that the two most important people on there, Senator McClaren the chairman of the committee and Senator Malcom Walt of Wyoming, were not sponsors of that legislation. That makes it tough to get a bill through the committee and the committee chairmanship.

The legislation to transfer lands to state in massive amounts is going to be difficult at this time. Our legal case is pending in the ninth circuit court in San Francisco, and will take several months before we get an answer. At that time, we will know what facts we have. I think we need to ask ourselves, why, and what happened? There wasn't that much thwart to give one third of America to the states for nothing.

The reason, I am sure, was because Americans are a trillion dollars in debt, (the administration is looking at 90 billion dollar budget deficit per year.) Some concern has also been started about

transferring management from one bureaucracy to another. So I guess we must ask ourselves, where do we go from here? We still have a story to tell, and I think we told it well, up to this point. It is not right that 64 % of west is owned/controlled by Washington D.C. Our founding fathers, I am sure, completely misread the west.

The 160 homesteads worked well in Ohio, and other midwestern states; but they did not work well for Nevada and some of our other more arid states. In particular, they didn't fare in a state like Alaska. They certainly did not want to see one third of the United States end up being owned by the federal government. This is precisely what the architects of our constitution tried to avoid. Thomas Jefferson in 1785 wrote, "The federal government should sell all of it's vast domain to private owners, and it should never after, in any case, revert to the United States."

What has happened in the Unites States, is what Thomas Jefferson wanted to avoid. Government operation of the means of production. What we need to do, I feel, and many colleagues of ours also feel this way - is that, we need to develop a Western Public Lands program which will assist the national economy, budgets of the state and local governments, as well as benefit'ng the American consumer. We must explore new ideas, and new frontiers in transferring of authority/ownership of federal agencies, that will not only benefit all Americans; but, will also make the Sagebrush Rebellion success implicitly painful (inadvisible). We must also make the Sagebrush Rebellion, with the Tundra concept, sensible to non-western states.

What we need to do, is to shift gears quietly. We need to continue to pressure legislation such as the Tundra Rebellion; continue our legal actions, to state, congress, and the administration. But, we need to explore new ground. We need to make massive land exchanges, and we definitely should encourage disposal of surplus lands to be sold to the private sector. We must explore a new era of land ownership, some people are calling it privatization. In the west, and I am sure it would work in some places in Alaska, we could sell surface rights only. Sell it at realistic prices. Present user would have first option on that; over a thirty to forty year reasonable pay period. Lands around the cities and towns, needed for community expansion, should be sold to private enterprise and put on the tax role. All recreation and access rights on all lands, should be transferred over to state and local control. We already own the wildlife, there is no reason why we shouldn't manage the habitat.

We should let the state and local government resolve conflicts and recreations - hunters and fishermen, should not be touched. Gas and oil rights should be retained by the federal government. State and local governments should receive a bigger share of the pie for managing costs. All of the above revenues, should be ear-marked to reduce the national debt; and not be used to create new programs.

We seem to have lots of support building up for some of these policies I mentioned above. The President's budget, (many of you are familiar with it), in his budget message he noted, he has budgeted for

1983 one billion dollars for selling federal property and the designation of federal property, buildings and equipment, and also federal land. (transmission break-up)..... In 1984, four billion dollars has been budgeted and in 1985, four billion dollars for a total of nine billion in the next three years.

In my travels back there, state senator Laxalt for the first time discussing the public land issue, is very excited about this new proposal; and many other congressmen and senators I talked to were too. The administration is setting up a special White House task force to look into the legal hurdles that will have to be taken care of. As many of you are aware, I think the Federal Land Management Policy Act of 1976 requires that any land over 2,500 acres that is sold has to have the approval by Congress. I am sure that most of you, and we certainly are in the west, that that act, called the "organic act", was probably the most harmful and far reaching act ever passed (involving public lands), in the west. This is probably what fired up the Sagebrush Rebellion.

For the first time, it stated the government would no longer dispose of land in an orderly fashion; but would retain ownership in perpetuity. It must be amended severely. I think the administration is taking a good tough look at it. For this reason alone, the passage of the Tundra Rebellion would help greatly in that effort.

The administration is setting up a "Property Review Board". They will recommend probably in priority the properties, which would include, federal land, which is to be sold. In my opinion, these actions complemented the President's federal advisory committee. It will do much to change future management policies on federally owned lands. The President's Federalism Advisory Committee, of which I am a member, there are some 40 of us; senators, congressmen and (transmission break-up) etc. Mr. Donald Smith, (Anchorage), is on the committee representing Alaska I believe. Senator is the chairman of that commission; while I am the chairman on the sub-committee on lands and water. Many of the ideas I have mentioned, will be discussed on the 22nd of this month back in Washington D.C.; at our federalism sub-committee meeting. That same day, we have a meeting with the President. We will be talking to him about some of these issues.

As I see it, I am sure as we discuss these issues, it is possible in round-two, of the President's federalism program, (this is my name for programs of his that may come down the road), that the transfer of control of federal land will be prime candidates for state/local control. I think that that is the name of the game of the federalist program. I am sure that the passage of the Tundra Rebellion will greatly add support to this direction, particularly to the President's federalist role.

With that, I would like to conclude, and urge you all on the committee to pass the Tundra Rebellion. I think it would serve as a signal back to Washington that we want some changes made. Thank you very much.

and I do not blame you for being concerned. I think we are sincere, I guess we just haven't been able to get the job done.

Rep. Fanning: As I understand your comment, passage of the Sagebrush Rebellion preclude, and in fact, you would be in agreement with the State mandating the assurance of access to other State lands and across private lands for traditional purposes; such as hunting, (be it subsistence, or sport, and fishing), could and should, be mandated.

Let me ask you another question, that many legislators up here have, or that has been seen as a stumbling block. In the Alaska Legislature, this House bill has been introduced for several years; but, there are some folks in our legislature who feel that before we deal with this,

we should pass an amendment to the constitution of the State, relating to the land disclaimed by the State under the act admitting Alaska into the union. I know that several other western states have that same provision in their constitution, (Article 12 in our constitution - the disclaimer agreement.) I wonder if you could shed some light. Have other states dealt with these issues? In what order? What would your suggestions be?

Sen. Rhoads: I think our attorney general gave us the best opinion as to what to do with that. We, and other states, considered putting that on the ballot. They told us it wouldn't do us any good, because, congress would also have to reject it. Our attorneys told us, that it is a moot question. It was illegal because prior court cases, (mainly a case in Alabama - Palmer vs. Akin.) They did not have the right to make western states put that into their constitution, but they let the eastern and mid western states leave it out. They actually discriminated against us, and Alaska.

They felt that when the legal action goes through the court, such as we now have in the ninth circuit court. The disclaimer clause will be ruled illegal. That is what our attorneys are telling us. We have not gone to the effort of taking it out of our constitution, for these two reasons: 1) Our attorneys say that when it goes through the court cycle, hopefully, it will be ruled illegal. The point is - if we or you take it out of the constitution, congress of the United States has to also pass it back there. As you know, it will be mighty tough to get it through those two committees.

HB 8

LARRY HAYDEN
3604 East 18th Avenue
ANCHORAGE, ALASKA 99504

TESTIMONY PRESENTED
TO THE
HOUSE RESOURCE COMMITTEE
March 11, 1982

THE TUNDRA REBELLION

Good afternoon, gentlemen. This is Larry Hayden in Anchorage. Our good friend Senator Rhodes has made some excellent arguments in favor of the Tundra Sagebrush Rebellion.

Let me add that by this teleconference process today we are performing a great service in alerting the rest of the country that federal ownership and management of the public lands are causing great unhappiness.

As Representative Randolph has just stated, President Reagan has publicly stated on numerous occasions that he favors turning major tracts of federal land over to the states; and Secretary of the Interior James Watt was deeply involved in the Sagebrush Rebellion just prior to his appointment. We have a more favorable environment in Washington D.C. now than has existed in 100 years. Alaska's challenge now is to take advantage of it.

It is absolutely imperative that the citizens of Alaska control the land upon which they must live.

We need to realize that property rights are the basis of individual rights and those are best managed and maintained at the closest proximity to the individual.

If nothing else, we want to have greater partnership in the management of federal lands within our borders. We cannot emphasize too much that western resource states are our natural allies in fending off any efforts by Congress to limit, tax or confiscate state resource revenues.

We need to have the entire Alaska legislative body pass favorably this Tundra Rebellion bill which would let the U. S. Congress and the various states know that Alaska wants less federal lands within its boundaries.

Does anyone have a question for me?

Judiciary

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 3
Title Providing for Management & Control of State Land
Requested by House Resources Date 3-25-82

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
Program Category Affected NRMEC
BRU, Program, Or Subprogram(s) Affected See below
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		22,000	ESTIMATE			

FUNDING (Thousands of Dollars)

GENERAL FUND		22,000				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		250	ESTIMATE			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

If the constitutional amendment described in Section 3 of the bill passes, the Department would have management authority over approximately 200 million acres of existing federal lands. The Department currently manages approximately 50 million acres of patented and tentatively apposed state lands; the state's land entitlement is 102 million acres. The estimate described above is based on the fact the state would assume responsibility for mining claims, fire protection, water adjudication, oil and gas leasing, timber sales and general land use (disposals, leases, etc.) on the newly acquired lands. The figure given is a rough estimate - the exact figure would depend on the timing of the transfer and legislative and executive policy on management of the lands. (For comparative purposes, the U.S. Forest Service Spends over \$90 million a year and employs 1200 people to manage the 23 million acres in Alaska for which that agency is responsible.)

IV. DATE 3-25-82 PREPARED BY Mark Wittow *Mark Wittow*
AGENCY DMR
Original: Legislative Finance PHONE 465-2400
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

TUNDRA REBELLION FACT SHEET

By REPRESENTATIVE DICK RANDOLPH

1. What is the Sagebrush Rebellion? Originally under the Constitution, states were sovereign entities which gave the federal government limited powers to act as their agents in such matters as mutual defense and as trustee for lands to be transferred to new states upon admission to the union. This arrangement worked out fairly well for eastern states which have little or no federal land within their boundaries. However, as western states were admitted to the Union, the federal government began to require disclaimers from new states as to their rights to the federal land within their borders as a condition of statehood. These disclaimers did not bother many states because at the time they were made it was federal policy to dispose of these lands anyway. In 1976, however, Congress passed the Federal Land Policy Management Act (Organic Act) which declared that the federal government would from now on hold these lands in perpetuity. This act (FLPMA) touched off the 'sagebrush rebellion' which uses two theories to support it.

(1) FLPMA was a clear breach of trust by the federal government of its Constitutional duty to transfer this land to the states, and

(2) The Constitutional Equal Footing Doctrine requires that western states receive title to this public land on an equal basis with eastern states.

The 'Tundra Rebellion' enacts legislation which declares state ownership of public lands so that through judicial and political efforts, this land can be transferred to local and private interests.

2. Why is the 'Sagebrush Rebellion' important? In Alaska, we refer to this movement as the Tundra Rebellion. Land is the most basic resource in production. Unless land is allowed to be used for human purposes, both recreational and productive, our economy will be stifled and consumers will suffer. Federal policy has been to deter productive use of public lands with the result that our nation is dependent on foreign sources of oil and other minerals. This dependence is unnecessary and has us in a near war situation in the Middle East. Most important is the issue of responsive government and individual freedom. Transfer of these lands to state, local, and ultimately private control insures that those who live on or near this land can decide its best use. That isn't possible when unelected bureaucrats living thousands of miles away control the land. Who has more concern for the land? Those who live on it or unelected bureaucrats in Washington? And who should decide its use, Alaskans or

someone else? Although some question the ability of Alaskans to manage their own land, the 'Tundra Rebellion' asserts that we are worthy and deserving of this trust. With eventual transfer of this land to private hands based on use principles, individuals will have the freedom to decide their destiny and better their lives through use of the land. Thirteen western states (sometimes called the new colonies) contain about 90% of all federal lands. This rebellion has become the new American revolution, fighting a distant federal government which imposes hardships on the western colonies.

3. What are the chances of ultimate success? Clearly, the 'Tundra Rebellion' is Alaska's best chance available to rectify the unjust treatment that it is receiving from the federal government, and to develop the economy of our state. For that reason alone it is worth doing.

So far, six states have passed 'rebellion' legislation. They are Nevada, Utah, Arizona, Washington, Wyoming, and New Mexico. All thirteen western states will hopefully pass this type of legislation by 1981. It is incredible that Alaska, with about 95% of its land in federal ownership, has not taken the lead in this effort.

The 'Rebellion' effort has gone beyond the hopes of judicial satisfaction. Political pressure is mounting. Legislation has been introduced in Congress to rectify the situation, and with western states uniting and increasing the pressure, relief may be coming from that avenue. Although Secretary Andrus disclaims the 'Rebellion's' credibility, he has so far been afraid to challenge Nevada in court, and some Interior Department solicitors have admitted the chances of success for Nevada. There is considerable legal precedence on the side of the rebellion. Three presidential candidates have endorsed the 'rebellion' concept. Votes in state legislatures which have passed this legislation have run 5 to 1 in favor of the 'rebellion.' It is clear that we have everything to gain and nothing to lose by this course of action. The initiative effort will encourage elected officials to act responsibly on this issue.

THE TUNDRA REBELLION
March 5, 1980

This is meant to be an easy to understand explanation of issues involved in a 'Sagebrush Rebellion' type of statute for Alaska and the court proceedings which would follow.

Firstly, one might ask why Alaska should pursue this course at all. The reasoning behind this effort is one of more local control with individual control over one's own life as an ultimate objective. The theory is that federal control offers the least amount of Alaskan and individual choice. If title is transferred into state hands, Alaskans will have more control, and the likelihood of eventual transfer of land into private ownership is greatly enhanced.

Since an understanding of the history of federal land control is essential to seeing the whole picture, and since the courts will likely lean heavily on historical factors, a brief historical sketch is appropriate.

Before the French and Indian Wars, France claimed lands west of the 13 colonies all the way to the Mississippi River. When they lost the French and Indian Wars, France gave this land to England. Upon this grant, the King of England proclaimed these lands to be 'Temporary Indian Land' and unavailable for extension of existing colonies. When the Declaration of Independence occurred, each colony became an independent sovereign state and started making claims to expand westward. Next came the Articles of Confederation.

The Articles of Confederation gave Congress no power to own land within a state. Ordinances and resolutions enacted under the Articles of Confederation confirmed the trust of the public lands and acknowledged the duty of the feds to

dispose of the land. Included in these was the Northwest Ordinance regarding land north of the Ohio River. It provided for the admission of new states on an equal footing and for a duty on Congress to dispose of this land. Congress was to dispose of this land until the area became a state, in which case it would be transferred to the state along with sovereignty.

Under the Articles of Confederation, each state maintained its sovereignty but the federal government was charged with resolving boundary disputes. The Confederacy did not own one foot of land in the original 13 colonies.

Also under the Articles of Confederation, original states were to give back to the federal government claims to westward land which they had made following the Declaration of Independence. This was so the feds could hold this land in trust, both to sell and pay off revolutionary war debts, and to transfer to new states upon admission.

It is the contention of Nevada, based on legal arguments discussed elsewhere, that the new Congress under the Constitution succeeded the old Congress as the trust administrator for the land to be transferred to new states.

The Constitution itself manifests an intention that Congress continue to hold the unappropriated lands in trust. This is evidenced in: (1) property clause of Article IV, Section 3; (2) the framers' intentions to create a federal system of government; (3) from express grant of power to Congress to admit states and implied power to acquire territory; (4) the limitation on the federal government's powers to acquire land for its own use in the "needful buildings" clause of Article I, Section 8; and (5) from the Equal Footing Doctrine. These will be briefly discussed elsewhere.

The first two new states admitted were Vermont and Kentucky in 1791 and 1792. No terms or conditions were placed on their admission to the union and the federal government kept no land within those states. Tennessee was

the third new state admitted in 1796 with specific language in their statehood act which guaranteed them admission on an equal footing with the original states in all respects whatsoever.

As new states were admitted to the Union, very little land was retained by the federal government until the Rocky Mountains were reached. From that point westward, most states had imposed on them, as a condition to becoming a state, that they forever disclaim all rights and title to any lands or other property not granted to the state under the authority of the Act. Because of this term of these statehood acts, many states, including Alaska, wrote into their state constitutions this disclaimer on land. It is interesting to note, however, that Section 3 of the Alaska Statehood Act, also requires that the Constitution of the State of Alaska not be repugnant to the Constitution of the United States. It is clear that any land disclaimers in statehood acts are ineffective to derogate from the grant under the Equal Footing Doctrine.

The Equal Footing Doctrine is a well settled truism of Constitutional law which has been developed by judicial interpretation. The actual term "equal footing" does not appear in either the Constitution or in the Articles of Confederation. The Supreme Court has repeatedly referred to the condition of equality between the states as if it is an inherent attribute of the federal union. In short, the Equal Footing Doctrine prohibits Congress from imposing by consent or otherwise, conditions on admission to statehood which infringe upon the equality of the new state in relation to the other states. Cases, so far, leave the question open as to the application of the Equal Footing Doctrine to unappropriated lands within a state. At least this establishes no precedent against Alaska. Alaska would have to argue that the subject of unappropriated lands is a necessary incident of internal sovereignty affecting the dominion

or eventual dominion of the state over its unappropriated lands. The leading case on 'Equal Footing' (The Pollard case) clearly establishes that since the original thirteen states were specifically granted ownership of all navigable waters and the land thereunder, then the other states are also entitled to such ownership. This brings up an interesting question regarding federal rights to offshore natural resource rights and wild and scenic rivers designations.

One argument given by opponents of the 'sagebrush rebellion' is that the Equal Footing Doctrine only applies to political rights. This is countered, however, by the Pollard case and the fact that without federal relinquishment of land, states would be denied political "rights" such as large property tax bases.

Another Constitutional area involved in this issue is the "Property Clause" of Article 4 Section 3. This clause gives Congress power to dispose of and make all needful rules and regulations respecting territory or property of the United States. As can be readily seen, this clause is somewhat ambiguous in its application to the trust theory and Equal Footing Doctrine. State's advocates claim that this clause supports their case because it implies that Congress will dispose of its property, rather than keep it forever, and that the 'needful rules and regulations' only refers to those temporary ones which are applicable prior to disposal, or which specify the disposal itself. Opponents, on the other hand, argue that this clause only allows Congress to dispose of United States property if it so chooses, and that if it doesn't, then Congress may establish rules and regulations and keep the land forever. There are many complicated arguments in this regard, with the weight seemingly on the states' side. At any rate, it is likely that if a confrontation were to occur between the Equal Footing Doctrine and the federal government's interpretation of the property clause, the latter would yield. This is because of the relative importance of the two theories. The heavy

importance of the 'federal system of government' inherent in the Equal Footing Doctrine is a cornerstone of the Constitution. As such, it is more persuasive than an ambiguous interpretation of the property clause.

Another important concept in the 'sagebrush rebellion' issue is the "trust theory" which says that the federal government only holds land in trust for states until it can be transferred to them incident to statehood. The Articles of Confederation and ordinances thereunder recognized this trust theory, and, as mentioned in my historical discussion, the argument goes that this trust theory continued to be applied to Congress under the Constitution.

The Supreme Court has intimated on numerous occasions that it would deny the federal government the right to hold public lands permanently without the consent of the state. The Pollard case, mentioned previously, cites that whenever the United States shall have fully executed these trusts, the sovereignty of the new states will be complete throughout their respective borders, and they and the original states will be on an equal footing, in all respects whatever. Other cases indirectly support this trust theory, such as the Dred Scott case, which established that Congress cannot maintain what is in essence a territory or colony within any state in perpetuity.

In addition, a very strong argument can be made that the "necessary buildings, etc" clause of Article I, Section 8 of the Constitution clearly shows an intention for federal public land only to be held in trust. This clause specifically limits the federal government as to what land it can own within a state. This limitation includes forts, magazines and arsenals, dock yards, and other needful buildings upon consent of the state involved.

A brief examination of the constitutional powers of the states and the federal government is applicable to this issue as well. Under our Constitution the federal government was to have limited powers. Powers to remain with the

states were to be numerous and indefinite. Thus the power of the federal government was not to be exercised over internal or local objects such as land within states.

Some see Article 12, Section 12 of the Alaska Constitution as an impediment to a successful 'sagebrush rebellion' for Alaska. It is true that an Alaska 'sagebrush rebellion' initiative might be legally challenged as unconstitutional under Article 12, Section 12. However, this may not be true if the courts hold that federal retention of this land is unconstitutional in terms of the United States Constitution. Obviously, the Alaska Constitution would have to yield. In addition, HJR 51 calls for a constitutional amendment to be placed on the ballot which would take out that hindrance in our State Constitution.

Another potential problem with a successful legal challenge of federal control of Alaska land is the concept of sovereign immunity. This concept says that the federal government cannot be sued except in those cases where it has granted its permission. At first, Nevada was hoping the federal government would initiate suit against them over their statute. It became clear however, that the federal government chose to ignore the statute and put the burden on Nevada to find a way to initiate suit. Unfortunately, Nevada cannot bring the issue up very easily as a counterclaim to an ancillary suit by the feds, since counterclaims may not be for issues other than those which could have been brought as an original suit.

The way out of this dilemma appears to be a federal statute (28 USC 2409a) passed in 1972 which allows certain suits against the federal government in matters of settling title to land. One problem with this vehicle is that it contains a 12 year statute of limitations on suits. This means that any suit thereunder must be brought within 12 years of the date when the action arose or when the plaintiff would have known of the existence of the cause of action. The most likely argument is that since the statute was not in effect until 1972, an action couldn't have been

brought until that time and therefore Nevada, or Alaska, must bring suit by about 1984. Time is on the side of the federal government and they are probably delaying as much as possible and hoping to appropriate or reserve as much of the public land as possible prior to suit. It would behoove Alaska to start this process as soon as possible. Nevada's stance at this time is to wait in hopes of having other states pass similar legislation and join them in the suit. It is obvious that the Supreme Court is a political animal and that unified political pressure by western states will increase the possibility of success. One case relating to this issue pointed this out clearly by making the remark that the Supreme Court is a constitutional convention which is constantly in session.

It is to the state's advantage that there is no precedent on the issue of the Equal Footing Doctrine application to public lands. Alaska and Nevada could argue that not only are they unequal to the original 13 states, but that they are unequal to other public land states.

It is clear that any future suit by states to settle this issue will be based on the theory that the states should have received this land under the Equal Footing Doctrine shortly after statehood. Further, such suit would claim that since the land has not been transferred, it has been held in trust by the federal government for the states. Since there is no adequate remedy at law and since trusts are creations of an equitable nature, the remedy to be sought is an equitable one. The claim would be that the federal government has breached its trust responsibilities and that therefore a new trust administrator should be appointed. The only possibilities for a new trust administrator is the state itself or the courts. The courts do not have the administrative capacity to administer such a trust, and the trust would be virtually terminated if the state became the administrator. One other possibility is that as a remedy in equity, the court would order the feds

to begin the transfer of the land to the states with a timetable and certain conditions on interim management. The courts are reluctant to issue such orders to the federal government because they lack the capabilities to enforce such a decree short of a citation for contempt of court.

It is anyone's guess as to what would result from such a suit. Many guess that even though the legal weight of authority is on the states' side, the courts will find a way to resolve in favor of the feds because of the many years of established federal land management systems. They might be reluctant to disturb those systems. On the other hand, some theorize that the court will find some middle ground compromise position which will transfer at least a portion of the public lands to 'worthy' states on an equitable basis. In the end, since the courts rarely decide issues on the basis of principle, it is clear that political pressure will settle the issue. It is also clear that unless Alaska gains political leadership which will support this effort 100%, it may not be effective. This avenue for gaining state control of public lands appears to be about the only one available to us. If we pass it up, we may not get another chance short of Congressional action, mass civil disobedience, or secession from the United States.

NEVADA LEGISLATURE
SELECT COMMITTEE ON PUBLIC LANDS

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



ASSEMBLYMAN KAREN W. HAYES, *Chairman*
SENATOR NORMAN D. GLASER, *Vice Chairman*
SENATOR DON W. ASHWORTH
SENATOR RICHARD E. BLAKEMORE
ASSEMBLYMAN ALAN GLOVER
ASSEMBLYMAN DEAN A. RHOADS

STAFF DIRECTOR: ROBERT E. ERICKSON (702) 885-5637

March 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

Thank you for your efforts in Alaska along the lines of Nevada's "Sagebrush Rebellion." Although the movement in Alaska has apparently been called the "Tundra Rebellion" because of your lack of sagebrush, we understand that it is basically the same concept as that advocated by Nevada and several other western states.

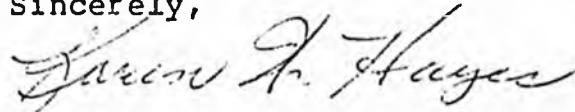
As you know, it is vital for as many western states as possible to unify in a common protest of the massive and unnecessary federal landholdings in the western United States. Although there is apparently no "appetite" in Congress at present for wholesale land transfers into state or local control, as originally advocated by the "Sagebrush Rebellion," there is growing support on Capitol Hill for disposal of excess federal lands into private ownership. If the legislature and people of Alaska make known their support for a general divestiture of the federal lands, this would be another indication to the politicians in Washington that we in the West are indeed serious regarding public lands issues.

It should also be mentioned that Nevada's attorney general is continuing the fight on the basic issue behind the "Sagebrush Rebellion," namely that Nevada and other western states were deprived of their basic Constitutional rights by not being placed on an "equal footing" with earlier states in respect to the percentage of lands under state and private control. This matter will be reviewed in the next few months in the Ninth U.S. Circuit Court of Appeals. We will keep you informed of our progress along this legal front.

Page 2

Again, thank you for your efforts in Alaska which have complemented our "Sagebrush Rebellion" movement. We strongly encourage you to keep your public lands movement active in Alaska. We need to put as much pressure as possible on the Federal Government in order to reverse the current federal land situation.

Sincerely,



Assemblyman Karen W. Hayes, Chairman
Clark Co. Assembly District No. 13 (D)

Senator Norman D. Glaser, Vice Chairman
Northern Nevada Senatorial District (D)

Senator Don W. Ashworth
Clark County District No. 3 (D)

Senator Richard E. Blakemore
Central Nevada Senatorial District (D)

Assemblyman Alan H. Glover
Assembly District No. 40 (D)

Assemblyman Dean A. Rhoads
Assembly District No. 33 (R)

JAN 12 1982

United States Senate

WASHINGTON, D.C. 20510

January 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Dick:

Thank you for your recent letter.

I certainly appreciate and share your concern over the issue of responsible land management. The Sagebrush Rebellion is a major issue in Idaho just as the "Tundra Rebellion" is in Alaska.

The Sagebrush Rebellion has been misrepresented as a land grab, despite numerous safeguards to assure that the lands will remain in government hands. The Western States, which have an excellent record as government land managers, are sending a message to Washington, L.C. that they are capable, if the BLM is not, to manage those government lands responsively and efficiently. The beautiful system of state parks, and state management of wildlife and other natural resources are testament to the fact that the federal government does not have a monopoly on land management talent.

I am a strong supporter of the concept of the Sagebrush Rebellion. I feel it is high time to send a message to the federal land managers that if they are incapable of managing the government lands responsibly and efficiently, that they should turn them over to the states. Consequently, I was pleased when Senator Hatch introduced S. 1245, although there are several reasons why I have not cosponsored the bill.

First, by including the Forest Service in the definition of lands for transfer, the debate will be shifted from the subject of land management to the subject of transfer. That inclusion will defeat the bill, in my opinion, since the Forest Service enjoys a greater reputation for responsive land management than do other land management agencies such as the BLM.

Secondly, the bill allows the state to select the prime federal lands for transfer. Such an action would leave the federal Treasury paying for losses incurred on unprofitable (and unwanted) federal lands. I feel that the land transfers should be complete, that is, they should include all of the land of a federal agency that is not managing the lands to their fullest multiple-use. Again, the issue of the bill should be land management, not land transfer.

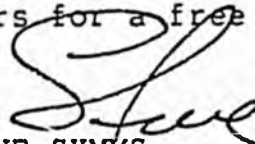
The Honorable Dick Randolph
January 4, 1982
Page 2

As this legislation moves through Congress, I will closely monitor its progress, and will be active in its consideration. In the meantime, I will continue to work with Secretary Watt in his efforts to improve the administrative government land management policies.

Thanks for making me aware of your views.

With best regards, I am

Yours for a free society,

A handwritten signature in cursive script, appearing to read "Steve".

STEVE SYMMS
United States Senator

SS/wfc



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

JAN

2

January 25, 1982


The Honorable Dick Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

Thank you for your letter of December 18, 1981, explaining some of the issues being covered by your "Tundra Rebellion". In many ways your "Rebellion" parallels that of Montana's "Sagebrush Rebellion".

I hope that you will keep my office informed of your progress and any information pertaining to your "Rebellion".

Sincerely,


TED SCHWINDEN
Governor

United States Senate

WASHINGTON, D.C. 20510

FEB 0 1 1982

January 22, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Randolph:

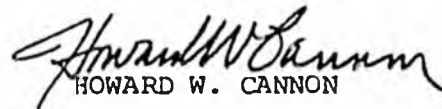
Thank you for your letter advising me of developments in the State of Alaska to secure greater control over present Federal land in that State, which you call the Tundra Rebellion. I appreciate knowing of your leadership in this effort in Alaska.

While the so-called Sagebrush or Tundra Rebellion efforts are mostly State initiatives, I want you to know I am a co-sponsor with Senator Hatch of his bill to provide for a legislated process for transferring public lands in the West to State control.

Thank you for your letter on this important matter, and you may be sure I will be supportive of the effort both in your State of Alaska as well as Nevada and other Western States.

With best wishes, I am

Sincerely,


HOWARD W. CANNON

HWC:KAbv

DAN MARRIOTT
2ND DISTRICT, UTAH

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
SMALL BUSINESS

COUNTIES:
BEAVER PIUTE
GARFIELD SALT LAKE
IRON TOOELE
JUAB WASHINGTON
KANE WAYNE
MILLARD

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE:
1133 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3011

DISTRICT OFFICE:
2311 FEDERAL BUILDING
SALT LAKE CITY, UTAH 84138
(801) 524-4394

FEB 0 2 1982

January 28, 1982

The Honorable Richard Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

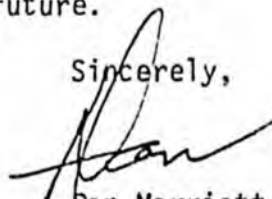
I have received your recent letter regarding the "Tundra Rebellion" and your initiative to transfer Alaskan lands from the federal government to the State of Alaska.

While I am pleased with the response that the Department of Interior under Secretary Watt has given to the land issues in the western states and Alaska, I believe there remains a fundamental inequality between states of the Union because of the distribution of land ownership.

It is unthinkable to many that the federal government should own 90 percent of the land in New York or Massachusetts, and yet citizens of these and other nonwestern states have no problem imposing that condition on your state and my State of Utah.

In the past, I have cosponsored legislation to redress this situation and I shall continue to do so in the future.

Sincerely,



Dan Marriott
Member of Congress

DM/c

JIM SANTINI
NEVADA

FEB 01 1982

WASHINGTON OFFICE:
2429 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3965

DISTRICT OFFICES:
SUITE 4-620 FEDERAL BUILDING
300 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA 89101
TELEPHONE: (702) 385-6575

SUITE 1139 FEDERAL BUILDING
300 BOOTH STREET
RENO, NEVADA 89502
TELEPHONE: (702) 784-3657

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 7, 1982

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEES:
MINES AND MINING, CHAIRMAN
PUBLIC LANDS AND NATIONAL PARKS
ENERGY AND COMMERCE
SUBCOMMITTEES:
COMMERCE, TRANSPORTATION AND TOURISM
OVERSIGHT AND INVESTIGATIONS
SELECT COMMITTEE ON AGING
SUBCOMMITTEE:
HOUSING AND CONSUMER INTERESTS
U.S. CONGRESSIONAL TRAVEL
AND TOURISM CAUCUS, CHAIRMAN

Representative Dick Randolph
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

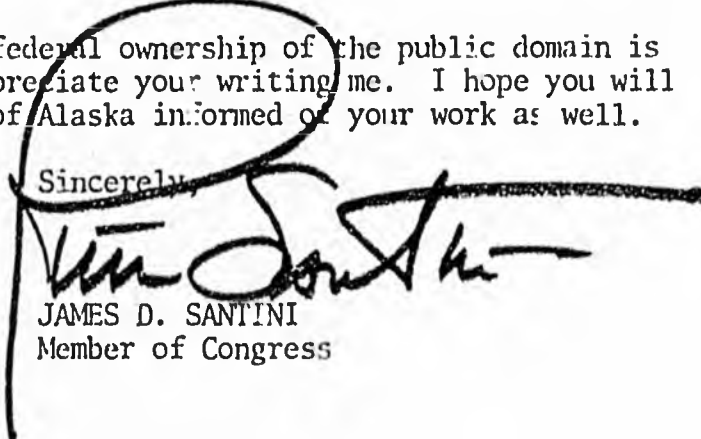
I very much appreciated hearing about the "Tundra Rebellion" in Alaska. Your goals and objectives are very similar to the Sagebrush Rebellion and I wish you the best of luck in your public initiative and in your legislative efforts.

As you may know, Nevada is 87 percent federally owned and controlled. I introduced H.R. 3655 in the House of Representatives to return millions of acres of federally appropriated lands (most federal lands with the exception of national forests, parks, and national wildlife refuges) to states to control and manage.

In fairness, I must tell you the support behind the Sagebrush Rebellion, which began in the Nevada Legislature, seems to be changing. The prime movers in my state have informed me they are temporarily putting off land transfers in favor of amending another federal proposal as a short term solution. You may want to contact Nevada Assemblyman Dean Rhoads, Tuscarora, Nevada to obtain his views and to discuss strategy. Assemblyman Rhoads has been very active on the Sagebrush Rebellion issue.

The whole question of federal ownership of the public domain is vitally important, and I appreciate your writing me. I hope you will keep Congressman Don Young of Alaska informed of your work as well.

Sincerely,



JAMES D. SANTINI
Member of Congress

JDS:mcs



STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

SANTA FE

87503

JAN 27 1982

BRUCE KING
GOVERNOR

January 6, 1982

The Honorable Dick Randolph
Alaska House of Representatives
1105 Cushman Street
Fairbanks, AK 99701

Dear Representative Randolph:

Thank you for your letter of December 18, 1981 setting forth your position on the "Tundra Rebellion." The question of federally administered public lands is, of course, a volatile issue with profound implications. The issue of control of the vital resources represented by these lands persists, to varying degrees, despite the apparent equivocation at the national level which you point out.

Due to this uncertainty, it is difficult to accurately discern the eventual outcome of this intense and pervasive question. Nonetheless, it is quite apparent that the fundamental questions which have been raised reflect a persistent doubt about the inviolability of the status quo. Increasingly, states have been asserting their prerogative to exercise greater control over the lands within their boundaries.

Recognizing the monumental implications of this issue, the second session of the thirty-fourth New Mexico legislature enacted into law a bill addressing state control of public lands. I am pleased to enclose a copy for your information.

I share the concern of many of those in the western states, both within and outside of government, regarding the critical importance of public lands, and will continue to advocate for the realization of states' prerogatives in this area.

Sincerely,

BRUCE KING
Governor

Enclosure



STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

SANTA FE

87503

BRUCE KING
GOVERNOR

June 17, 1980

Dr. William P. Stephens
P. O. Box 3189
NMSU Campus
Las Cruces, New Mexico 88001

Dear Bill:

I am pleased to appoint you to serve on the Public Lands Board of Review effective June 6, 1980 for a term ending at the pleasure of the Governor.

Your membership on this Board is a public service to the people of this state. Your willingness to serve is commendable, and we appreciate the contribution you will make.

Thanks for your help.

Sincerely,

A handwritten signature in cursive script that reads "Bruce King".

BRUCE KING
Governor



FEB 11 1982

The State of Nevada
Executive Chamber

Robert List
Governor

Capitol Complex
Carson City, Nevada 89710

February 8, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Pouch V, Juneau, Alaska 99811

Dear Representative Randolph:

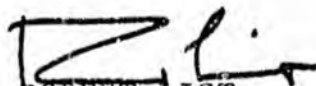
While I am not familiar with all the details of the "Tundra Rebellion", I can assure you that Nevada shares Alaska's interest in achieving genuine land reform in the West. However, I must respectfully disagree with your assessment of the Reagan Administration. We are, in fact, pleased by the efforts this Administration is making to be a more reasonable and responsive landlord.

We, too, are pursuing the judicial and legislative avenues for land reform while, at the same time, we are working with the federal administration to immediately reduce the burden of excessive control from Washington.

As you know, there have recently been discussions in Washington that the federal government could and should dispose of much unneeded real property to both reduce the national debt and eliminate massive operating bureaucracies. Furthermore, the States Rights Coordinating Council, composed of legislators in the western states, and the Western Council of State Governments have both passed resolutions with this in mind. Most recently, a resolution (SR 231) has been introduced in the U.S. Senate by Senator Charles Percy (R) Illinois which leads in the same direction.

Much good has been accomplished already in the land reform movement but we all need to work for permanent solutions for the future of the west. We, as westerners, must move forward with a unified front.

Sincerely,


ROBERT LIST
Governor