

AGNC RESOLUTION # _____
DEFINING LEGISLATIVE JURISDICTION AND AUTHORITY ON FEDERAL LANDS

WHEREAS, Legislative jurisdiction is the constitutional authority to make and enforce laws. A transfer of the state's legislative jurisdiction to the United States is a cession, and the return of that legislative jurisdiction to the state is a retrocession.

WHEREAS, The Enclave Clause, Article 1, Section 8, Clause 17 of the United States constitution, referred to herein as "Clause 17", states that the federal government will "exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings."

WHEREAS, During the Eisenhower Administration, the United States General Services Administration (GSA) published a series of reports titled "Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States" referred to herein as "GSA Jurisdiction Reports". There were three separate GSA jurisdiction reports published, [Part I](#) (1956), [Part II](#) (1957), and the [Inventory Report](#) (1962); in which four types of legislative jurisdiction were identified and the jurisdictional status of every acre of federal land within the United States was recorded in each state, categorized by county.

Exclusive Legislative Jurisdiction: This term is applied when the federal government possesses, by whichever method acquired, all of the authority of the state, and in which the state concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except to serve civil or criminal process in the area for activities that occurred outside the area. The GSA Jurisdiction Reports (Part I) states: "The term "exclusive legislative jurisdiction" as used in this report refers to the power "to exercise exclusive legislation"... In the exercise of such power as to an area in a State the Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative.";

Concurrent Legislative Jurisdiction: This term is applied in those instances wherein by granting to the United States authority, which would otherwise amount to exclusive legislative jurisdiction over an area, the state concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority;

Partial Legislative Jurisdiction: This term is applied in those instances wherein a state has granted authority to the federal government to legislate over an area of the state, but the state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area, or the right to tax private property; and

Proprietorial Interest Only: This term is applied to those instances wherein the federal government has acquired some right or title to an area in a state but has not obtained any measure of the state's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental, rather than a proprietary, capacity.

WHEREAS, The GSA Jurisdiction Reports ([Part II](#), Pages 46-47), states: "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to [Clause 17] by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or (3) unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State..." "NECESSITY OF STATE ASSENT TO TRANSFER OF JURISDICTION TO FEDERAL GOVERNMENT: Constitutional Consent – The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State... The consent requirement of [Clause 17] was intended by the framers of the Constitution to preserve the States' jurisdictional integrity against federal encroachment."

WHEREAS, The GSA Jurisdiction Reports ([Part II](#), Page 48) states: "NECESSITY OF FEDERAL ASSENT: Express consent required by [R.S. 355](#)--Acquiescence, or acceptance, by the Federal Government, as well as by the State, is essential to the transfer of legislative jurisdiction to the Federal Government. When legislative jurisdiction is reserved by the Federal Government at the time statehood is granted to a Territory, it is, of course, obvious that the possession of legislative jurisdiction meets with the approval of the Federal Government. When legislative jurisdiction is to be transferred by a State to the Federal Government either pursuant to Article I, Section 8, Clause 17, of the Constitution, or by means of a State cession statute, the necessity of Federal assent to such transfer of legislative jurisdiction has been firmly established by the enactment of the February 1, 1940, amendment to R.S. 355. While this amendment in terms specifies requirement for formal Federal acceptance prior to the transfer of exclusive or partial legislative jurisdiction, it also applies to the transfer of concurrent jurisdiction."

WHEREAS, The GSA Jurisdiction Reports ([Part I](#), Page 11) states the following: "Exclusive jurisdiction requirement terminated.— enacted, on February 1, 1940, an amendment to Section 355 of the Revised Statutes of the United States which eliminated the requirement for State consent to any Federal acquisition of land as a condition precedent to expenditure of Federal funds for construction on such land. The amendment substituted for the previous requirement provided that (1) the obtaining of exclusive jurisdiction in the United States over lands which it acquired was not to be required, (2) the head of a Government agency could file with the governor or other appropriate officer of the State involved a notice of the acceptance of such extent of jurisdiction as he deemed desirable as to any land under his custody, and (3) until such a notice was filed it should be conclusively presumed that no jurisdiction had been accepted by the United States. This amendment ended the 100-year period during which nearly all the land acquired by the United States came under the exclusive legislative jurisdiction of the Federal Government. "

WHEREAS, The GSA Jurisdiction Reports ([Part I](#), Page 64) “Federal lands primarily in proprietorial interest status-- The committee notes as to the great bulk of land owned by the United States, including substantially all lands of the so-called public domain, the Federal Government holds only a proprietorial interest, possessing with respect to such land no measure of legislative jurisdiction within the meaning of article 1, section 8, clause 17, of the Constitution.”

WHEREAS, The GSA Jurisdiction Reports ([Inventory Report](#), Page 895), categorize 95% of United States Forest Service (USFS) and Bureau of Land Management (BLM) public lands in the United States as held in “Proprietorial Interest Only” (aka Proprietary Jurisdiction) by the federal government.

WHEREAS, Cessions of legislative jurisdiction by the Colorado State Legislature to the Federal Government are recorded in Title 3 of the Colorado Revised Statutes (CRS). Research reveals that since 1962, (when the GSA Jurisdiction Reports (Inventory Report) was published), only one recorded cession of jurisdiction has occurred on federal lands within Colorado. The cession of concurrent jurisdiction within the boundaries of nine separate National Monuments and National Recreation Areas in 1983, with the passage of [State Senate Bill 313 \(CRS 3-3-101\)](#). This included areas such as the Colorado National Monument, Black Canyon of the Gunnison National Monument, and Dinosaur National Monument. Federal acceptance of the cession of concurrent jurisdiction was recorded by the [DOI in 1984](#).

WHEREAS, Once the federal government has obtained exclusive, concurrent, or partial jurisdiction over federal lands thru the cession/reservation process, it is often referred to as a federal enclave. Federal enclaves are subject to the Assimilative Crimes Act [18 U.S.C § 13](#) and territorial jurisdiction per [18 U.S.C § Section 7 \(3\)](#) where federal law enforcement agencies can assimilate (adopt) state laws and prosecute them as a federal law violation (when the violation is not punishable by an applicable federal law). The process is often referred to as Enclave Law.

WHEREAS, When the federal government holds a proprietorial interest only (proprietary jurisdiction) on federal lands they cannot unilaterally assimilate (adopt) state and local laws.

WHEREAS, In 1970 the United States Government published the [One Third of Nations Land](#) report, prepared by the Public Land Review Commission and Chaired by Wayne Aspinall (Colorado Congressman from Palisade, CO). Page 278 of the report identifies the four types of legislative jurisdiction on federal lands as Exclusive, Concurrent, Partial, and Proprietorial. Additionally, the report states: “Two other provisions of the Constitution are germane to the power which the Federal Government may exercise over its lands, the "Property" and "Supremacy" clauses. While the Property Clause was originally thought to apply only to federally held lands outside the boundaries of any state, later judicial decisions leave no doubt that plenary authority is vested by this provision in Congress as to the protection, management, and disposition of federal lands within the states. The Constitution, laws of the United States, and treaties made under its authority are declared to be the supreme law of the land in the Supremacy Clause. Conflicting state law must yield to federal law, and a state cannot interfere with an agency or instrumentality of the United States engaged in a lawfully authorized activity, without the consent of Congress.”

WHEREAS, The Property Clause (Article 4, Section 3, Clause 2) of the Constitution allows Congress to dispose of and make needful rules and regulations over federal lands. The Property Clause does not apply to how the federal government obtains a state's legislative jurisdiction over federal lands.

WHEREAS, Title VII, [Section 701 \(G\) \(2\)](#) of the Federal Land Policy and Management Act (FLPMA) of 1976 states “(G) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or– (2) as expanding or diminishing Federal or State jurisdiction.”

WHEREAS, Within the [1987 Department of Army, Field Manual 19-10, Ch. 5 Pg. 1](#) it states “jurisdiction and authority are not the same. MP may have the authority to apprehend a suspect, but the military may not have jurisdiction to try the suspect. Authority is the lawful right of designated persons or agencies to exercise governmental power and control.”

WHEREAS, The Colorado State Legislature has provided a cession of “authority” for federal law enforcement agents (LEOs) to enforce state law felonies and misdemeanors in Colorado with the passage of [CRS 16-3-110](#). This law is not a cession of jurisdiction, it's a cession of the states' law enforcement authority. Upon making an arrest for state felonies or misdemeanors (not petty offenses), federal LEOs must contact the local authority with “jurisdiction” and release the person/s to the local law enforcement agency with “jurisdiction”. It should also be noted that some federal agencies such as the BLM, also require a signed Memorandum of Understanding (MOU) by the local Sheriff, before they will enforce any state law, even if state statute allows it.

WHEREAS, Sheriffs in Western Colorado have, on occasion, provided cessions of authority to federal BLM LEO's beyond CRS 16-3-110; in the form of MOUs which included the authority to enforce state law petty offenses, county ordinances, and even county regulations. The 2015 and [2020 Mesa County Sheriff / BLM MOU](#) are such an example.

WHEREAS, The State of Colorado passed [CRS 3-1-102](#) Consent to Acquire Land. It states “the United States shall give written notice of intention to acquire the land to the board of county commissioners of the county wherein the land is situated and to the division of property taxation, which notice shall be given at least sixty days prior to the date of the intended acquisition. If the notice is not given or if the board of county commissioners or the division files with the secretary of state of the state of Colorado within the sixty-day period a request that the acquisition be considered by the general assembly of the state of Colorado, then the consent of the state of Colorado shall not be deemed to have been given to the acquisition, unless and until the general assembly of the state of Colorado shall have by law specifically consented thereto.”

AS DEFINED HEREIN, IT IS RESOLVED, that the Associated Governments of Northwest Colorado (“AGNC”) hereby proclaim that review of Colorado Enabling Act of 1875 and review of the GSA Jurisdiction Reports, reveal Colorado provided no reservation of legislative jurisdiction for the United States at statehood, regarding public lands (public domain) within the borders of Colorado. It is also worth noting that Colorado provided no reservation of legislative jurisdiction to the United States toward “reserved” public lands within its borders.

AS DEFINED HEREIN, IT IS RESOLVED, that since 1940 and passage of [R.S. 355](#) the federal government and its various agencies such as the BLM and USGS, cannot currently take unilateral action to acquire any level of the state’s legislative jurisdiction or adopt/assimilate state laws without a cession of jurisdiction (exclusive, concurrent, partial) by the Colorado State Legislature. This legal cession process is defined within Clause 17, 40 USC § 3112 (RS 355), and the Assimilative Crimes Act. Approximately 97% of Colorado’s 23+ million acres of federally managed public lands are held in a Proprietary Interest Only by the Federal Government. These federal lands are largely made up of USFS and BLM lands. When the federal government holds a proprietary interest only (proprietary jurisdiction) on federal lands they cannot unilaterally assimilate (adopt) state and local laws.

AS DEFINED HEREIN, IT IS RESOLVED, that the AGNC hereby proclaim that unless a recorded cession of jurisdiction or a legal cession of authority has occurred, the federal government and its various agencies cannot enforce state laws, county ordinances, or county regulations. The various federal agencies have certain defined and limited jurisdiction/authority on federally managed public lands. The enforcement of criminal and civil law on federal lands within the boundaries of a state is not one of them. County and state governments using local ordinances and state statute oversee and enforce all criminal and civil actions within their jurisdiction. In the event an AGNC members county sheriff provides a cession of authority to federal LEOs (MOU/Cooperation Agreement, etc). The AGNC hereby advises, it would be appropriate to share this cession document with county commissioners and county residents to encourage full transparency. Residents should be made aware of what local law enforcement authorities a sheriff has given to federal agents within their county on public and private lands.

AS DEFINED HEREIN, IT IS RESOLVED, That the AGNC hereby supports the inherent right of its member counties to object to the Federal Government purchasing/acquiring private lands within its borders as defined in [CRS 3-1-102](#). It should be recognized that the various federal agencies hold no level of legislative jurisdiction whatsoever, over Colorado private lands and once those private lands are transferred to federal ownership it can negatively impact the county (taxes / local control). Prior to private lands within member counties being transferred to the Federal Government (sale, land swap, etc), approval must be attained either by the appropriate Board of County Commissioners or the General Assembly (Colorado State Legislature) per CRS 3-1-102.

AS DEFINED HEREIN, IT IS RESOLVED, That the AGNC fully recognize the constitutional and legal process to form a federal enclave on federal lands within Colorado. The list below are few examples of recorded legislative cessions of jurisdiction from the Colorado Assembly to the Federal Government forming federal enclaves on federal lands within the state.

Year	State Cession Statute	Enclave Location	Jurisdiction Ceded
1929	CRS 3-1-103	Rocky Mountain National Park	Exclusive Jurisdiction
1929	CRS 3-1-131	Mesa Verde National Park	Exclusive Jurisdiction
1983	CRS 3-3-101	Colorado National Monument, Black Canyon Gunnison National Monument, Dinosaur National Monument, and others.	Concurrent Jurisdiction

AS DEFINED HEREIN, IT IS RESOLVED, That the AGNC fully recognize that there are also federal enclaves (exclusive jurisdiction) formed within certain communities of NW Colorado, as a result of the federal government purchasing lands within the state prior to Congress amending R.S. 355 in 1940. These acquisition federal enclaves are identified (by county) within the GSA Jurisdiction Report ([Inventory Report](#)). Three such examples are on Page 123 of the GSA Inventory Report for Mesa County, CO:

- 1) 402 Rood Ave. Post Office (0.5 acres)
- 2) VA Hospital, 2121 North Avenue (27.2 acres)
- 3) Atomic Energy Comm., Grand Jct OPR. HDQT-S (55.7 acres)

PASSED, APPROVED AND ADOPTED on April 3, 2022

Chairman
Associated Governments of Northwest Colorado (AGNC)