Statement of
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U.S. Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 2788, Utah Recreational Land Exchange Act
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Thank you for the opportunity to testify on S. 2788, the Utah Recreational Land Exchange Act. The bill would legislate a large-scale land exchange between the Bureau of Land Management (BLM) and the State of Utah. We strongly support the completion of major land exchanges with the State of Utah. We look forward to working with the sponsors and the Committee on S. 2788 and could support the bill with some additional modifications. As a matter of policy, we support working with states to resolve land tenure and land transfer issues that advance worthwhile public policy objectives. A great deal of progress has been made on this legislation over the last eight months and the bill as introduced in the Senate reflects much of that work.

Background

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.5 million acres of land and 4.5 million acres of mineral estate within the State of Utah primarily for the benefit of the schools of the State of Utah. Many of these parcels are scattered and interspersed with public lands managed by the BLM.

Managing 22.87 million acres of land within the State of Utah, the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. As the nation's largest Federal land manager, the BLM administers the public lands for a wide range of multiple uses, including energy production, recreation, livestock grazing, conservation use, forestry and open space. The Federal Land Policy and Management Act (FLPMA) provides the BLM with a clear multiple-use mandate which the BLM implements through its land use planning process.

Section 206 of FLPMA provides the BLM with the authority to undertake land exchanges. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. Over the past five years, throughout the bureau, nearly 550,000 acres of public lands were disposed of through exchange, while 370,000 acres were acquired by the BLM through this process. During this same time period in Utah, the BLM has disposed of 110,178 acres while acquiring 112,842 acres through exchange. The vast majority of this was completed under the direction of Congress through the Utah West Desert Land Exchange Act (Public Law 106-301).

S. 2788

S. 2788 directs the exchange of approximately 40,000 acres of lands managed by SITLA for approximately 40,000 acres of BLM-managed Federal lands. Many of the lands that the State is proposing to transfer to the BLM are lands that the BLM has a high degree of interest in acquiring because they would consolidate Federal ownership within wilderness study areas, Areas of Critical Environmental Concern, or other sensitive lands. Among these are:

- 640 acres on the eastern boundary of Arches National Park which will provide important viewshed protections;
- 1,280 acres and 420 acres along the Colorado River west and east of Moab which includes Corona Arch and other popular recreation sites within the BLM's Colorado Riverway Management Area;

- 4,500 Acres within the Castle Valley watershed which also has important wildlife habitat and scenic values;
- 2,560 acres of land currently leased by the BLM and Grand County from the State for recreation-related activities associated with the Sand Flats Recreation Area and the famous Slickrock Mountain Bike Trail; and,
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources.

We support the provisions of the bill that establish a phasing process for the transfer of lands from SITLA to the BLM. This will allow BLM to prioritize the use of Federal resources in the appraisal and review process on the lands with the highest resource value for acquisition.

The bill also identifies a number of parcels for transfer to SITLA from the BLM. Some of these would improve manageability and encourage appropriate local development, including:

- 2,800 acres of scattered parcels near the town of Green River which are suitable for private agricultural development; and
- 80 acres adjacent to Canyonlands Field municipal airport operated by Grand County, Utah which are suitable for private development.

In addition, some of the lands identified for transfer to SITLA from the BLM have high energy potential.

Valuation Issues

In December of 2004, former Secretary of the Interior Norton issued policy guidance to all of the bureaus on legislative exchanges and land valuation issues. A copy of that guidance (Secretary of the Interior Order No. 3258) is included for the record. This policy was developed to ensure that land transactions are conducted with integrity and earn public confidence.

The policy states that all real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP)). Accordingly, the policy specifically prohibits the use by the Department of alternative methods of valuation in appraisals. However, the policy recognizes there may be times when Congress will direct, or the Department will propose, the use of alternative methods of valuation other than, or in addition to a standard appraisal. Under the policy guidance, if Congress directs the Department to use an alternative method of valuation in a specific transaction, the Department will expressly describe the alternative method of valuation applied; explain how the alternative method of valuation differs from appraisal methods applied under the Uniform Appraisal Standards or the Uniform Standards of Professional Appraisal Practice; and, if so directed by Congress, provide this material to the appropriate committees prior to or after completion of the transaction, as required by the direction.

The Department's Inspector General has commented on the Department's appraisal reform efforts. In testimony given before the Senate Committee on Finance, he commended the Department for the significant changes it has made to the land appraisal program and process.

As stated, there are circumstances in which the Congress or the Administration may decide that alternative methods of valuation are appropriate for achieving worthwhile public policy objectives. It is our duty to be clear and transparent about the details of proposed exchanges and to be clear that an alternative method of valuation is being used.

S. 2788 is not an Administration legislative proposal. It is a legislative proposal from Congress. Its stated purpose is to facilitate the exchange of certain Federal lands for non-Federal lands to further the public interest by exchanging Federal land that has limited recreational and conservation resources and acquiring State trust land with important recreational, scenic, and conservation resources for permanent

public management and use. To meet these legitimate public policy objectives, Congress may determine that alternative methods of valuation are consistent with the intent of the legislation.

S. 2788 directs that all appraisals shall be in accordance with the requirements of FLPMA and with the BLM's regulations governing appraisals. The bill further directs the use of two alternative methods of valuation for two different purposes. I will describe the Department's view of each of these and the relative benefits or risks of using these methods.

Sec. 5(b)(4) requires that, for Federal lands that are not under mineral lease at the time of appraisal, such lands shall be valued without regard to the presence of any minerals that are subject to leasing under the Mineral Leasing Act of 1920. This provision would not affect the appraisals for lands that contain no mineral values. Additionally, it would not affect the appraisals for those lands that are already under Federal mineral lease. Rather, this provision would modify a standard appraisal by directing a reduction in the value of any eligible parcel by the value of any present minerals which are subject to leasing under the Mineral Leasing Act of 1920, but not under lease. For such lands, the transaction value would be reduced by the value of those minerals. In exchange for this reduction in value, the State or its successors in interest to the property (by virtue of covenant language in Section 5(b)(4)(B)) would have to agree to pay the United States 50% of whatever bonus or rentals are paid to the State for any mineral development in the future; and an amount equal to the Federal royalties that would have otherwise been collected by any future mineral development conducted pursuant to the Mineral Leasing Act, minus amounts that would have otherwise been due to the State under Section 35 of that Act.

This is a complicated methodology that departs from a standard appraisal and valuation practice. We note that currently under standard appraisals oil shale, the mineral that, in addition to oil and gas, is likely to be found in the unleased lands that would be convey to the State, does not factor into the value because there are no comparable oil shale transactions, or there is no reasonably foreseeable oil shale development on the property. The result of using a standard appraisal process might therefore be that properties with significant oil shale resources will probably have no additional value attributed to them by virtue of the presence of this resource. This could lead to the criticism that the United States is "giving away" potentially millions of dollars in oil shale. The material purpose of the provisions contained in section 5(b)(4) is to address that risk by ensuring that the United States receives the value for any future oil shale or other leasable mineral development it would have received if the Federal government had retained the lands and leased them.

We would like to work with the Committee to further refine this section. In particular, we would like the bill to clarify that under Section 5(b)(4), the royalty rate for which the State would compensate the Federal government in the event that currently unleased minerals are eventually developed is the standard Federal onshore rate established at the time the resource is developed. Also, it may be more appropriate to narrow the scope of this provision expressly to oil shale and allow for an appraisal that would capture the value of any other leasable minerals according to general appraisal standards. In addition, as currently drafted, the provision conditions the use of the alternative method of valuation on an agreement the State would make after conveyance of the lands. The lands, however, cannot be conveyed until they are valued.

The second alternative method of valuation is found in Sec. 5(b)(6)(B). This provision would apply only to parcels under Federal mineral lease at the time of the appraisal. Clause (ii) in that subparagraph would direct the BLM to reduce the value of an applicable appraisal by an amount equal to what would be the State's share under Section 35 of the Mineral Leasing Act. A standard appraisal would identify the value of the parcel based on a net present value of the future royalty stream. That valued revenue stream would comprise the entire Federal collection, without an offset or reduction for the portion of the revenue stream that the Federal government remits to a state. It is the Department's understanding that this provision is included to recognize that the Mineral Leasing Act currently provides that 50% of all the money received by the United States in accordance with Section 35 of the Mineral Leasing Act shall be paid to the State within the boundaries of which the leased lands or deposits are or were located.

This provision would reduce the net present valuation by an amount equal to what would be the State's share under the Mineral Leasing Act.

The overall result of the proposed valuation methods will be a greater number of Federal acres exchanged for a lesser number of state acres. This may be the desired outcome given Congress' stated public policy objectives.

Other Concerns

The Department opposes section 5(d) of the bill requiring a "resource report" on the lands to be transferred out of Federal ownership. Under S. 2788 the Secretary has no discretion regarding the lands to be transferred out of Federal ownership; therefore the intent and usefulness of this section is unclear. Resource reports on the parcels will be time-consuming and costly, will delay the purposes of the bill, and will not ultimately affect the directed exchange. We urge the Committee to delete this provision.

Additionally, the Department has serious concerns with section 6(a)(2)(B) which places permanent withdrawals from the mineral leasing and mineral materials laws on certain state parcels once they are transferred to the Federal government. We would support the short term withdrawals envisioned in 6(a)(2)(A) because they are consistent with the present public planning process. Generally the Department prefers to identify lands for permanent withdrawal from mineral entry or leasing through the public land use planning process because it gives all interested parties an opportunity to be heard. A short-term withdrawal of these lands from mineral leasing would preserve the option of more permanent withdrawal for any final record of decision. This is standard BLM practice.

We would like the opportunity to continue to fine tune some technical provisions, including section 4(a), to insure that the implementation of the exchange is correctly and appropriately completed.

Finally, we understand that the current maps created by the BLM, dated March 16, 2006, are works in progress. We look forward to the opportunity to finalize these in the coming weeks in coordination with the sponsors and the Committee.

Conclusion

The Department of the Interior supports the intent of this legislation. Large-scale land exchanges can resolve management issues, improve public access, and facilitate greater resource protection, and we support such exchanges. To that end, we are ready to work with the Committee and the sponsor to resolve remaining issues in the bill. I would be happy to answer any questions.