

# UNINTENDED CONSEQUENCES OF THE PUBLIC LANDS TRANSFER MOVEMENT

John Ruple, Associate Professor of Law (Research) &  
Wallace Stegner Center Fellow

2016 Rocky Mountain Land Use Institute



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# UNINTENDED CONSEQUENCES -- \$\$\$

## Federal Payments to States -- FY2014

	Colorado	Utah	11 Western States
<b>Total Federal Land Payments</b>	<b>\$220,407,785</b>	<b>\$266,054,906</b>	<b>\$3,799,772,410</b>
PILT	\$34,530,642	\$37,903,225	\$336,833,120
Forest Service Payments	\$12,785,953	\$10,099,253	\$220,827,264
BLM Payments	\$846,240	\$1,346,364	\$55,739,266
USFWS Refuge Payments	\$570,361	\$57,662	\$3,415,240
Federal Mineral Royalties	\$171,674,589	\$216,648,402	\$3,182,957,521

Generated using Headwaters Economic Profile System on 01-12-2016

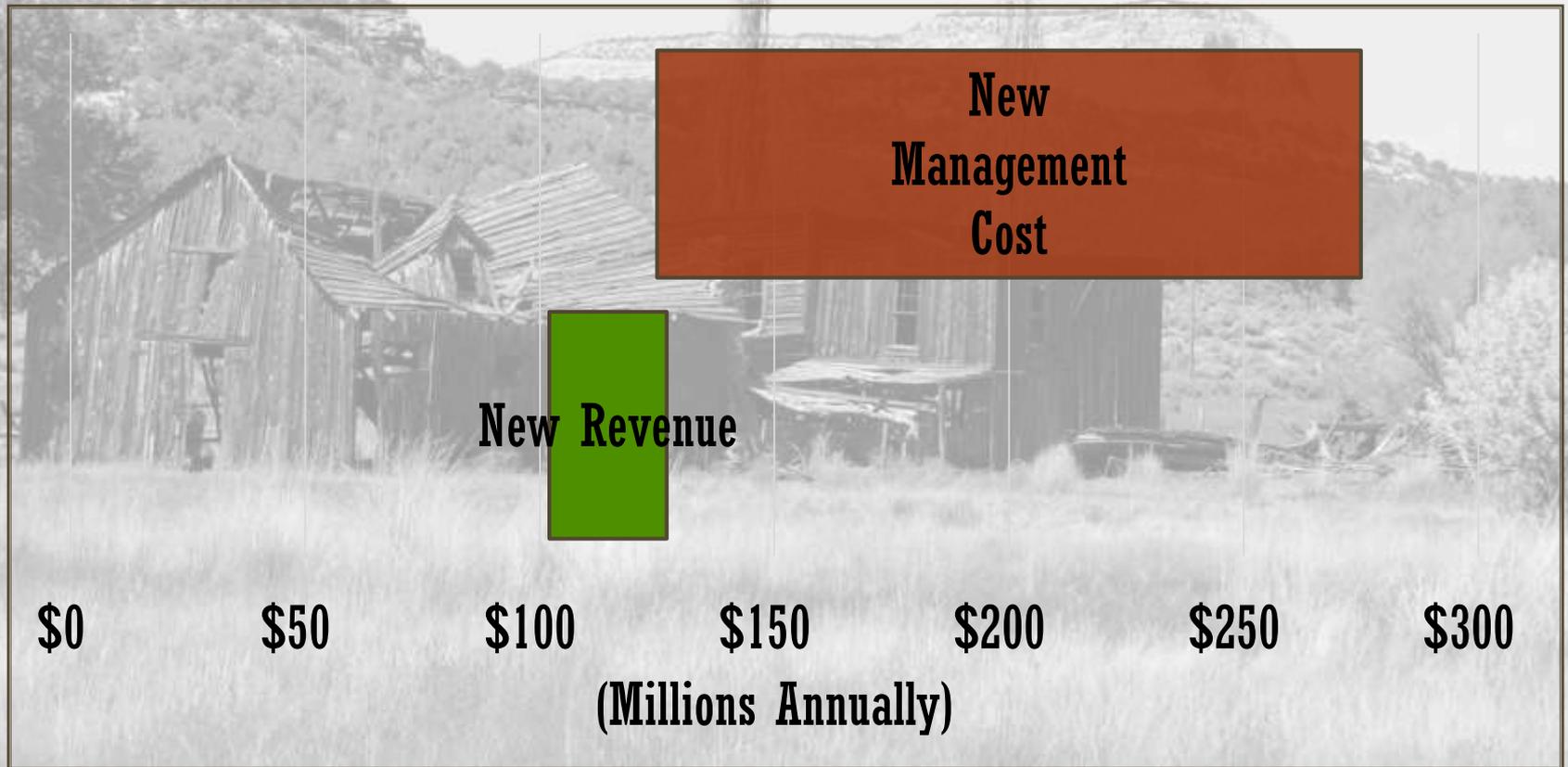


THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# UNINTENDED CONSEQUENCES -- \$\$\$



Utah Office of Legislative Research & General Counsel, H.B. 276 Fiscal Note, 2016 Gen. Sess. (2016).



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# UNINTENDED CONSEQUENCES – THE ESA

- The TPLA does *NOT* eliminate Endangered Species Act compliance requirements.
- Loss of federal nexus *DOES* change procedural requirements for ESA compliance.

## Time to Obtain an Incidental Take Statement / Permit

	Federal Land	Non-Federal Land
CE	0.5 years	1.7 years
EA	1.5 years	4-6 years
EIS	4.4 years	8-12 years

*Ruple et al., Shooting the Albatross: Why a State Takeover of Federal Public Lands Would Make Endangered Species Act Compliance More Difficult*, 39 ENVIRONS ENVTL. L. & POLICY J. \_\_\_\_ (2016).

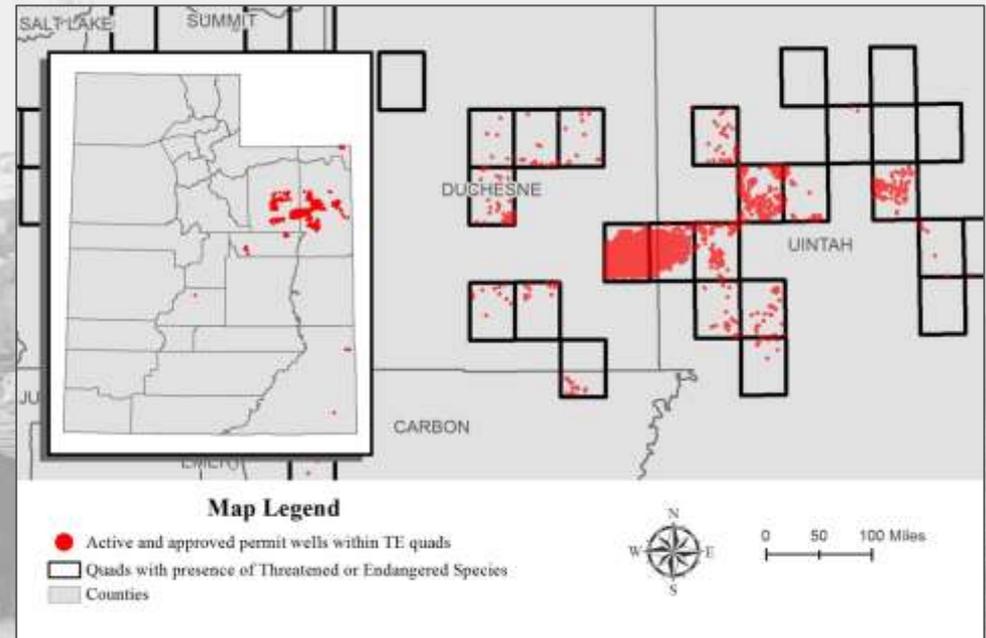
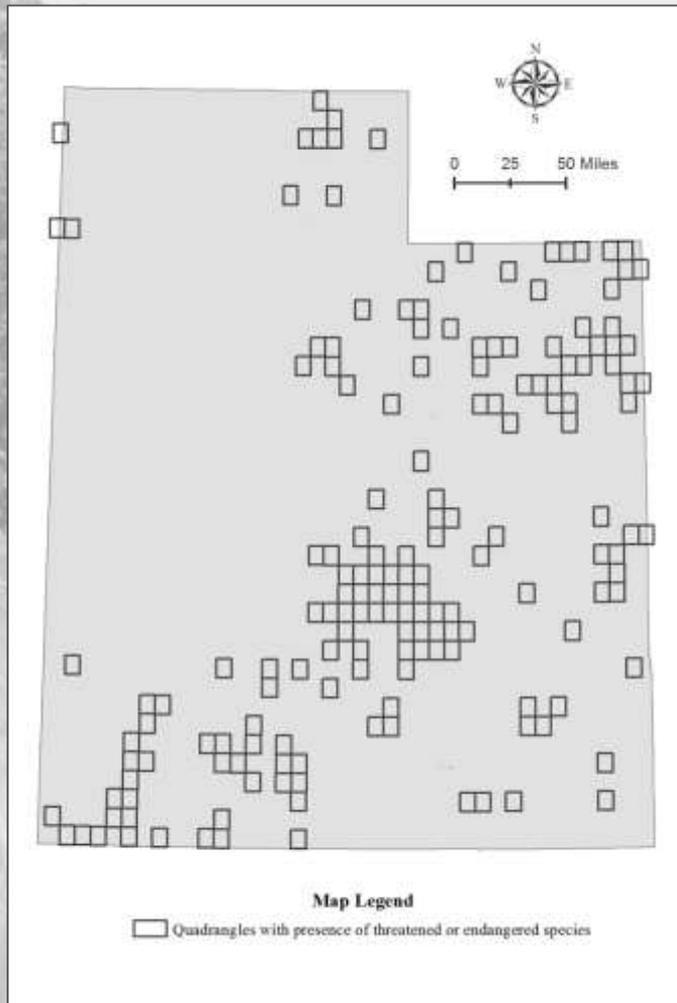


THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# UNINTENDED CONSEQUENCES – THE ESA



- 3,240 producing oil & gas wells
- 1,103 approved wells
- 36 pending APDs

*Ruple et al., Shooting the Albatross: Why a State Takeover of Federal Public Lands Would Make Endangered Species Act Compliance More Difficult, 39 ENVIRONS ENVTL. L. & POLICY J. \_\_\_\_ (2016).*



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



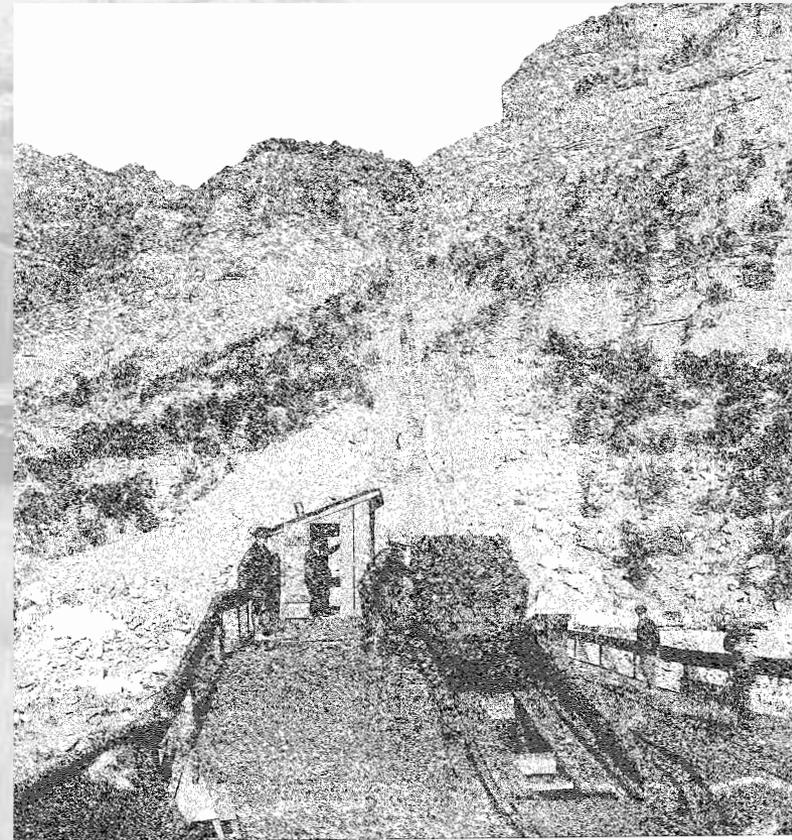
Wallace Stegner Center for Land,  
Resources and the Environment

# NOT SO FAST . . . MINERALS

Statehood enabling act land grants are read in light of “mining laws, the school land indemnity law and the settled public policy respecting mineral lands,” which “certainly show” that Congress did not intend to include mineral lands in grants to states.

“Where [land grant] sections are mineral — known to be so when the grant takes effect — they do not pass under the grant.”

United States v. Sweet, 245 U.S. 563 (1918); *see also*, Ivanhoe Mining Co. v. Keystone Consol. Mining Co., 102 U.S. 167, (1880).

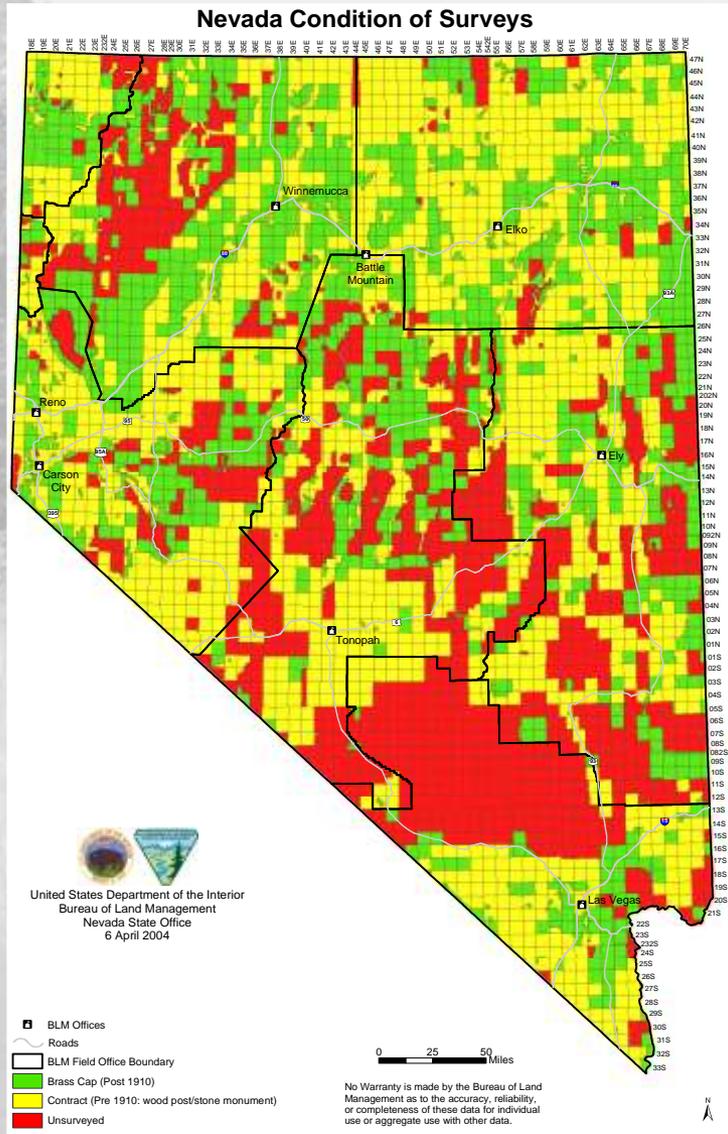


THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# NOT SO FAST . . . LAND SURVEYS



“[T]itle to unsurveyed sections of the public lands . . . does not pass to the State upon its admission into the Union, but remains in the Federal Government until the land is surveyed. Prior to survey, those sections are a part of the public lands of the United States and may be disposed of by the Government in any manner and for any purpose. . . . The interest of the State vests at the date of its admission into the Union only as to those sections which are surveyed at that time and which previously have not been disposed of by the Federal Government.”

United States v. Wyoming, 331 U.S. 440, 443-44 (1947).



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



Wallace Stegner Center for Land,  
Resources and the Environment

# HYPERLINKS TO PAPERS

- *A Legal Analysis of the Transfer of Public Lands Movement*
- *The Transfer of Public Lands Movement: Taking the 'Public' Out of Public Lands*
- *When Winning Means Losing: Why a State Takeover of Public Lands May Leave States Without the Minerals They Covet*
- *Shooting the Albatross: Why a State Takeover of Federal Public Lands Would Make Endangered Species Act Compliance More Difficult*
- *Alternatives to the Transfer of Public Lands Act*



# QUESTIONS OR COMMENTS

[john.ruple@law.utah.edu](mailto:john.ruple@law.utah.edu)

**(801) 581-6545**



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**



Wallace Stegner Center for Land,  
Resources and the Environment