

# Here comes Utah, again; hat in hand, again

Marty Trillhaase/Lewiston Tribune

Monday, Idaho state Rep. Linden Bateman, R-Idaho Falls, asked why his constituents don't trust him or his colleagues.

"Over the last several years, there's been quite a bit of support (in the Legislature) for the theory that at least some federal lands should be managed by the states," Bateman said. "But most of the feedback I get is in opposition. It's almost like people aren't conscious of their own citizenship. They don't trust the people they elect; they're more inclined to trust federal bureaucrats."

Why would they?

Idahoans fear a land transfer will be expensive. Given the choices - raising taxes, cutting school budgets or simply selling off choice tracts to the highest bidders - Idahoans say they prefer the status quo.

Meanwhile, they see their own gullible elected representatives getting seduced by Utah politicians who want help pursuing a dubious legal scheme.

Three years ago, it was state Rep. Ken Ivory, R-West Jordan, who came to

Boise with the alluring notion that by going to court, Idaho could compel Uncle Sam to part with more than 30 million acres of federal land.

Eager legislators established a public lands task force and went to work. For almost two years, members of that panel sought to dispute what Deputy Idaho Attorney General Steve Strack told them at the outset.

Chief of Attorney General Lawrence Wasden's natural resources section and with 27 years of experience, Strack put it as diplomatically as he could:

Any such lawsuit was doomed.

It would run head-on into the Property Clause of the U.S. Constitution. So it's Congress that has absolute control over federal lands.

Also standing in the way of any legal challenge would be Idaho's 125-year-old state Constitution, which says: "The people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof ..."

"The lesson I took away was that where we saw progress in the past (in terms of transfer of land ownership) has been the result of congressional action," Strack said. "The limited litigation

experience we have wasn't successful. We know Congress does respond when the states can make a compelling argument: The Carey Act was a great example of that."

Rather than listen to Strack, the panel - chaired by Sen. Chuck Winder,

R-Boise, and former House Speaker and now Secretary of State Lawrence "Boss" Denny - rounded up its own lawyer, former U.S. Interior Solicitor William Myers of Boise.

Ultimately, Myers agreed with Strack: "The committee determined that if litigation were a panacea, it would have succeeded decades ago."

But it was a costly lesson. The panel spent more than \$60,000 on Myers' fees and probably another \$20,000 on its own expenses.

So here come Utah state Sen. David Hinkins, R-Orangeville, state Rep. Keven Stratton, R-Orem, and Sandpoint attorney George Wentz.

Monday, they told their Idaho counterparts they're poised to take the federal government to court. No doubt, they'd like some help from their northern neighbors.

But it won't be cheap.

Davillier Law Group of New Orleans, where Wentz works, says litigation will cost Utah at least \$14 million. Davillier's 145-page report predicts the process will be "time consuming, expensive and never certain in outcome."

Even if Utah prevails, the courts most likely will order a negotiated solution in which state ownership of the lands is only "a possible outcome."

Gulp.

As Myers told them, "... Idaho should let Utah take the lead in litigation of the issues and assess later whether litigation is a good option."

That's the best advice \$80,000 could buy. - M.T.