



Top Oregon legal officials see no case to sue for national lands

According to information obtained through public records requests of members of the Conference of Western Attorney's General (CWAG), the office of the Oregon Attorney General does not believe that the state of Oregon has standing to sue for the transfer of federal public lands to the state.

The opinion was revealed in e-mails sent by an attorney within the Oregon Attorney General's office during deliberations about a CWAG report, issued last July. The report is very critical of the State of Utah's legal efforts to force, through a lawsuit, the transfer of some federal public lands to the state. Oregon Attorney General Ellen Rosenblum was among 11 Attorneys General who voted to approved the report; Utah's Attorney General abstained.

In an effort to understand the deliberative process, Western Values Project sent public information requests to the Attorney's General who participated for their internal e-mails discussing the report. While we have not yet received e-mails from the Oregon Attorney Generals office, we do have correspondence between that office and the offices of other participating Attorney's General.

Background

In August 2014, CWAG formed a subcommittee to examine the legal theories being put forward to support the claim that, as its recent report puts it, the "federal government was legally obligated to sell or transfer the public lands within a given state to that state." For nearly two years, a team of attorneys from the AG offices in all of the eleven western states except California, plus Alaska, examined the issues. They produced a 48-page report that was adopted by CWAG at its annual meeting in Sun Valley, Idaho, on July 19, 2016 by a vote of 11-1.



The CWAG's report dispels claims being made by proponents of the land seizure movement that the United States is legally obligated to transfer public lands to the states. CWAG is composed of the top lawyers for all of the western states with significant amounts of public lands within their borders.

What's in the emails?

The internal communications clearly spell out why Oregon would not have standing to sue for the transfer of public lands. The underlying reasoning centers on a 1995 Oregon Attorney General Opinion, which states, in part:

"In Oregon's Admission Act, Congress and the people of Oregon established the terms and conditions of Oregon's statehood. By agreeing that it would 'never interfere with the primary disposal of the soil within the [State of Oregon] by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers'...Oregon recognized federal ownership of the public lands and agreed to relinquish any claim it might otherwise have had to those lands."

The opinion continued, "no law or document has ever purported to transfer...[federal land] to the state; and nothing in the state or federal constitutions or the Admission Act supports a theory that the United States ever yielded its ownership to the state." - Opinion No. 8237 of the Attorney General of the State of Oregon, 07/07/95

Why does this matter?

The potential seizure of national public lands by individual states is a hot issue. It is at the center of the Bundy family's controversial violent occupation of Malheur National Wildlife Refuge in Oregon. Many critics of this plan have pointed out that states could not afford to manage these lands, and would end up forcing their sale to private interests.



Credit: Oregon Forestry Department

Groups like the American Lands Council are aggressively advocating for land seizure while westerners from a broad spectrum are adamantly opposed. Many folks value public lands - to hunt, fish, hike, ride ATV's, graze your cattle, or earn a living as a logger, among other activities - and they're worried that transferring taxpayer owned public lands to states could ultimately mean their sale and/or closure. Those activities aren't just part of a way of life, they drive a multi-million dollar outdoor economy.

Controversy has surrounded the proposed sale of Oregon's Elliott State Forest to private interests -- something many fear will be the consequence of transferring control of national lands to states.

It should be comforting to many Oregonians to know that their Attorney General's office doesn't believe the State has claim to federal public lands, and they are therefore safe from the possibility of lawsuits to force transfer and bring about another situation like Elliott State Forest. That land is currently under consideration for sale by the state legislature.



Credit: Oregon Forestry Department

Other sources

Western Values Project Blog: Time for Western AGs to publicly oppose land transfer: <http://westernvaluesproject.org/time-for-western-ags-to-publicly-oppose-land-transfer/>

Information Available upon Request:

- Full analysis of open records received
- CWAG Legal Paper Background
- CWAG Public Lands Subcommittee Report