Testimony of
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Bureau of Land Management
Department of the Interior
Subcommittee on National Parks, Forests, & Public Lands
Committee on Natural Resources
U.S. House of Representatives
H.R. 1275, Utah Recreational Land Exchange Act
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Thank you for the opportunity to testify on H.R. 1275, 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 support the completion of major land exchanges which further public policy goals and enhance resource protection. However, we have several concerns with H.R. 1275 and we request that the Committee defer any action on the bill until we can address our concerns with the sponsors and the Committee. We look forward to working with the sponsors and the Committee on this legislation.

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 interspersed with public lands managed by the BLM.

Managing 22.8 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 and conservation uses. 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. Among other purposes, exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. Over the past ten years the BLM in Utah has completed two large-scale exchanges with the State of Utah at the direction of Congress through the Utah West Desert Land Exchange Act of 2000 (Public Law 106-301) and the Utah Schools and Land Exchange Act of 1998 (Public Law 105-335). Over 262,000 acres of Federal land were conveyed to the State of Utah and the United States acquired over 571,000 acres from the state through these exchanges.

H.R. 1275

H.R. 1275 directs the exchange of approximately 46,300 acres of land and mineral estate managed by SITLA for approximately 35,700 acres of BLM-managed Federal lands and mineral estate primarily in Grand and Uintah Counties, and further specifies that the exchange shall be of equal value.

The first hearing on this proposal was held in 2005 by this Committee. The BLM in Utah is currently revisiting the specific parcels identified for exchange on the maps accompanying H.R. 1275 to assess any changes in status in the intervening years, and whether the acquisition of all of these parcels is in the public interest. The BLM will inform the Committee if we find any conditions that raise concerns about the transfer of specific parcels and we would request that the Committee delay any further action on this legislation until we have a chance to complete this review.

Many of the lands that the State is proposing to transfer to the BLM are lands the BLM has an interest in acquiring in order to consolidate Federal ownership within wilderness study areas, Areas of Critical Environmental Concern, or other sensitive lands. Among these are:

- 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;
- 1,280 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;
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources; and,
- 8,600 acres in the Dolores Triangle containing prime habitat for elk and deer which is therefore a focus area for hunting.

The BLM supports the provisions of the bill that establish a phased process which prioritizes the transfer of lands from SITLA to the BLM. This will allow the BLM to make best use of Federal resources in the appraisal and review process.

The lands and mineral estate the bill directs be transferred to SITLA from the BLM are primarily parcels with high energy potential. These lands are located in the highly productive Uintah Basin, with producing oil and natural gas wells within close proximity of these parcels. Some of the parcels which would be transferred to SITLA under this legislation would improve manageability and encourage local development in the state; for example 80 acres adjacent to Canyonlands Field municipal airport in Grand County.

It is typical in administrative exchanges between governmental entities that costs of the exchange, including but not limited to appraisals, surveys, and clearances, are split equally between the two parties. We trust that is the intention of H.R. 1275, but it is not specified and we recommend that this be made clear.

Section 3(i) provides that the exchange shall be equal value and provides for a mechanism of equalizing those values. The BLM supports section 3(i), but notes that it is often impossible to reach complete equalization through land values alone. We recommend allowing for a minimal cash equalization payment or waiver of payment by either party as authorized by Section 206(b) of FLPMA. Any difference in values would be minimized to the extent possible through the addition or elimination of land.

Section 4 of H.R. 1275 addresses management of the lands post-exchange. In general the lands exchanged to the government are to be managed as a part of the Federal administrative unit in which the land is located. However, section 4(a)(2)(A) further provides that all of the lands acquired by the Federal government from SITLA should be withdrawn from the mineral leasing laws for the later of two years after the date of enactment of this Act or the signing of the Record of Decision (ROD) for the applicable Resource Management Plans (RMPs). The RODs for the Moab and Vernal RMPs were signed on October 31, 2008, and therefore the temporary withdrawal language is no longer necessary since new land use plans governing management of these lands is now in place. Furthermore, section 4(a)(2)(B) permanently withdraws from the mineral leasing and mineral materials laws more than half of the acres acquired from the state. We understand that the intent of this withdrawal is to protect lands which would be specifically acquired for conservation purposes.

The status of existing grazing permits on both the lands to be exchanged to SITLA and to the BLM is addressed in section 4(b). In the case of state lands transferred to the BLM, it might be more advantageous to both the rancher and the BLM to simply include the new lands in existing grazing leases under existing laws and regulations rather than have them continue as if under state law. The Utah BLM office believes that the lessees of the state land would be the same as those on adjacent BLM land. Maintaining separate grazing systems on small inholdings within larger grazing allotments could be administratively burdensome for both the BLM and the permittee and would increase costs for the permittee as state grazing fees are higher than those charged by the Federal government. We would like to discuss with the Committee the inclusion of a transition period for full integration of the state leases into the preexisting BLM permits.

Many of the parcels proposed for transfer from SITLA to the BLM are encumbered with mineral leases. The BLM has concerns with acquiring existing mineral leases because we do not typically do so, and we would like the opportunity to more fully understand the implications of these encumbered parcels. For example, managing leases under terms established by the state of Utah (which may differ substantially from terms the BLM would impose established through our planning process) may pose management challenges. The legislation does not specifically address this issue and we are reviewing options at this time.

Valuation and Appraisal

The valuation and appraisal provisions of H.R. 1275, are found in sections 3(d) and 3(f). These differ from standard methods in some cases. While there may be circumstances in which the Congress may decide that alternative methods of valuation are appropriate for achieving worthwhile public policy objectives, the Department seeks to be clear and transparent about where those differences lie and where they raise concerns.

Section 3(d)(2) states that appraisals "shall be conducted in accordance with section 206 of the Federal Land Policy and Management Act" (FLPMA). While we do not disagree with this statement, the legislation omits the language typically included in legislated land sales and exchanges stating that the appraisals shall be conducted "in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice." The omission of this language could raise questions about the intent of Congress and the Department recommends its inclusion.

Section 3(d)(4) provides a limitation on the appraisal that raises additional concerns. As noted earlier, the lands proposed for exchange from the BLM to SITLA are lands with high oil and gas mineral potential. The BLM does not typically exchange such lands out of Federal ownership. Section 3(d)(4) requires the appraiser to reduce the value of parcels with attributable mineral value (under the Mineral Leasing Act -- MLA) by the percentage of the Federal revenue sharing with the states under the MLA. Presumably, the premise is that the state would have received a revenue stream had there been production under Federal ownership. However, Federal revenue sharing with the states under the MLA is 50% of royalties, bonus bids and rentals which is different than the total value of the parcels. The Federal royalty is 12.5% of production, with a resulting state share of 6.25%. Thus, the relationship between the 50 % discount in mineral value and the 50% of the revenue stream the State would have received had there been production under Federal ownership is unclear. The Department opposes this provision and recommends that the bill be amended to clearly require that standard appraisal practices are utilized to ensure that the taxpayer is made whole and is treated the same as if these exchanges were undertaken administratively.

Section 3(f) of H.R. 1275 is critically important to the legislation and we strongly support it. In addition to the oil and gas reserves that underlie the lands to be exchanged to SITLA from the BLM, there is significant, but speculative, high potential for oil shale resources. Under current standard appraisal practices, potential oil shale values would likely not factor into appraisals because of their speculative nature. Using a standard appraisal process might therefore result in properties with significant oil shale resources having no additional value attributed to them in spite of the presence of this resource. This could lead to the criticism that the United States is "giving away" millions of dollars in potential oil shale revenues. Section 3(f) addresses this risk by reserving a Federal interest in the oil shale, thus ensuring that the United States receives the value for any future oil shale development it would have received if the Federal government had retained the lands and leased them. This reserved interest arrangement is common in the private sector and protects sellers from disposing entirely of some unknown future mineral wealth.

Additional Concerns

There are a number of additional issues that should be addressed before the bill moves forward. Many of these are no doubt oversights and technical in nature, but nonetheless significant. For example, while the bill addresses hazardous materials inventory and remediation, it should make clear that these actions should be undertaken consistent with FLPMA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other relevant laws. Furthermore, we believe the legislation should make it clear that SITLA and the Federal Government should have equivalent obligations with respect to inventory and remediation of their respective properties. Additionally, the bill and its provisions are open-ended with no sunset date. To avoid unexchanged lands being held indefinitely without any certainty as to their status, we believe a 10 year sunset provision would be reasonable. We look forward to working with the Committee and sponsor to resolve these issues and other technical concerns.

Conclusion

Large-scale land exchanges can resolve management issues, improve public access, and facilitate greater resource protection. 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.