**STATEMENT OF PETE CULP, ASSISTANT DIRECTOR, MINERALS AND REALTY**

**BUREAU OF LAND MANAGEMENT**

**ON**

**S. 1331 Lincoln County Land Act**

**S. 2069 Powell, Wyoming Land Conveyance**

**S. 2300 Coal Market Competition Act**

**BEFORE THE**

**SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES**

**SUBCOMMITTEE ON FOREST AND PUBLIC LANDS**

**JUNE 7, 2000**

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to testify on three bills: S. 1331 Lincoln County Land Act; S. 2069 Powell, Wyoming Land Conveyance; and S. 2300 Coal Market Competition Act. S. 1331 gives Lincoln County, Nevada, the exclusive right to purchase 4,817 acres of public land in the County during a ten-year period from the Bureau of Land Management (BLM). S. 2069 would waive the reversionary clause to the 1906 Act for public land conveyed to the town of Powell, Wyoming. S. 2300 amends the Mineral Leasing Act to increase the maximum aggregate acreage of Federal coal leases an entity may hold in any one State and the maximum aggregate acreage of Federal coal leases an entity may hold within the United States altogether. While the Administration supports the intent of these bills, we oppose legislative public land conveyances (like S. 1331 Lincoln County, Nevada) and believe the objectives can be accomplished within existing administrative authorities. We would, however, like to make a few comments on changes to the Bills that would improve the administration of these Bills if enacted.

**S. 1331 Lincoln County Nevada Land Conveyance**

Lincoln County, Nevada was among the last portions of that State to become settled. It is lightly populated today. The county encompasses 6.8 million acres, making it nearly the size of the entire State of Maryland. However, nearly 90 percent of the land in that county has remained in Federal ownership. The pattern of private ownership has made management of some of these extensive Federal lands difficult and uneconomical.

Through the land use planning process required under the Federal Land Policy and Management Act (FLPMA) (P.L. 94-579), the Bureau identifies lands as potentially available for disposal. However, the sale authority granted the BLM pursuant to FLPMA has not been widely used for a number of reasons, including staffing and disposition of sales receipts. The BLM has made progress toward improving management efficiency by consolidating land ownership through exchanges, purchases, and negotiating agreements with other land management agencies.

The BLM is rapidly gaining invaluable experience in the disposal of public lands. The Southern Nevada Public Land Management Act of 1998 (P.L. 105-263) (SNPLMA), has helped to refine and improve our land sales process. The SNPLMA provided for the sale of public land, but was limited to lands in the Las Vegas valley.

The 1983 Caliente Management Framework Plan (the Plan) does not recommend this land disposal. However, BLM recently reviewed this existing Plan and after considering public comment, developed a proposed Plan amendment. This Plan amendment followed BLM Planning and Nepa process. This proposed Plan amendment would allow for the disposal of 14,213.95 acres of land in Lincoln County, including the land identified in the Bill. The Plan amendment will not be completed until the Fall of 2000. Similar to this Act, S. 1892 (The Valles Caldera Preservation Act), is currently working its way through Congress and Title II of S. 1892 would allow for the same actions nationally as proposed in this Bill for Lincoln County, Nevada. The Administration sees little need for this local Bill should S. 1892 be enacted.

**Other recommendations for specific amendments include:**

Within SEC. 2. SALE OF PUBLIC LAND (a) RIGHT TO PURCHASE:

The BLM would prefer disposal of the identified parcels of public land described in subsection (b), after consultation with Lincoln County, through a competitive sale process. This would allow sale at fair market value and parallel the approach taken in the SNPLMA.

Within SEC. 2 (b) LAND DESCRIPTION:

The BLM proposed land use plan amendment identifies this Bill's 4,817 acre parcel for disposal. This Bill would leave approximately 1,385 acres of isolated, unmanageable BLM administered public lands along the Nevada-Utah state line. We believe a logical development unit should include disposal of all lands within an identified disposal area. We therefore recommend that the Bill be amended to allow BLM to dispose of the entire 14, 214 acres identified in the proposed land use plan amendment. In addition, the area contains unsurveyed lands, so land acreage figures are estimates. Actual acreages will be determined upon completion of a cadastral survey.

Within SEC. 2 (f) WITHDRAWAL:

We are concerned that the 10-year withdrawal period is too long to administer the land sale and the "Special Account," causing administrative difficulties and expenses. In addition, over this period of time conditions may change. In view of this uncertainty, this section should be amended to state that if commercial oil, gas or geothermal resources are discovered, the

Secretary of the Interior will have an assessment conducted to determine if the lands should still be withdrawn under existing mineral laws.

Within SEC. 3. DISPOSITION OF PROCEEDS (a) LAND SALES:

Under this Bill, 5 percent of the sale proceeds will be paid to the State of Nevada, 10 percent will be returned to Lincoln County, and the remainder will be deposited in a special account in the U.S. Treasury. This again is similar to the SNPLMA. The possibility exists that the administrative costs of sales could exceed the gross sale value. If that were to happen,

BLM's ability to meet the disposal needs in Lincoln County could be diminished. Under this scenario, it is unclear how the requirements for payments to the state and the county would be accomplished.

Within SEC. 3 (b) AVAILABILITY OF SPECIAL ACCOUNT- (1) IN GENERAL:

It is recommended that Section 3 be amended to read: ". . . reimbursement of costs incurred by the Bureau of Land Management in preparing sales under this Act, or *under existing public land laws, additional* land sales or exchanges . . ." The meaning or intent of "other authorized" would be clarified in this section with this wording. Also, based on our experience with the SNPLMA, we suggest the inclusion of this statement: "The reimbursement of costs incurred by BLM in implementation of this Act shall include not only the direct costs for sales or exchanges but also other BLM administrative costs. Other administrative costs include those expenditures for establishing and administering the Federal Lands Disposal Account under the Act, developing implementation procedures, and consultation with legal counsel." Such clarifying language, applicable to the SNPLMA, was contained in Report language accompanying the FY 2000 Interior and Related Agencies Appropriations bill.

**S. 2069 Powell, Wyoming Land Conveyance**

The Administration supports this wavier of the reversionary clause for land in Powell, Wyoming. The town has been in control of this land since 1906 and the sale of this land would benefit the local community.

**S. 2300 Coal Market Competition Act**

The "Coal Market Competition Act of 2000," would increase the amount of Federal acreage that can be held by a coal lessee in a single state from 46,080 acres to 75,000 acres and would raise the national acreage limit from 100,000 to 150,000 acres.

The Administration supports S. 2300. We believe the current law provides sufficient anti-speculation and antitrust safeguards such that an increase in the acreage limitation will not encourage speculation or create a monopoly in the domestic coal industry. Further, passage of this legislation will remove unintended incentives for coal companies to bypass Federal coal.

The BLM is responsible for management of the mineral estate on about 570 million acres of BLM, national forest, and other federal lands, as well as private lands where the minerals rights have been retained by the Federal Government. Authorization to develop the coal resources within the Federal mineral estate is provided by the MLA. Oil, gas, phosphate, potassium, sodium, and sulphur minerals are also leased under the MLA.

Production from Federal coal leases in Fiscal Year 1999 was 389 million tons with a value of about $2.9 billion. This production generated $305 million in Federal royalties. About a third of the nations' 1.1 billion tons of annual coal production comes from Federal coal leases. At the end of Fiscal Year 1999 there were 349 Federal coal leases in effect, of which 128 (about one third) produced coal during the fiscal year.

Due in part to the energy crises of the 1970's and the perception that Federal coal leases were being held speculatively, the FCLAA was enacted to amend the MLA to provide additional anti-speculative safeguards. Prior to FCLAA, the MLA's anti-speculative controls were limited to the maximum of 46,080 acres that a lessee or operator could hold within a state. The 46,080 acre limitation was established in 1964 (P.L. 88-526) [not 1976 as incorrectly stated in Section 2, Findings 5(A) of S. 2300] and was not changed with the passage of FCLAA. The requirements of FCLAA include:

- An antitrust review by the Department of Justice prior to issuance or readjustment of a new Federal coal lease;
- Diligent development of the Federal coal lease by requiring production of commercial quantities of coal within 10 years after the lease is issued; and
- Continued production of commercial quantities of coal from a Federal coal lease after it has achieved diligent development.

FCLAA amended the MLA to require that a Federal coal lease cannot be issued or readjusted without prior consultation with the United States Attorney General to assure that the lease will not create or maintain a situation that is inconsistent with the antitrust laws of the United States. If the Attorney General recommends a lease not be issued or readjusted, BLM can only issue or readjust the lease after public hearings and making a determination; that issuance or readjustment of the lease is necessary to effectuate the purposes of MLA, that it is in the public interest, and that there are no reasonable alternatives that are consistent with the MLA, the antitrust laws, and the public interest. S. 2300 would not affect this part of the law.

The amount of acreage that any lessee or operator controls will have no effect on the MLA requirement to produce commercial quantities of coal within 10 years of lease issuance. The statutory penalty for not having met this requirement is cancellation of the lease (30 U.S.C. 184(h)(1)).

If a lessee or operator obtains a lease with a speculative intent and somehow manages to comply with the 10-year production requirement, the MLA further requires that the lessee or operator continue to annually produce commercial quantities of coal. Large investments of capital for mining machinery and transportation infrastructure are required to even minimally comply with this requirement. A speculator, seeking maximum return for minimum time and capital, would be

frustrated by the requirement of continued production of commercial quantities. Again, S. 2300 does not affect this requirement.

The Surface Mining Control and Reclamation Act of 1976 (SMCRA) was enacted 12 years after the current state acreage limitation was established. The Office of Surface Mining Reclamation and Enforcement (OSM), also part of the Department of the Interior, administers SMCRA. OSM regulations require coal companies to retain control of reclaimed acreage for 10 years, for lands west of the 100$^{th}$ meridian, to ensure reclamation success. While the coal resources have been fully extracted from these areas, BLM requires the acreage under reclamation to remain under lease, counting towards the acreage limitation, to assure access in case additional mitigation measures are required. We expect, in the future, more acreage to be held in reclamation status, causing lessees/operators to begin to be constrained by the acreage limits.

Like other segments of the economy, the coal industry has experienced increased consolidation of companies, which has meant a similar consolidation of leased acreage holdings. In some case**s**, the consolidated acreage comes close to exceeding the current state acreage limits. Ongoing coal industry consolidation within the Powder River Basin of Wyoming and Montana is reflected by the fact that three major coal companies, Peabody, Arch, and Kennecott, produce 70 to 80 percent of the Basin's 300 million plus tons of coal production. These consolidations have provided the companies economies of scale that have been directly reflected in the pricing of their product. The average sales value for Federal coal has fallen by more than half from a historic high in 1987 of $15.57 per ton to $7.52 per ton in 1999. During the same period, production of Federal coal has more than doubled from 168 million tons per year in 1987 to 389 million tons per year in 1999. Prices for spot market coal sales have recently been as low as $3.50 per ton. All reliable forecasts of coal sales and value do not foresee any change in the downward pressure of coal prices. Therefore, industry consolidation to date does not appear to have had an adverse or anti-competitive effect on the price or supply of Federal coal. Given significant other market parameters, such as compliance with the Clean Air Act and deregulation of electric generation, we do not expect an increase in the acreage limitation to effect the market for coal.

Other leasable mineral acreage limits have recently been raised. Statutory acreage limits in any one state range from 1,920 acres for sulphur through 246,080 acres for oil and gas. Potassium acreage limits, set by regulation, were recently increased to 96,000 acres (effective November 1999). Congress raised the sodium state acreage limit in P.L. 106-191 (H.R. 3063/S. 1722) from 15,360 to 30,720 acres. S. 2300 is similar to these prior actions.

The BLM has adopted as a strategic goal to provide opportunities for environmentally responsible commercial activities. We do this through the NEPA planning and the MLA permitting processes. To achieve this goal, BLM attempts to obtain the maximum economic recovery of the coal resource from the area that is determined to be environmentally responsible to mine. If the acreage limitations are left unchanged, there is the potential for coal operators to bypass some Federal coal that otherwise would not be extracted.

In conclusion, we believe the current law provides sufficient safeguards to protect the public interest. Current statistics do not indicate any adverse impacts from industry consolidation to

date. Further, this legislation is consistent with the other goals of the MLA and serves to protect the competitive nature of Federal coal resources. We support passage of S. 2300.

We appreciate the intent of these three pieces of legislation. We look forward to working with the Committee on improving these Bills.

That concludes my testimony. I would be happy to respond to any questions.