

**Statement of  
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House Committee on Natural Resources  
Subcommittee on Federal Lands  
H.R. 5780, Utah Public Lands Initiative Act  
September 14, 2016**

Thank you for the opportunity to testify on H.R. 5780, the Utah Public Lands Initiative Act, which is a sweeping bill that provides direction for the future management and use of Federal lands within Summit, Uintah, Carbon, Emery, Grand, Duchesne, and San Juan Counties in eastern Utah. H.R. 5780 establishes numerous public land units that are somewhat similar to existing conservation designations, including 41 wilderness areas, 11 National Conservation Areas (NCAs), six Special Management Areas (SMAs), a National Monument, approximately 357 miles of Wild and Scenic Rivers, an approximately 120-mile National Historic Trail, and an expansion of Arches National Park on lands currently managed by the Bureau of Land Management (BLM), National Park Service (NPS), and U.S. Forest Service (USFS). The bill also proposes a large-scale land exchange with the State of Utah's School and Institutional Trust Lands Administration (SITLA), directs a number of land conveyances, requires the sale of some public lands, designates 13 recreation zones, and establishes an off-highway vehicle (OHV) trail. Finally, H.R. 5780 includes several land management provisions that would transfer the BLM's permitting authority for all energy development to the State of Utah, require that grazing continue at current permitted levels in perpetuity, restore grazing in areas where it has been reduced or eliminated for resource protection, and grant perpetual, no-cost rights-of-way for certain roads claimed by counties and the State of Utah.

The Department of the Interior (Department) sincerely appreciates the sponsors' efforts to address a broad range of challenging resource and management issues in eastern Utah. Due to the length and complexity of the bill, this testimony will briefly summarize the views of the Department. While the Department supports many of the goals of H.R. 5780, we have significant concerns with numerous provisions and are opposed to the bill as it is currently written. In particular, the Department opposes the nonstandard management language for many of the proposed conservation and special management designations, which are repeated throughout the bill and would result in significantly less protection than in other similarly-designated areas. Additionally, the Department strongly opposes the unprecedented language transferring all energy development and permitting authority within the affected counties from the Federal government to the State of Utah, proposed limits on the BLM's management of grazing, and the automatic granting of Revised Statute (R.S.) 2477 right-of-way claims that are currently subject to active litigation with no showing that they have satisfied applicable legal standards. A number of additional important concerns are detailed below. We defer to the U.S. Department of Agriculture regarding provisions in the bill concerning the lands and interests in lands under their administration.

## **Background**

Eastern Utah is a land of spectacular natural beauty, important historical resources, and areas of special significance to a number of Tribes. The lands managed by the BLM and NPS in this region range from rolling uplands and snow-capped peaks to free-flowing rivers and colorful red-rock canyons. This varied and magnificent terrain provides habitat for a variety of wildlife, including mule deer, pronghorn antelope, bison, and several sensitive bird and fish species. The southeastern portion of this area, in particular, also contains thousands of vulnerable cultural and archaeological sites, including well-preserved cliff dwellings and rock art. Home to premier recreation hubs like Moab, the public lands in eastern Utah provide popular destinations for outdoor enthusiasts, including off-highway vehicle users, hikers, mountain bikers, rock climbers, and hunters. Many of these public lands also provide opportunities for grazing, energy development, and other commercial activities.

## **Division A – Conservation & Special Management Designations**

### ***Wilderness***

Title I of Division A would designate 41 new wilderness areas on over 2.4 million acres of Federal land in Summit, Uintah, Carbon, Emery, Grand, Duchesne, and San Juan Counties in eastern Utah. The designations are on lands managed primarily by the BLM (over 1.56 million acres), but also include lands managed by the NPS (over 469,000 acres) and the USFS (over 119,000 acres). The BLM-managed lands that would be designated as wilderness by H.R. 5780 include areas of stunning beauty, secluded places offering opportunities for solitude, and important wildlife habitat. For example, the proposed Cedar Mesa Wilderness contains an extensive canyon system that features spectacular sandstone cliffs and pinnacles and an abundance of cliff dwellings and other archeological resources. This area's striking scenery provides an exceptional opportunity for primitive recreation, including hiking, photography, and horse packing. Similarly, the proposed Crack Canyon Wilderness includes colorful badlands of eroded soils, cliffs, and rock monuments, including fins which form a sawtooth sandstone ridge, and knobs, caves, and arches. Scenic, geologic, and archaeological features and wildlife habitat in this area are remarkable, and the narrow, twisting canyons offer outstanding opportunities for primitive recreation.

We recognize the hard work of the sponsors and other members of the Utah delegation in seeking consensus on BLM and NPS wilderness designations and Wilderness Study Area (WSA) releases. We believe that the areas identified in the bill could be managed as wilderness. However, the Department is very concerned that the bill, as currently written, contains language that would prevent the effective management of these areas for their wilderness values. For example, Title I of Division A would permit motorized access within all of the proposed wilderness areas for the maintenance of future water infrastructure, a provision that is ambiguous and could be interpreted to permit broad manipulation of the hydrology of the landscape. The Department strongly opposes this troubling exception to the Wilderness Act of 1964. It is without precedent for BLM- and NPS-managed wildernesses, would undermine each agency's ability to protect, enhance, and maintain wilderness values and opportunities for the public, and is at odds with one of the core values associated with wilderness – to prohibit the use of motorized equipment. The Department notes that the Congressional Grazing Guidelines, outlined in Appendix A of the report accompanying H.R. 2570 of the 101st Congress and H.R.

5487 of the 96th Congress, already provide for a specific, generous management approach that has worked well for grazing within BLM-administered wilderness areas.

Additionally, the bill omits essential, standard language requiring that any wildlife water development structures and facilities within the proposed wilderness areas enhance wilderness values and minimize their visual impacts. Moreover, Title I of Division A includes provisions requiring the BLM to maintain trail and fence lines within proposed wilderness and potentially eliminating the Secretary's discretion to permanently close a trail or remove a fence line for resource protection. The Department opposes this language, which would effectively pass the historic responsibility for maintenance of fences from the authorized grazing permittee to the BLM.

In place of the problematic language on wildlife water developments, motorized access to water infrastructure, and trail and fence maintenance within the proposed wilderness areas, we urge the sponsors and the Subcommittee to instead adopt the standard wilderness management language that has been used by Congress for decades, including in the successful Washington County, Utah, conservation bill included as part of the Omnibus Public Land Management Act of 2009 (Public Law 111-11, Subtitle O). The Department would also like the opportunity to work with the sponsors and Subcommittee on a number of additional amendments, including boundary adjustments for manageability and to eliminate overlapping or incompatible designations, time frames, and clarifications regarding outfitting and guide activities, mapping requirements, the jurisdictional coordination of wildfire management, and the role of the Utah Department of Agriculture in BLM grazing administration. In addition, we would like to work on language addressing legacy Primitive Area classifications for the Grand Gulch and Dark Canyon areas.

Title I of Division A also proposes to release nearly 81,000 acres of BLM-managed land from WSA status. While the Department appreciates the use of standard WSA release language in this title, we believe that the Desolation Canyon and Jack Canyon WSAs contain such extraordinary scenic resources and recreational opportunities that protection of those areas is essential. Together with Turtle Canyon, these areas represent the largest complex of unprotected WSAs in the lower 48 states. The extremely rugged terrain of the Desolation Canyon and Jack Canyon WSAs contributes to their scenic quality, remoteness, and habitat for species such as bighorn sheep and raptors, which are sensitive to development. Moreover, these WSAs have an extensive system of deep canyons and feature arches, pinnacles, and other erosional elements not known to occur elsewhere. In addition, the diversity of wildlife within these areas is unusual compared with the public lands surrounding them. We would like the opportunity to work with the sponsors and the Subcommittee on language and boundaries that would ensure the continued protection of outstanding resources in these areas.

Finally, the Department opposes section 110 of this title, which could be construed to prohibit the designation of Class I airsheds under the Clean Air Act for lands proposed as NPS-administered wilderness in the bill. All NPS-administered wilderness areas are currently managed as Class I airsheds, which means that the wildernesses proposed by the bill would be managed to a lesser standard. The Department is particularly concerned that this language would

eliminate or reduce the existing Class I airsheds associated with both Canyonlands National Park and Arches National Park.

### ***National Conservation Areas***

Title II of Division A designates 11 new NCAs covering more than 1.35 million acres on BLM-managed lands. The spectacular and diverse landscapes of the BLM's National Conservation Lands currently include 21 NCAs nationwide. All of these designations have certain critical elements in common, which have consistently been followed in a bipartisan manner during the Clinton, George W. Bush, and Obama Administrations. These elements include withdrawal from the public land, mining, and mineral leasing laws; limiting off-highway vehicles to roads and trails designated for their use; language that charges the Secretary of the Interior with allowing only those uses that further the conservation purposes for which the NCA is established; and language ensuring that lands within the NCA are managed at a higher level of conservation than lands outside of such designations.

The management language for all 11 NCAs proposed by this title does not comport with these standards and repeatedly makes exceptions that would conflict with the primary objective of conserving the significant natural and cultural resources within the proposed areas. For example, the purposes for which the NCAs are to be established are overly broad. As a result, the BLM would have to manage these areas for purposes that may prevent effective resource protection. The Department urges the sponsors to clearly define the specific resources, objects, and values to be protected for each of the proposed NCAs consistent with the purposes for which the BLM's National Conservation Lands were established. The Department opposes language in the bill requiring that the BLM "recognize and maintain historic uses" of the NCAs because such uses may be incompatible with the protection of resources for which these areas are to be designated.

Title II of Division A also includes unacceptable grazing language that would make it more difficult to achieve rangeland health standards in the proposed NCAs. In fact, this language would create lower standards for grazing in the proposed NCAs than it would on public rangelands that are outside of the proposed conservation units. The Department opposes this grazing language, which not only represents a significant deviation from all other NCA designation laws, but also from the management of grazing on all other public lands. As with the proposed wilderness designations, the Department strongly recommends that the sponsors and Subcommittee adopt the standard NCA management language that Congress has used for decades, including in the Washington County, Utah, provisions of Public Law 111-11.

For the sake of efficient management, the Department also encourages the sponsors to consider designating a single NCA for the lands surrounding the Dinosaur National Monument, which would include the bill's proposed Beach Draw, Diamond Mountain, Docs Valley, Stone Bridge Draw, and Stuntz Draw NCAs and would consist of approximately 44,000 acres of BLM-managed public lands. Manageability and interagency coordination would be improved by combining these five geographically clustered NCAs into a single NCA managed under a single management plan.

The San Rafael Swell, a portion of which is proposed for NCA designation under the bill, is one of the most spectacular areas managed by the BLM. The terrain of this area varies from sheer cliffs and dazzling canyons to more gently carved badlands broken by shallow washes. The fins and folds of the San Rafael Reef jut through the southeast side of the area and feature dramatic cliffs, pinnacles, the knobs of Goblin Valley, twisted canyons, and valleys of stunning colors. Few canyons can compare to the entrenched, narrow gorges of the Black Boxes of the San Rafael River, which twists and turns through the San Rafael Swell. The Department recognizes and applauds the vision of the sponsors to protect this special area. We believe that this vision would be best reflected through the designation of a single NCA encompassing the approximately 750,000 acres proposed as the San Rafael and Muddy Creek NCAs, the proposed Goblin Valley Cooperative Management Area, as well as other adjacent lands that contain similar resources, such as the currently excluded area between the proposed Cedar Mountain and Muddy Creek Wildernesses. Again, a single management plan for this area, consistent with the goals and purposes for which NCAs are designated, would significantly enhance manageability.

Similarly, the Department notes that the proposed Labyrinth Canyon and San Rafael River NCAs are separated only by the Green River. We believe that manageability for these areas would be improved by combining them into a single NCA under a single management plan.

Finally, the Department would like the opportunity to work with the sponsors on a number of additional amendments to this title, including boundary modifications for manageability, time frames, language addressing potentially incompatible overlapping designations, and clarifications and other edits regarding management plan development, mapping requirements, WSA release, and travel management planning.

### ***Special Management Areas***

Title IV of Division A proposes four new Special Management Area (SMA) designations on approximately 108,200 acres of BLM-managed public lands for the Desolation Canyon, Nine Mile Canyon, White River, and Book Cliffs areas, and two other SMAs on approximately 27,400 acres of national forest land. Under the bill, each of these BLM-managed SMAs would be open to oil and gas development at the Secretary's discretion and subject to surface occupancy restrictions. The management guidance that comes with these new designations does not seem to differ greatly from the BLM's existing authorities and management practices. As a result, we do not see a reason to create this new category of public land designations. However, we recognize the significant wildlife, cultural, and other values contained in these areas and would like to work with the sponsors and Subcommittee on provisions that would ensure meaningful protection for these areas.

### ***Arches National Park Expansion***

Title V of Division A adds approximately 19,000 acres to Arches National Park. The Department supports this expansion because management of these lands in accordance with the park's General Management Plan would enhance visitor enjoyment and protect irreplaceable resources, including paleontological resources. The eastern portion of the expansion would contribute significantly to the ability of the NPS to protect principal views from key points within the park. The small southern addition, while within the exterior park boundary, is a BLM Recreation and Public Purposes Act (R&PP Act) lease held by Grand County. The existing

arrangement works well; however, NPS ownership of this area may require changes to current management and recreational use. The Department would like to work with the sponsors and the Subcommittee on additional amendments to this title, including boundary adjustments to address these management challenges.

### ***Jurassic National Monument***

The BLM currently manages the Cleveland-Lloyd Dinosaur Quarry in Emery County, Utah, to protect and conserve its unique paleontological resources, which includes the densest concentration of Jurassic resources in the world. Title VI of Division A designates this area as an 867-acre National Monument, and the Department applauds the sponsors for putting forward a vision to permanently protect this special place. To ensure adequate conservation of the world-class paleontological resources of this area, the Department would like to work with the sponsors on amendments to ensure consistency with other National Monument designation laws, language limiting motorized and mechanized vehicles to roads and trails designated for their use, time frames, management plan development, mapping requirements, and clarifications that the BLM would manage the proposed National Monument.

### ***Wild & Scenic Rivers***

Title VII of Division A appears to designate approximately 357 miles of rivers on lands managed by the BLM and NPS as wild, scenic, or recreational rivers for protection under the Wild and Scenic Rivers Act. The Department supports the designation of the proposed river segments, but we strongly encourage the sponsors and Subcommittee to adopt the standard designation language that has been used by Congress for decades. In addition, we would like to work on time frames, mapping requirements, and technical amendments to this title for consistency with the Wild and Scenic Rivers Act, including language identifying beginning and ending points for individual river segments, ensuring standard protective corridors, and enhancing manageability.

## **Division B – Land Management & Economic Development**

### ***School Trust Land Consolidations***

Title I of Division B proposes the exchange of approximately 328,000 acres of Federal land and approximately 5,700 acres of Federal mineral estate to the State of Utah, and approximately 288,000 acres of State land and approximately 8,000 acres of State mineral estate to the United States. This title, however, is unacceptable as currently drafted as it does not include public interest determinations according to standard practice under FLPMA, complete environmental and cultural review, standard appraisal language, or equalization of values – four provisions that are critical on any land exchange because they provide for public engagement and opportunities to consider mitigation for impacts to environmental and cultural resources, and to help ensure that unknown and unforeseen issues are not overlooked.

While Congress has in the past determined that individual land exchanges are in the public interest, this generally occurs when the BLM has already had an opportunity to identify the parcels as potentially suitable for disposal through the land use planning process. Based on an initial review of the final legislative maps, it is not yet clear whether that is the case in this situation. In addition, some of the lands proposed for exchange out of Federal management in the bill contain sensitive cultural, paleontological, and natural resources and recreational uses, and active oil and gas leases. The BLM does not typically exchange such lands out of Federal

ownership and seeks to ensure continued protection of these important resources. Moreover, the Department is concerned about the potential effects of the proposed exchange on valid existing rights and grandfathered uses. Therefore, the Department opposes the proposed exchange as currently written and urges the sponsors to adopt standard language regarding public interest determinations according to standard practice under FLPMA, complete NEPA and cultural review, appraisals, and equalization of values. The Department would also like to work with the sponsors on additional amendments, including potential boundary adjustments for manageability and to ensure protection of important resources, time frames, and language ensuring that royalties for potash and oil and gas are consistent with existing law. The Department also believes that Federal land should not be used to pay for the administrative costs of the exchange, and we would like to work with Congress to ensure that the BLM has the resources needed to implement this title. Additionally, the Department notes that the Book Cliffs roadless area mineral withdrawal provision is unclear as currently written, and we are unsure if it would achieve its intended purpose. We would like to work with the sponsors to clarify this language to ensure continued protection of the important wildlife habitat and natural resources of this area.

Finally, the Department notes that section 103(g) of this title may threaten the Federal reserved water right for Arches National Park, which was negotiated and finalized by the State of Utah and the NPS a year ago to protect seeps, springs, and streams in the park. The Arches Federal reserved water right extends within the Entrada formation underneath a block of parcels to be exchanged west of Arches. The Department would like to work with the sponsors and Subcommittee on language ensuring that the exchange does not adversely impact this important agreement.

### ***Land Transfers, Conveyances, & Disposals***

Title II of Division B requires the conveyance, at no cost, of nearly 10,000 acres of BLM-managed lands to the State of Utah to expand the Goblin Valley State Park. It also requires that the BLM, at the State of Utah's request, enter into a cooperative agreement whereby approximately 153,000 acres of BLM-managed land surrounding the enlarged park would appear to be managed by the Utah State Parks and Recreation Division of the Department of Natural Resources.

In the past, the Department has supported minor conveyances for the expansion or establishment of public parks in various western states. We would like the opportunity to work with the sponsors and Subcommittee to address a number of concerns with the proposed Goblin Valley State Park conveyance, including boundaries, the presence of occupied endangered species habitat, conflicts with wild horse herd management areas and unpatented mining claims, and investments made in recent years by the BLM. The Department would also like to work with the sponsors on time frames and language ensuring consistency with the R&PP Act and other applicable laws. The Department also believes that legislation establishing a Cooperative Management Area (CMA) for the lands surrounding Goblin Valley State Park is unnecessary. The BLM has a long record of successfully using cooperative agreements for the management of public lands in Utah, such as the Sand Flats Recreation Area near Moab, without the need for implementing legislation.

Title III of Division B would exchange approximately 13,300 acres of Federal land in Carbon County, Utah, to the State of Utah and approximately 15,000 acres of State land in Grand and San Juan Counties, Utah, to the United States for the purpose of creating the Price Canyon State Forest. The Department opposes this title as drafted because the exchange includes the BLM-managed Price Canyon Recreation Site, located just north of the cities of Helper and Price, Utah, which is popular with the public and has substantial recreation use. The BLM has invested more than \$1 million in recent years to improve access and infrastructure for public use at this site. In addition, the exchange does not include public interest determinations under FLPMA, complete environmental and cultural review, standard appraisal language, or equalization of values. As discussed above, these elements are critical for successful land exchanges. The Department strongly encourages the sponsors to adopt standard language regarding public interest determinations under FLPMA, complete environmental and cultural review, appraisals, and equalization of values. The Department would also like to work with the sponsors on additional amendments, including boundary adjustments for manageability and to ensure protection of important resources, and time frames.

Title V of Division B deals with longstanding encroachment and reservoir boundary issues on Bureau of Reclamation (BOR) managed lands at Scofield Reservoir. While the requirement to secure properties within the flood surcharge elevation at Scofield is constructive, the bill's language places long-term responsibility on the BOR to monitor and enforce these requirements, which could pose a significant budgetary impact. The Department continues to have concerns about the safety of the facility with the structures located in the surcharge space. Separately, section 503(d)(5)(C) places responsibility for administrative costs to the subject lands with Carbon County; BOR would implement this provision under the terms of a mutual agreement with the county. The Department continues to have concerns with the trust fund as indicated in earlier testimony, and we look forward to working with the Subcommittee to further refine that provision.

Title VI of Division B would transfer 20 parcels of public land – encompassing approximately 18,000 acres – to various State and local governmental entities for a variety of purposes. As discussed above, the Department has previously supported legislated, no-cost public purpose conveyances if they meet standards under the R&PP Act and are determined to be appropriate for transfer out of Federal ownership. While many of these parcels may be appropriate for transfer if additional conditions are satisfied, others may not be for various reasons, including the presence of significant natural and cultural resources, lack of a well-defined public purpose, acreage inappropriate for the intended use, conflicts with wildernesses proposed by Title I of Division A, and conflicts with current uses such as recreation or mineral development. In addition, numerous parcels are encumbered by withdrawals for public water reserves, water supply, and power site reserves. The Department appreciates the sponsors' work to address concerns with other parcels proposed for transfer in earlier public discussion drafts, including the Sand Flats, Fantasy Canyon, and Dugout Ranch areas. The Department would like to work with the sponsors on additional amendments, boundary adjustments for manageability and protection of sensitive resources, time frames, mapping requirements, language ensuring consistency with the R&PP Act and NEPA, including the addition of standard reversionary clause provisions.



Title VII of Division B would require the Secretary to dispose of approximately 5,400 acres of BLM-managed lands, subject to valid existing rights, within two years of enactment. While sale of some of these parcels may be appropriate if undertaken consistent with section 203 of FLPMA (including environmental review, public participation, and appraisals), other parcels should remain in Federal ownership. We encourage the sponsors to consider an approach for land disposals similar to those outlined in the White Pine County Conservation, Recreation, and Development Act of 2006 (Public Law 109-432) and the Owyhee Public Land Management provisions of Public Law 111-11, and we would like to work with the sponsors on time frames and language ensuring consistency with FLPMA and NEPA, should disposal of some of these parcels be appropriate and consistent with the purposes of FLPMA.

### ***Recreation & Trails***

Title VIII of Division B would designate 13 new recreation zones on approximately 414,500 acres of BLM-managed public lands. The Department notes that the BLM already manages all or major portions of the proposed zones as either Special Recreation Management Areas (SRMAs) or open OHV areas, which were established in the relevant land use plan through a public process. It is unclear how the designation of the proposed zones would differ from the existing administrative designations. Further discussion would be necessary to understand the purpose and need for the proposed zones.

Additionally, Section 815 of this title would designate the Hole-in-the-Rock Trail as a National Historic Trail under the National Trails System Act. This trail would traverse approximately 120 miles of BLM and NPS-managed lands. While the Department supports the designation of this trail as a National Historic Trail, we note that the route depicted on the legislative map accompanying the bill is very general. We would like to work with the sponsors to prepare an updated map depicting the exact location of the trail. Moreover, we are extremely concerned that portions of this trail, which would be designated to “promote motorized and non-motorized uses,” would bisect the proposed Cedar Mesa Wilderness. The Department strongly opposes such a provision on motorized and mechanized use within wilderness as it is counter to the purposes for which wilderness areas were established, and we would like to work with the sponsors and Subcommittee on additional amendments, including boundary adjustments for clarity and language ensuring consistency with the National Trails System Act.

Title VIII of Division B includes language regarding Recapture Canyon (section 816) and the Big Burrito Non-Motorized Trail (section 817). Section 816 would approve San Juan County’s application for a FLPMA Title V right-of-way in Recapture Canyon and outline the purposes for this right-of-way. The BLM is currently going through a public process to evaluate potential trails and routes through this area of rich archaeological treasures that was home to Ancestral Puebloans. A draft environmental assessment for these potential trails and routes was released on September 9, 2016. The Department opposes this section. Section 817 exempts the proposed 9.3-mile Big Burrito Non-Motorized Trail from administrative or judicial review, presumably in perpetuity. The Department notes that the BLM established this trail through a public process and that it is in use today; the purpose of this language is unclear and cannot be supported in its current form.

Title IX of Division B would establish the Red Rock Country Off-Highway Vehicle (OHV) Trail, a 90-mile motorized recreation trail in Grand County, Utah. The Department has supported similar efforts in the past and, with some alterations, could support this effort.

### ***Tribal Mineral Transfer***

Title X of Division B would transfer minerals beneath a portion of the Uintah and Ouray Indian Reservation to the Ute Tribe and would direct that all split estate lands and minerals that are currently managed by a Federal agency be held in trust for the Tribe. This title also transfers the Federal minerals beneath a portion of the Navajo Nation to the Utah Navajo Trust Fund and modifies the royalty payment due to the State of Utah. The Department notes that the intent of the provisions in this title is unclear, and we would like to work with the sponsors and Subcommittee to get a better understanding of the purpose and vision for this title.

### ***Energy Permitting & Development***

The Department oversees a robust oil and gas development program on Federal lands in Utah, and we are proud of the BLM's safe and effective management of this important energy source. As of the end of FY 2015, BLM Utah managed nearly 9,000 wells on over 1.1 million acres that are currently producing oil and gas resources in the state. In FY 2015 on BLM-managed lands in Utah, the agency approved three times more drilling permits (847) than were actually drilled (218). As of the end of FY 2015, 2000 drilling permits are ready for use without any further action by the BLM. To date in FY 2016, 243 applications for permit to drill were approved, but only 14 were drilled. In light of this strong performance and the agency's long history of successful management of mineral resources, the Department strongly opposes Title XI of Division B, which authorizes the State of Utah to take over the permitting processes, regulatory requirements, and development of all energy sources on Federal lands within Uintah, Carbon, Emery, Grand, Duchesne, and San Juan Counties, Utah. This title is also contrary to the BLM's multiple use and sustained yield mission and ignores critical public participation components of the land use planning process, including NEPA and other laws.

### ***Highway Rights-of-Way***

Title XII of Division B would recognize the existence and validity of certain claims of "Class B" road rights-of-way in Uintah, Carbon, Emery, Grand, Duchesne, and San Juan Counties, Utah, that were paved as of January 1, 2016. In addition, the Secretary would be required to convey to the State of Utah easements across Federal lands for the current disturbed widths of these purported roads. This title would also require the Secretary to grant perpetual, no-cost rights-of-way for certain "Class D" roads claimed by Uintah County.

The Department recognizes the enormous scope and importance of this issue both to the people of Utah and to successful public land management. However, we have broad concerns with this title because most, if not all, of the claimed routes are currently subject to active litigation and many are located in sensitive resource areas, including priority sage-grouse habitat and specially designated areas. As a matter of policy, we do not believe that R.S. 2477 rights-of-way asserted by the State should be automatically recognized as valid and existing rights-of-way. In establishing the validity of an R.S. 2477 claim through the judicial process, the burden of proof is on the claimant to demonstrate that they have satisfied the applicable legal standard. In contrast, this title's recognition of all county assertions as valid would reverse existing legal

precedent and would establish perpetual rights over public lands without applying applicable legal tests. Further dialog and coordination are needed before the Department could consider a legislative approach to this complex issue.

### ***Grazing***

The Department strongly opposes Title XIII of Division B, which would require that grazing on all Federal lands in Summit, Duchesne, Uintah, Grand, Emery, Carbon, and San Juan Counties, Utah, continue at current permitted levels. Although this title includes an exception for “extreme range conditions where water and forage are not available,” this language is unclear and could prevent the BLM from addressing deteriorating range conditions. Given the broad scope of this language, the Department may identify additional concerns as we continue our analysis. The Department also does not support managing rangelands according to arbitrary targets of use, which may be inappropriate depending on resource condition. As we have previously testified, the Department instead supports management of rangelands by adjusting targets of use according to resource conditions and through transparent processes, working with the affected permittees and the public under the principles of multiple use and sustained yield. In addition, this title includes language directing that public grazing lands, including areas outside of those otherwise designated by this title, that have “reduced or eliminated grazing shall be reviewed and managed to support grazing at an economically viable level.” The Department strongly opposes this language because it is inconsistent with the BLM’s multiple use and sustained yield mission and ignores critical public participation components of the land use planning process, including FLPMA, NEPA, and other laws. Furthermore, this language could inadvertently undermine the application of the Congressional Grazing Guidelines to the wildernesses proposed under Title I of Division A.

Title XIII of Division B also includes language on bighorn sheep management. This language is contrary to BLM policy guidance on improving coordination and management of bighorn sheep habitat to minimize conflicts with domestic sheep and goats released in March 2016, which reflects extensive public outreach and input, represents a thoughtful management approach, and is aligned with USFS policy and efforts on this issue. The Department opposes this provision because it would limit the BLM’s efforts to sustain and manage bighorn sheep populations on public lands.

### **Division C – Advisory Committee**

H.R. 5780 would establish a “Public Lands Initiative Planning and Implementation Advisory Committee” (PLI Advisory Council) and would require the Secretary to consult and coordinate with this committee in developing management plans for many of the designations proposed in the bill, including NCAs, SMAs, the Jurassic National Monument, and the Hole-in-the-Rock Trail. Under this title, in the event this council’s recommendations on the management plans are not adopted, the Secretary would be required to provide a written explanation to Congress outlining the reasons for rejecting the recommendations.

The Department has supported advisory councils for many NCAs and National Monuments, and we believe that the local input and involvement that they provide is beneficial in the management of public lands. Based on an initial review of the bill, however, it is unclear if this advisory committee would be consistent with both FACA and with other advisory councils for BLM-

managed NCAs and National Monuments. The Department would like to work with the sponsors and the Subcommittee on language ensuring that the PLI Advisory Council meets these elements, which we believe would be essential for it to function effectively. The Department also encourages the sponsors to consider incorporating other advisory councils established by the bill into the PLI Advisory Council – perhaps through subcommittees or other mechanisms – which we believe will be beneficial for the participants and the agencies involved.

### **Division D – Bears Ears National Conservation Area**

The Bears Ears area of southeastern Utah is a unique landscape that combines extraordinary natural features, irreplaceable cultural resources, and areas of great importance to a number of Tribes. It has been proposed for protection by members of Congress, Secretaries of the Interior, State and Tribal leaders, and local conservationists for at least 80 years.

This region contains some of the most significant cultural and natural resources anywhere in the West, with thousands of vulnerable cultural and archaeological sites spanning thousands of years – from the Paleoindian Period 12,000 years ago to Mormon pioneers in the 1800s. Visitors to this remarkable area are rewarded with spectacular canyon vistas surrounded by high mesa tops dotted with juniper trees and pinyon pines. Hikes into the canyons reveal ancient cliff dwellings, kivas, and rock art left by the Ancestral Puebloans more than a thousand years ago.

H.R. 5780 establishes two new NCAs encompassing a total of nearly 1.3 million acres of BLM-, NPS-, and USFS-managed lands in this part of San Juan County – the approximately 858,000-acre Bears Ears NCA and the approximately 434,000-acre Indian Creek NCA. The Bears Ears NCA represents the largest of the proposed NCAs in H.R. 5780. The Department notes that the same unacceptable and nonstandard management language that applies to the other proposed NCAs would also apply to the Bears Ears NCA, including the omission of language that permits only those uses compatible with the conservation purposes for which the area is to be designated. While the bill does provide for additional opportunities for Tribal and other stakeholder input into the management planning process, it does not appear to contain the cooperative management language that the Tribes have requested, and we encourage the sponsors to continue to reach out to the Tribes directly for their input. The Department would like the opportunity to work with the sponsors on the care and protection of the world-class cultural and natural resources of the area and on additional amendments regarding definitions, time frames, management plan development, mapping requirements, and boundary adjustments for manageability.

### **Conclusion**

The Department of the Interior greatly appreciates the sponsors' ambitious effort to address difficult resource and land management issues in eastern Utah and supports many of the goals of H.R. 5780. However, the Department opposes this bill in its current form for the reasons articulated above. The Department has a number of substantive as well as additional modifications to recommend, and we look forward to continuing to work with the sponsor and the Subcommittee to address those issues.