

UTAH SCHOOLS AND LANDS IMPROVEMENT ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

ON

H.R. 677

TO EXCHANGE LANDS WITHIN THE STATE OF UTAH, BETWEEN THE
UNITED STATES, AND THE STATE OF UTAH

HEARING HELD IN WASHINGTON, DC
MAY 4, 1993

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H.R. 677, A BILL TO EXCHANGE LANDS WITH- IN THE STATE OF UTAH, BETWEEN THE UNITED STATES AND THE STATE OF UTAH

TUESDAY, MAY 4, 1993

**HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NA-
TIONAL PARKS, FORESTS, AND PUBLIC LANDS, COMMIT-
TEE ON NATURAL RESOURCES,**

Washington, DC.

The subcommittee met at 10:04 a.m., in room 1324, Longworth House Office Building, the Honorable Bruce F. Vento (chairman of the subcommittee), presiding.

STATEMENT OF CHAIRMAN VENTO

Mr. VENTO. The subcommittee on National Parks, Forests and Public Lands will be in order. I'm pleased to convene this hearing and ask unanimous consent that all statements by members and witnesses, in their entirety, be made part of the record.

Hearing no objection, so ordered.

We're meeting today to consider H.R. 677, the Utah Schools and Lands Improvement Act of 1993.

The measure has been introduced by my good friends and colleagues from Utah, Congressman Hansen and Congresswoman Shepherd.

A similar, but not identical bill, was introduced by a former member, Congressman Owens, last year. A version was also introduced then by Congressman Hansen. The Committee reported and the House passed the Owens bill, on which legislative action was not completed.

I think there is a growing consensus with regard to resolution of this issue, as the members from Utah are aware, because the proposed significant exchange of lands will facilitate both the goals of land management, from the perspective of the national government, and serve the best interests of Utah in terms of producing income, which is obviously desperately needed for the dedicated purpose of education in the state.

[Text of the bill, H.R. 677, follows:]

103D CONGRESS
1ST SESSION

H. R. 677

To exchange lands within the State of Utah, between the United States
and the State of Utah

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1993

Mr. HANSEN (for himself and Ms. SHEPHERD) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To exchange lands within the State of Utah, between the
United States and the State of Utah

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Utah Schools and
5 Lands Improvement Act of 1993".

6 **SEC. 2. UTAH-NAVAJO LAND EXCHANGE.**

7 (a) ADDITIONS TO RESERVATION.—For the purpose
8 of securing in trust for the Navajo Nation certain lands
9 belonging to the State of Utah, which comprise approxi-
10 mately thirty-eight thousand five hundred acres of surface

1 and subsurface estate, and approximately an additional
2 nine thousand five hundred acres of subsurface estate, as
3 generally depicted on the map entitled "Utah-Navajo
4 Land Exchange", dated May 18, 1992, such lands are
5 hereby declared to be part of the Navajo Indian Reserva-
6 tion in the State of Utah effective upon the completion
7 of conveyance from the State of Utah and acceptance of
8 title by the United States.

9 (b) AUTHORIZATION.—The Secretary of the Interior
10 is authorized to acquire through exchange those lands de-
11 scribed in subsection (a) which are owned by the State
12 of Utah, subject to valid existing rights.

13 **SEC. 3. STATE LANDS WITHIN THE GOSHUTE INDIAN RES-**
14 **ERVATION.**

15 (a) ADDITION TO RESERVATION.—For the purpose
16 of securing in trust for the Goshute Indian Tribe certain
17 lands belonging to the State of Utah, which comprise ap-
18 proximately nine hundred eighty acres of surface and sub-
19 surface estate, and an additional four hundred and eighty
20 acres of subsurface estate, as generally depicted on the
21 map entitled "Utah-Goshute Land Exchange", dated May
22 18, 1992, such lands are hereby declared to be part of
23 the Goshute Indian Reservation in the State of Utah effec-
24 tive upon the completion of conveyance from the State of
25 Utah and acceptance of title by the United States.

1 (b) AUTHORIZATION.—The Secretary of the Interior
2 is authorized to acquire through exchange those lands de-
3 scribed in subsection (a) which are owned by the State
4 of Utah, subject to valid existing rights.

5 (c) OTHER LAND.—(1) The following tract of Fed-
6 eral land located in the State of Nevada, comprising ap-
7 proximately five acres more or less, together with all im-
8 provements thereon is hereby declared to be part of the
9 Goshute Indian Reservation, and shall be held in trust for
10 the Goshute Indian Tribe: Township 30 north, range 69
11 east, lots 5, 6, 7, 9, 11, and 14 of section 34.

12 (2) No part of such lands shall be used for gaming
13 or any related purpose.

14 **SEC. 4. IMPLEMENTATION.**

15 The exchanges authorized by sections 2 and 3 of this
16 Act shall be conducted without cost to the Navajo Nation
17 and the Goshute Indian Tribe.

18 **SEC. 5. STATE LANDS WITHIN THE NATIONAL FOREST SYS-**
19 **TEM.**

20 (a) AUTHORIZATION.—The Secretary of Agriculture
21 is authorized to accept on behalf of the United States the
22 school and institutional trust lands owned by the State
23 of Utah within units of the National Forest System, com-
24 prising approximately seventy-six thousand acres as de-

1 picted on a map entitled "Utah Forest Land Exchange",
2 dated May 18, 1992.

3 (b) STATUS.—Any lands acquired by the United
4 States pursuant to this section shall become a part of the
5 national forest within which such lands are located and
6 shall be subject to all the laws and regulations applicable
7 to the National Forest System.

8 **SEC. 6. STATE LANDS WITHIN THE NATIONAL PARK**
9 **SYSTEM.**

10 (a) AUTHORIZATION.—The Secretary of the Interior
11 is hereby authorized to accept on behalf of the United
12 States all school and institutional trust lands owned by
13 the State of Utah located within all units of the National
14 Park System, comprising approximately eighty thousand
15 acres, located within the State of Utah on the date of
16 enactment of this Act.

17 (b) STATUS.—(1) Notwithstanding any other provi-
18 sion of law, all lands of the State of Utah within units
19 of the National Park System that are conveyed to the
20 United States pursuant to this section shall become a part
21 of the appropriate unit of the National Park System, and
22 be subject to all laws and regulations applicable to that
23 unit of the National Park System.

24 (2) The Secretary of the Interior shall, as a part of
25 the exchange process of this Act, compensate the State

1 of Utah for the fair market value of five hundred eighty
2 and sixty-four one-hundredths acres within Capitol Reef
3 National Park that were conveyed by the State of Utah
4 to the United States on July 2, 1971, for which the State
5 has never been compensated. The fair market value of
6 these lands shall be established pursuant to section 8 of
7 this Act.

8 **SEC. 7. OFFER TO STATE.**

9 (a) **SPECIFIC OFFERS.**—Within thirty days after en-
10 actment of this Act, the Secretary of the Interior shall
11 transmit to the State of Utah a list of lands, or interests
12 in lands, within the State of Utah for transfer to the State
13 of Utah in exchange for the State lands and interests de-
14 scribed in sections 2, 3, 5, and 6 of this Act. Such list
15 shall include only the following Federal lands, or interests
16 in lands:

17 (1) Blue Mountain Telecommunications Site,
18 fee estate, approximately six hundred and forty
19 acres.

20 (2) Beaver Mountain Ski Resort Site, fee es-
21 tate, approximately three thousand acres, as gen-
22 erally depicted on the map entitled "Beaver Moun-
23 tain Ski Resort" dated September 16, 1992.

24 (3) The unleased coal located in the Winter
25 Quarters tract.

1 (4) The unleased coal located in the Crandall
2 Canyon tract.

3 (5) All royalties receivable by the United States
4 with respect to coal leases in the Quitcupah (Con-
5 vulsion Canyon) tract.

6 (6) The unleased coal located in the Cotton-
7 wood Canyon tract.

8 (7) The unleased coal located in the Soldier
9 Creek tract.

10 (b) ADDITIONAL OFFERS.—(1) In addition to the
11 lands and interests specified in subsection (a), the Sec-
12 retary shall offer to the State of Utah a portion of the
13 royalties receivable by the United States with respect to
14 Federal geothermal, oil, gas, or other mineral interests in
15 Utah which on December 31, 1992, were under lease and
16 covered by an approved permit to drill or plan of develop-
17 ment and plan of reclamation, were in production, and
18 were not under administrative or judicial appeal.

19 (2) No offer under this subsection shall be for royal-
20 ties aggregating more than 50 per centum of the total ap-
21 praised value of the State lands described in sections 2,
22 3, 5, and 6.

23 (3) The Secretary shall make no offer under this sub-
24 section which would enable the State of Utah to receive

1 royalties under this section exceeding \$12,500,000 annu-
2 ally.

3 (4) If the total value of lands and interests therein
4 and royalties offered to the State pursuant to subsections
5 (a) and (b) is less than the total value of the State lands
6 described in sections 2, 3, 5, and 6, the Secretary shall
7 provide the State a list of all public lands in Utah that
8 as of December 31, 1992, the Secretary in Resource Man-
9 agement Plans prepared, pursuant to the Federal Land
10 Policy and Management Act of 1976, had identified as
11 suitable for disposal by exchange or otherwise, and shall
12 offer to transfer to the State any or all of such lands,
13 as selected by the State, in partial exchange for such State
14 lands, to the extent consistent with other applicable laws
15 and regulations.

16 **SEC. 8. APPRAISAL OF LANDS TO BE EXCHANGED.**

17 (a) **EQUAL VALUE.**—All exchanges authorized under
18 this Act shall be for equal value. No later than ninety days
19 after enactment of this Act, the Secretary of the Interior,
20 the Secretary of Agriculture, and the Governor of the
21 State of Utah shall provide for an appraisal of the lands
22 or interests therein involved in the exchanges authorized
23 by this Act. A detailed appraisal report shall utilize nation-
24 ally recognized appraisal standards including, to the ex-

1 tent appropriate, the Uniform Appraisal Standards for
2 Federal Land Acquisition.

3 (b) DEADLINE AND DISPUTE RESOLUTION.—(1) If
4 after two years from the date of enactment of this Act,
5 the parties have not agreed upon the final terms of some
6 or all of the exchanges authorized by this Act, including
7 the value of the lands involved in some or all of such ex-
8 changes, notwithstanding any other provisions of law, the
9 United States District Court for the District of Utah,
10 Central Division, shall have jurisdiction to hear, deter-
11 mine, and render judgment on the value of any and all
12 lands, or interests therein, involved in the exchange.

13 (2) Any action provided for in this subsection can be
14 filed with the court no sooner than two years and no later
15 than five years after the date of enactment of this Act.
16 Any decision of a district court under this Act may be
17 appealed in accordance with the applicable laws and rules.

18 (c) ADJUSTMENT.—If the State shares revenue from
19 the selected Federal properties the value of such prop-
20 erties shall be the value otherwise established under this
21 section, less the percentage which represents the Federal
22 revenue sharing obligation, but such adjustment shall not
23 be considered as reflecting a property right of the State
24 of Utah.

1 (d) INTEREST.—Any royalty offer by the Secretary
2 pursuant to subsection 7(b) shall be adjusted to reflect
3 net present value as of the effective date of the exchange.
4 The State shall be entitled to receive a reasonable rate
5 of interest at a rate equivalent to a five-year treasury note
6 on the balance of the value owed by the United States
7 from the effective date of the exchange until full value is
8 received by the State and mineral rights revert to the
9 United States as prescribed by subsection 9(a)(3).

10 **SEC. 9. TRANSFER OF TITLE.**

11 (a) TERMS.—(1) The State of Utah shall be entitled
12 to receive so much of those lands or interests in lands and
13 additional royalties described in section 7 that are offered
14 by the Secretary of the Interior and accepted by the State
15 as are equal in value to the State lands and interests de-
16 scribed in sections 2, 3, 5, and 6.

17 (2) For those properties where fee simple title is to
18 be conveyed to the State of Utah, the Secretary of the
19 Interior shall convey, subject to valid existing rights, all
20 right, title, and interest, subject to the provisions of sub-
21 section (b). For those properties where less than fee simple
22 is to be conveyed to the State of Utah, the Secretary shall
23 reserve to the United States all remaining right, title, and
24 interest of the United States.

1 (3) All right, title, and interest in any mineral rights
2 described in section 7 that are conveyed to the State of
3 Utah pursuant to this Act shall revert to the United States
4 upon removal of minerals equal in value to the value at-
5 tributed to such rights in connection with an exchange
6 under this Act.

7 (4) If the State of Utah accepts the offers provided
8 for in this Act, the State shall convey to the United States,
9 subject to valid existing rights, all right, title, and interest
10 of the State to all school and institutional trust lands de-
11 scribed in sections 2, 3, 5, and 6 of this Act. Except as
12 provided in section 7(b), conveyance of all lands or inter-
13 ests in lands shall take place within sixty days following
14 agreement by the Secretary of the Interior and the Gov-
15 ernor of the State of Utah, or entry of an appropriate
16 order of judgment by the district court.

17 (b) INSPECTIONS.—Both parties shall inspect all per-
18 tinent records and shall conduct a physical inspection of
19 the lands to be exchanged pursuant to this Act for the
20 presence of any hazardous materials as presently defined
21 by applicable law. The results of those inspections shall
22 be made available to the parties. Responsibility for costs
23 of remedial action related to materials identified by such
24 inspections shall be borne by those entities responsible
25 under existing law.

1 (c) CONDITIONS.—(1) With respect to the lands and
2 interests described in section 7, enactment of this Act
3 shall be construed as satisfying the provisions of section
4 206(a) of the Federal Land Policy and Management Act
5 of 1976 requiring that exchanges of lands be in the public
6 interest.

7 (2) Development of any mineral interest transferred
8 to the State of Utah pursuant to this Act shall be subject
9 to all laws, rules, and regulations applicable to develop-
10 ment of non-Federal mineral interests, including, where
11 appropriate, laws, rules, and regulations applicable to such
12 development within national forests.

13 **SEC. 10. LEGAL DESCRIPTIONS.**

14 (a) IN GENERAL.—As soon as practicable after en-
15 actment, a map and legal description of the lands added
16 to the Navajo and Goshute Indian Reservations and all
17 lands exchanged under this Act shall be filed by the appro-
18 priate Secretary with the Committee on Natural Resources
19 of the House of Representatives and the Committee on
20 Energy and Natural Resources of the Senate, and each
21 such map and description shall have the same force and
22 effect as if included in this Act, except that the appro-
23 priate Secretary may correct clerical and typographical er-
24 rors in each such legal description and map. Each such
25 map and legal description shall be on file and available

1 for public inspection in the offices of the Secretary of Agri-
2 culture and the Secretary of the Interior and the Utah
3 offices of the appropriate agencies of the Department of
4 the Interior and Department of Agriculture.

5 (b) PILOT.—Section 6902(b) of title 31, United
6 States Code, is amended by striking “acquisition.” and in-
7 serting in lieu thereof “acquisition, nor does this sub-
8 section apply to payments for lands in Utah acquired by
9 the United States if at the time of such acquisition units,
10 under applicable State law, were entitled to receive pay-
11 ments from the State for such lands, but in such case no
12 payment under this chapter with respect to such acquired
13 lands shall exceed the payment that would have been made
14 under State law if such lands had not been acquired.”.

15 (c) INTENT.—The lands and interests described in
16 section 7 are an offer related only to the State lands and
17 interests described in this Act, and nothing in this Act
18 shall be construed as precluding conveyance of other lands
19 or interests to the State of Utah pursuant to other ex-
20 changes under applicable existing law or subsequent Act
21 of Congress. It is the intent of Congress that the State
22 should establish a funding mechanism, or some other
23 mechanism, to assure that counties within the State are
24 treated equitably as a result of this exchange.

1 (d) COSTS.—The United States and the State of
2 Utah shall each bear its own respective costs incurred in
3 the implementation of this Act.

4 (e) DEFINITION.—As used in this Act, the term
5 “school and institutional trust lands” means those prop-
6 erties granted by the United States in the Utah Enabling
7 Act to the State of Utah in trust and other lands which
8 under State law must be managed for the benefit of the
9 public school system or the institutions of the State which
10 are designated by the Utah Enabling Act.

11 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums
13 as are necessary to carry out this Act.

○

Mr. VENTO. I will dispense with the further reading of my statement, except to note that former Governor, Scott Matheson had laid much of the groundwork, I think, with Project Bold, and we in fact here had quite a history on this issue.

The subcommittee was in Utah to conduct oversight hearings during the late 1980s on the subject; it's been a lot of work and a lot of compromise.

Obviously we hope that this attitude of seeking a solution and working towards resolution of outstanding issues will continue. I do feel somewhat confident that that can be achieved.

Let me dispense, as I said, with further comments, and yield to my colleague from Utah, the ranking member, Mr. Hansen.

Jim.

[Prepared statement of Chairman Vento follows:]

OPENING STATEMENT OF CONGRESSMAN BRUCE F. VENTO, HEARING ON H.R. 677,
UTAH SCHOOL LANDS EXCHANGE, MAY 4, 1993

The subcommittee on National Parks, Forests, and Public Lands will come to order. As members have been notified, we are meeting this morning for a hearing on H.R. 677, the "Utah Schools and Lands Improvement Act of 1993".

This bill, introduced by our colleagues from Utah, Mr. Hansen and Mrs. Shepherd, is similar but not identical to a bill introduced by our former colleague from Utah, Mr. Owens, that the committee reported and the house passed last year but on which legislative action was not completed. It provides for a very large-scale exchange of lands and interests between the United States and the State of Utah.

In fact, under the bill, the State would transfer to the United States all the State's inholdings in National Park System units and almost all its inholdings within the National Forests, as well as inholdings in two Indian reservations. In return, the State would be entitled to receive an equal value of specified lands and money.

I think all who are familiar with the current pattern of land ownership in Utah, as in other Western States, would agree that it leaves much to be desired. More than nine million acres of the public domain in Utah were granted to railroads and to the State of Utah at the time of its admission to the Union.

These grants were intended to promote economic development and, through the largest of the several grants to the State, to benefit Utah's public schools.

Unfortunately, because the grants were based on the arbitrary straight lines of surveyors rather than on topography or the characteristics of the land, the result has been to fragment land ownership patterns in ways that present difficult problems for all concerned, especially for those responsible for managing the lands held by the State and National Governments.

For more than a decade, there have been proposals for broadscale adjustment of the land-ownership pattern in Utah through the exchange of State lands for lands remaining in National ownership.

Former Governor Scott Matheson was a leader in developing one such proposal, known as "project bold," that would have been accomplished through legislation, but no such legislation was enacted.

After that, the State and national administrations indicated they would attempt to carry out a program of administrative exchanges to achieve similar goals. However, that attempt came to a dead end because it proved impossible to reach agreement on how to assure that each side would receive the proper value of the lands involved in the exchanges.

The bill before us today, like the House-passed bill of last year, would resolve that by providing that disputes over valuation would be settled in Federal court.

While we will carefully review the differences between H.R. 677 and the bill that the House passed last year, I continue to believe that completion of the exchanges provided for in this bill would be most desirable for both the State of Utah and the National Government, and I look forward to working with its sponsors to facilitate the completion of this long-standing objective in a fair and reasonable manner.

A copy of the bill and background information about it are before each member, so I will dispense with further description of it at this time, and will recognize other Members who may wish to make opening remarks before we hear from our witnesses.

The gentleman from Utah.

STATEMENT OF JAMES V. HANSEN

Mr. HANSEN. Thank you, Mr. Chairman.

It's a real privilege to be here with you today, and I sincerely want to thank you for having the hearings on this particular bill that we've been working on for some time.

I welcome our two Senators, Senator Hatch, Senator Bennett, our colleague, Bill Orton. Myself and Congresswoman Shepherd have introduced this piece of legislation.

I welcome our Attorney General Jan Graham, and many distinguished people from the State of Utah. We're grateful that they're here with us today on what we consider an extremely important piece of legislation.

I remember years ago in the state legislature, when I was Speaker of the Utah House, working with then-Governor Scott Matheson, who really pioneered some great ideas, and probably the term, Project Bold, is very fitting because it was very bold.

And I still remember then-Chairman Mo Udall putting his arm around me and saying, maybe we're going too far too fast on this one, because it's going to affect all of the western states.

But this one, however, is kind of a step into this, and I think it is extremely important for education and some of the things we're doing in the State of Utah.

Mr. Chairman, today on H.R. 677, a bill to exchange lands between the State of Utah and the Federal Government, the Chairman's continued assistance with this bill is truly greatly appreciated.

In January, along with Representative Karen Shepherd, I introduced the Utah Schools and Lands Improvement Act of 1993. Companion legislation was introduced in the Senate by our two Senators.

This is the bill that we talked about that former Governor of the State, Norm Bangerter and the Utah State Land Board brought to the Utah Congressional Delegation this year, and it is supported this year by Governor Mike Leavitt.

I would like to thank the former governor, and Governor Leavitt for the support and leadership on this legislation.

A similar version of this bill passed the House last year. I supported the modifications made to the House bill in the Senate. The modified bill passed the Senate, but due to the last minute legislative maneuvering, the bill failed to gain final passage.

Before us is the Senate-passed bill that is intended to provide for the education needs in Utah.

As with all compromised pieces of legislation, it is not perfect, and we all realize that. But the education interests in Utah are benefitted by this bill.

Royalties generated from activities conducted on the exchanged land will provide important revenues for the education of Utah's children, of which we have many.

This is important legislation to Utah schools, and equally important to the improved management of the nation's forests and parks within Utah borders.

I know that all concerned parties are interested in final passage of this bill.

I welcome all of you here and thank you for coming.

And, Mr. Chairman, I'm one of the questioners on the bill on House Armed Services on Gays, and it is really creating a lot of attention.

Mr. VENTO. I think you just ought to stay here with us. [Laughter.]

Mr. HANSEN. I probably think that's the best counsel I've had for months.

Mr. VENTO. Due to the importance of this issue.

Mr. HANSEN. Thank you. And if I drop out, you'll know the reason. Thank you very much.

Mr. VENTO. Well I understand, and the gentleman has significant responsibilities on the Armed Services Committee.

I have the same dilemma once in a while, but I don't envy you this task this morning. It's a tough issue. And I appreciate his work on it. I think it'll be helpful to finally resolving it. And we'll understand if you have to leave.

Let me now recognize our new colleague, Congresswoman Karen Shepherd.

Ms. Shepherd?

STATEMENT OF HON. KAREN SHEPHERD

Ms. SHEPHERD. Thank you, Mr. Chairman. I'm very appreciative of having the opportunity to talk here today on the Utah Schools and Lands Improvement Act of 1993.

It's a tremendous honor for me to be the cosponsor of this bill with Representative Hansen.

It's delightful to have Senators Bennett and Hatch here, and Representative Bill Orton.

And it is a particular delight to welcome Jan Graham, because Jan and I have been working together for the last 15, 20 years on other projects. And the fact that she's here as Attorney General, and I'm here on this Committee, is something which, at this moment, strikes me as a very astonishing fact.

Anyway, thank you all.

H.R. 677 is a carefully crafted compromise that is vigorously supported by a broad coalition of agencies and interests, including the National Park Service, the U.S. Forest Service, the Bureau of Land Management, the State of Utah, Utah's educational community, Utah's environmental communities.

There's no way to overstate the degree of cooperation that has gone into this bill, and the willingness of people to compromise on their interests in order to come out with the best possible outcome for the State of Utah.

All interests have had to make substantial sacrifices to make this resolution possible. In this day and age, substantial sacrifices are hard to extract from people fighting for their own interests. But I believe we have provided a model for the country in the way we have carried for the negotiations on this bill.

If enacted, it will resolve a long-standing land-use conflict in a way that significantly enhances the public interest in both environmental protection and public school funding.

HR 677 is fair to both the State and the nation. The key elements of the compromise embodied in this legislation are, first, certainty that the assets acquired by the State will not be in environ-

mentally sensitive areas, and second, certainty that those assets will produce a fair return for the State School Trust Fund.

This bill would remove 800,000 acres of state inholdings from Arches National Park, Capitol Reef National Park, Glen Canyon National Recreation Area, and Dinosaur National Monument. The Escalante Canyons, Orange Cliffs, Waterpocket Fold, and other spectacular slickrock wilderness areas would be protected.

The park inholdings must be acquired to prevent inappropriate commercial or industrial development within them and within our National Parks.

The state-owned parcels within the National Forests also need protection, as do the Navaho and Goshute Indian Reservation inholdings, which contain many sites of particular religious significance to Native Americans.

Most of all, precious resources which are not well beyond the reach of Utah's school children, will finally be put to use for the purpose that they were originally intended.

We are already last among the fifty states in per capita student funding, and we are last, unfortunately, as recipients of federal funds per capita.

But Utah is first in the percentage of its budget spent on education. We care the most, we try the hardest, and Utah's school children still need a lot of help.

With this bill, 200,000 acres of trust lands will be exchanged for productive assets that can help meet Utah's most critical educational needs. With this bill, the Federal Government will finally have met its obligation, under the Utah Enabling Act, to allow trust lands to be used for the economic benefit of education.

H.R. 677 establishes an impressive model for the type of leadership, trust, and cooperation needed to resolve other land use disputes in Utah. This compromise would not have been achieved without the indispensable efforts and guidance of many of Utah's leaders, including former Governor Norm Bangerter, who recognized the need to foster trust and address the legitimate concerns of all interests; current Governor Mike Leavitt, who has chosen to support this approach and supports it strongly; former Congressman Wayne Owens, who put his heart into achieving final passage of this bill in the waning days of the 102nd Congress; and also the late Governor Scott Matheson for first proposing the legislative resolution of the state inholding problem with his Project Bold proposal.

Thank you again, Mr. Chairman, for holding this hearing, and for your assistance in advancing this legislation over the past year.

I ask you for continued help in enacting H.R. 677, and in fulfilling the promise that this legislation holds for Utah's school children and for the nation.

Mr. VENTO. Thank you, Ms. Shepherd.

Congressman Duncan, we're pleased to note your presence.

Did you have an opening comment this morning?

Mr. DUNCAN. No, I don't, Mr. Chairman.

Mr. VENTO. Thank you.

PANEL CONSISTING OF HON. ORRIN G. HATCH, A U.S. SENATOR IN CONGRESS FROM THE STATE OF UTAH; HON. ROBERT F. BENNETT, A U.S. SENATOR IN CONGRESS FROM THE STATE OF UTAH; AND HON. WILLIAM H. ORTON, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. VENTO. It is, I think, indicative of the support and interest in the bill that we have the entire Utah delegation here this morning. We will recognize the Senators first, if that is all right with the gentleman from Utah, our friend and colleague.

Senator Hatch, why don't you proceed with your statement? It's been made part of the record, so feel free to summarize.

STATEMENT OF HON. ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

We are very appreciative of the opportunity to comment on this bill, which has been so adequately described by both of our colleagues who are sitting with you on this Committee.

As you know, the substance of this bill is identical to that of S.184, which my colleague, Senator Bennett, and I have offered this year.

The bill is also supported, as Congresswoman Shepherd has said, by the Utah State Governor, Mike Leavitt, our State's Parent-Teacher Association, the Utah State Lands Board, the Utah State Office of Education, several environmental groups including the Sierra Club, the Wilderness Society, and the Utah Wildlife Leadership Coalition, and many other Utahans interested in education and in furthering Utah's economic viability and vitality.

In addition, one of Salt Lake's two daily newspapers, the *Deseret News*, has published an editorial in support of this legislation.

I would ask unanimous consent that all of these be placed in the record.

[EDITOR'S NOTE.—See appendix.]

Mr. VENTO. Yes, without objection, so ordered.

Senator HATCH. Thank you, Mr. Chairman.

Now I don't want to take a lot of the subcommittee's time, and I believe it will be critical that you listen to other Utah witnesses who are scheduled here to speak, including our Attorney General.

Basically, this legislation will effectuate a long-awaited and strongly desired land exchange between the State of Utah and the United States Government. At the time of Utah's statehood in 1896, Congress dedicated one-ninth of Utah's total acreage "for the support of the common schools."

Now the revenues generated from these lands, also called inholdings, would be deposited in a permanent school trust fund. The interest earnings would then flow annually to the state's education budget.

However, the state lands generated less than 2 percent of Utah's school budget in 1992, and the state's permanent school trust fund contained approximately \$60 million. The state with the next smallest trust fund is Colorado with \$200 million, and a close neighbor, New Mexico, has a fund totally \$2.5 billion. So, as you can see, Utah's lagging way behind.

Mr. Chairman, my colleagues, Representatives Hansen and Shepherd, have already noted that Utah spends more on education

as a percent of its total budget than any other state in the nation. The failure of our trust lands to produce substantial income is a severe hindrance to the educational reforms and opportunities for all of our Utah children.

In short, the effect of this legislation will be to exchange lands located within National Parks, National Forests, and the Navajo and Goshute Indian reservations for Federal lands or interest in certain Federal lands, which are currently producing a revenue stream or royalty.

The total amount to be received by Utah will be determined once the state's lands are appraised.

In addition, as negotiated last year, we are including a provision which allows the Federal Government to offer the state a portion of the royalties now received by the United States from certain Federal geothermal, oil, gas or other mineral interests.

Utah's state inholdings are not producing the revenue Congress originally envisioned because the state lacks direct management of its own lands. Utah's land status represents and resembles, as you can see on this map, a checkerboard, with many different owners having many different goals. This arrangement forces the state to be subservient to Federal managers who can and do sometimes block efforts by the state to develop inholdings, even though the state—in essence, the children of Utah—owns the land.

Mr. Chairman, the legislation before you seeks a value-for-value exchange, so that the Federal Government, the State of Utah, and its school children are all treated fairly.

This bill is identical, as Congresswoman Shepherd and Congressman Hansen have said, to legislation passed by the Senate during the 102d Congress, which of course failed to pass the House in the sudden adjournment difficulties of the last days.

I would be the first to state that this bill is not perfect in every way. Each of us could probably find something in it that could be changed to make it better.

I know I would have liked to have addressed some of the concerns that have been raised by some of our rural counties. And we have in some ways, but not in all ways.

But the Governor's State Land Inholdings Steering Committee, which crafted the bill, achieved a delicate balance of support from the large majority of its members, that included business, education, government and environmental interests.

This balance will be skewed if substantive changes are made in the legislation.

I believe that H.R. 677 is a sensible approach to resolving our inholdings problem and deserves adoption fully intact by this subcommittee.

Mr. Chairman, Utah and its school districts are struggling with the financial burden of educating the growing population of school-age children in Utah. The citizens of Utah are not asking for a handout or for something to which they are not entitled.

We are asking Congress, and in particular this Committee, to help us remedy a situation to which it is a party, which it helped to create in 1896. Today, we're asking the Congress to be part of the solution.

And we can tell you that Utah literally does a better job with the monies that it has in education than almost any state in the Union, because we have more children per teacher per capita, and we spend more money per child per capita than any state in the Union.

And yet we have all of these problems because, in part, we do not have the trust funds working in our best interests as they really should be.

So, finally, I just want to thank you personally for the interest that you've shown, for holding this hearing this day, and for helping us in getting this through. We appreciate it, and we'll not forget it.

Mr. VENTO. Thank you, Senator Hatch.

I'm pleased to welcome your colleague, junior colleague. There's sort of a mismatch here in terms of appearance and experience. [Laughter.]

But I am pleased to welcome him, and pleased to get to know him better, Senator Bennett.

Please proceed with your statement.

STATEMENT OF HON. ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I won't repeat the things that have been said.

One of the advantages of being junior Senator is that you can let your senior make the case, and the junior Senator can come along and simply say, amen.

The comment that I would make, however, in addition to all of the details and specifics that you've received, is to point out that when Utah became a state, roughly a hundred years ago, the decision was made to create school trust lands. However, this was done without respect either to economic or environmental considerations. This created a crazy quilt pattern of school lands scattered throughout the state.

And in the subsequent hundred years, we have discovered a number of environmental considerations, creating National Parks and National Forests that didn't exist then.

We've seen an economic pattern develop that could not have been foreseen by the authors of the Enabling Act. So it makes sense for us now, a hundred years later, to step in with the understanding of current economic patterns and current environmental patterns, and sort this out in a manner that recognizes present reality.

Utah, as had been said ad nauseam, is owned two-thirds by the Federal Government, and we cannot make the kinds of private decisions in the state that many, many states are free to make because of private landholdings.

We have to come to the Federal Government and ask for things like this because the Government is overwhelmingly the landlord in most of the state.

So I simply make my statement in support of the comments that have been made by the two members of your Committee, and my senior colleague in the Senate, the Governors of the State, past, present, and presumably future, as it does go back to democratic governors, republican governors, the current republican governor. This is not a partisan issue.

And I would hope that the subcommittee would help us resolve a past circumstance in the light of present reality, with an understanding of those realities. And I'm proud to associate myself with remarks that have been made.

Mr. VENTO. Thank you, Senator Bennett.

Let me then finally call on the last of the Utah delegation, Congressman Bill Orton.

STATEMENT OF HON. WILLIAM H. ORTON

Mr. ORTON. Thank you, Mr. Chairman.

If you hear me sniffing down here, it's not because I'm becoming emotional over this bill. I have a rather bad cold, and I apologize for that.

But I'd like to start out by thanking you, Mr. Chairman, and the Committee for holding hearings on this very critical issue to the people of Utah.

You'll note that I am not a cosponsor of H.R. 677. That does not mean that I do not favor a land exchange. Let me start by expressing my absolute and total support of a land exchange between Utah and the United States Government.

However, I'm not convinced that this legislation is the best that we can do. I am going to be urging the Committee to consider two fairly simple amendments, which I think would perfect the legislation and make it worthy of passage.

I have a rather lengthy statement that I have submitted to you, and ask that it be put in the record.

Mr. VENTO. Yes. And that permission has been granted, so you can feel free to summarize it.

Mr. ORTON. I would like to, at this point, try to just outline for you my basic concerns and what I would urge this Committee to do in perfecting the bill before you.

I have two separate concerns.

One is that the transaction be concluded within a reasonable period of time.

The other has to do with the financial impact of the transaction on the State of Utah, the Federal Government, and the counties and local communities.

Let me start with the first concern, that of closure within a reasonable time period. And to do so, I would refer you to Section 7 of the Act before you, which includes the offers to the state.

The Federal Government, in Section 7, is authorized to make specific offers to the state, which are under subsection (a) of Section 7, which include two tracts of specific land, Blue Mountain Telecommunications and Beaver Mountain Ski Resort.

Those two actual tracts of land or land for land transaction would equal approximately 20 percent of the value of the state inholdings.

These figures aren't exact, they're estimates, because we don't yet know the total value of the inholdings. That will be determined at some point in the future.

So subparagraphs (1) and (2) of Section 7(a) outline the specific land for land exchange.

Then subparagraphs (3) through (7) outline royalties to be received from unleased coal, except for Section 5, which is royalties

on a leased section of coal. The remaining sections 3, 4, 6 and 7, have to do with unleased coal tracts.

And with regard to my first concern, there is no provision in the bill that sets a time period when this would be completed. In other words, the bill says that the Federal Government will offer to the state these interests. However, from the very beginning, myself and former Senator Garn were very concerned about too much reliance on unleased coal as the source of revenues to pay the value of the land.

There are a number of reasons why the coal market may slip, maybe the production would be delayed. The Btu tax that we're considering, that would create a tax on Utah coal estimated at over \$5.00 per ton, could have a significant impact.

And my concern is that the state may be waiting for decades into the future, because these are the only items which the Government is authorized to offer under subsection (a).

To cure that, in the last session, we worked together with the Senate and they adopted subsection (b), which allows the Federal Government to offer to the state other royalties. But again there is no time specific set in there, and my recommendation is to include a provision which would require that on a certain date in the future, if all of the value has not been received by the State of Utah, that we either require the Federal Government to pay the balance owing in cash, or to remove the restrictions of subsection (b) (2) and (3), which limit the royalties from other sources that can be used to pay this value.

I believe that this is a reasonable amendment, and simply identifies a time in the future. I've suggested 10 years from now. If that's not agreeable to the Committee and the delegation, it certainly could be set at a different date. But I believe it would be prudent to include in there a time certain when all of the values will have transferred, and the state school trust will receive the total value of the lands that they transferred away to the Federal Government.

So that is the first amendment that I recommend.

[EDITOR'S NOTE.—See Appendix for Amendment suggested by Representative Orton.]

Also included in that first amendment is an additional clarification point on subsection 7(b).

The limitations on subsection 7(b), particularly subparagraph (2), state that the offer of other royalties shall be for royalties aggregating no more than 50 percent.

I believe the intent was that up to 50 percent, or 50 percent would be offered, and so I would recommend that, rather than the language:

"No offer under this subsection shall be for royalties aggregating more than 50 percent," that we actually say, "Any offer for royalties under subparagraph (1) be equal to 50 percent."

Again, I think that is a perfecting amendment, and I would be happy to explain in greater detail the need for it, if you think it's necessary.

Finally, my additional concern has to do with the economic impact, the financial impact on the State of Utah and the Federal Government as a result of this exchange.

If you follow through what's happening in Section 7, Section 7(a) says there are two specific tracts of land that will transfer from the Federal Government to the State immediately. We will also transfer future royalties from coal production. That's Section 7(a).

Section 7(b) says that up to 50 percent of the value that the Federal Government receives will come from future royalties from other minerals, which include geothermal, oil, gas, hard rock mineral, etcetera. That could be 50 percent.

Now let's assume, for a moment, that the value of the state lands are \$200 million, simply for example purposes. Under that scenario, approximately \$20 million of the value of the state trust lands being transferred is received back in land for land exchange.

Those are the two sites specified in 7(a).

Approximately 50 percent of the value can come from mineral leases or royalties from mineral leases, from hard rock, oil and gas, etcetera.

That would be approximately \$100 million, which cannot be received in excess of \$12.5 million per year.

Third, the balance would then come from future royalties from coal, mostly unleased coal. That would be approximately 40 percent or approximately \$80 million.

Again, my concern is the impact of this transaction on the Federal Government, the state, and local communities.

With regard to the Federal Government, it is clear that the Federal Government, if they did not acquire the state lands, would be receiving roughly, in this estimation, \$180 million more in royalties than they will receive through this transaction, because the payment for the value of the lands is in future royalties which the Federal Government will give to the state.

This appears to be nothing more than an installment purchase of these state land inholdings, with a price to be determined by appraisal or court determination, but no set price being established, no time period for payment, no enforcement mechanism to guarantee or require payment, and no due date on which the total payment must be made.

And the State of Utah waits in the future for development of a substantial amount of unleased coal reserves.

And the impact to the state, let me indicate to you, is that if the State of Utah received all of the payment from royalties that are currently under lease, the payment that comes to the state from the Federal Government comes out of the state's 50 percent share of royalties.

If, and I see heads nodding no, and I may be—

Mr. VENTO. I just said to Congressman Hansen, I said, how'd you like to have a loan from Orton? [Laughter.]

Mr. ORTON. The concern I have is that by transferring unleased coal reserves from the Federal Government to the state, 100 percent of the unleased coal reserve or the royalty from unleased coal offsets the value of the land transferred to the Federal Government.

If they receive it through leased coal reserves, only 50 percent of the royalty offsets the value transferred to the state, or from the state to the Federal Government, because 50 percent of the royalty

on leased reserves already belongs to the state through the royalty share.

And so the state stands to lose, in my example, up to \$40 million of revenues from royalties on unleased coal reserves.

That's one concern.

The other concern I've already mentioned, has to do with the cost to the Federal Government. The Federal Government is essentially paying \$180 million in lease revenues for these inholdings. And finally the impact to local governments which, in many counties in my district, in excess of 90 percent of the land in the county is owned by the Federal and State Government. That places severe restrictions on economic development, on the tax base necessary to provide services within the county.

And so my second amendment that I would recommend you consider would be a no net increase amendment.

In other words, the bill would say that, as a result of this land exchange, the Federal Government will not increase its ownership of land in the State of Utah.

Many people suggest that that is a killer amendment, which in fact goes contrary to the intent of FLPMA, and the intent of the exchange.

I disagree. In fact, I think just the opposite is true.

Under FLPMA, it is clear what could happen is that the State of Utah could transfer all of its inholdings to the Federal Government and receive, in exchange, Federal lands designated, under FLPMA, suitable for disposition.

The state then could take those former Federal lands, convert them to cash or an income stream by selling them, and thereby generate a cash flow to the State of Utah.

For a variety of reasons, which I won't outline here today, the State and Federal Government have not been able to agree on a land-for-land equal exchange.

Therefore, my recommendation that the Federal Government sell, or offer to the public for sale, an equivalent amount of Federal lands in Utah, to equal the amount that they are receiving through the exchange, simply accomplishes the same result that could be accomplished if the Federal Government transferred land to the state and the state sold the land.

In this instance, rather than land, the state is requesting a cash flow from the Federal Government by selling the additional Federal lands and the Federal Government will receive a cash flow which will offset the royalties that are to be paid by the Federal Government under this agreement.

And so it is a win-win-win situation. The Federal Government has a budget-neutral-exchange, a revenue neutral exchange. The state receives its cash flow that it desires. And there are additional lands placed into private ownership for future development, economic development, etcetera, which goes onto the county tax rolls, which produces income and tax from income produced thereon.

I believe that this perfecting amendment would in fact achieve the goals and desires, not only of the State of Utah, but of the Federal Government.

So those are the two amendments that I would urge the Committee to consider.

I've outlined it in greater detail and probably more coherently in my statement.

And I would be happy to answer any questions.

[Prepared statement of Mr. Orton follows:]

STATEMENT

of

REP. WILLIAM H. ORTON

Subcommittee on National Parks, Forests and Public Lands

May 4, 1993

MR. CHAIRMAN, let me begin by expressing my deepest thanks to you for scheduling this hearing on an issue of critical importance to the State of Utah and Utah school children which I represent in this Congress. I would like to start by expressing my absolute and total support for a land exchange between the State of Utah and the United States Government. It is clear that the current situation is intolerable and imposes severe economic hardship on the Utah School Trust which is the beneficial owner of state trust lands held within the borders of national reservations. However, I am not convinced that the bill before you, HR 677, is the best that we can do. I will be recommending that the Committee consider two perfecting amendments which I believe will improve the legislation and make it worthy of adoption.

From the very beginning of last year's efforts to pass this legislation, I have expressed concern over specific provisions of the proposal. I have categorized these concerns into four fundamental issues: 1) Whether the Utah School Trust will actually receive the full value of state trust lands within a time certain. 2) The financial impact on Utah State Treasury (other than proceeds to the school trust). 3) The financial impact on the United States Treasury and the deficit. 4) The financial impact on rural Utah communities and counties.

The first issue can be resolved with an amendment requiring the federal government to pay the State of Utah the outstanding balance on a specific date. The other three issues regarding financial impact on the national, state and local governments can be resolved by an amendment requiring the federal government to sell public lands equivalent to the state lands purchased in this transaction. My concerns and recommended amendments are outlined in detail below:

1) Provide a mechanism to guarantee that the Utah School Trust will actually receive the full value of state trust land inholdings within a time certain. While I have serious questions about whether the true value of the state land inholdings will be obtained, it is not within my jurisdiction to negotiate equal value for equal value.

Rather I am concerned with the mechanism of exchange or sale and the resources from which payment will be made to the school trust. It is clear that only a portion of the proposed transaction will be an actual exchange. Approximately 10% of the value of trust lands will be received through exchange of federal lands. The balance is to be paid in cash from federal royalty income over some unspecified period of time in the future. No

minimum amount is guaranteed to be paid, but once a specified maximum value is paid all interest in subsurface minerals or royalties reverts back to the federal government. It is clear that the proposed transaction is an installment sale with a maximum price set, no minimum price, no guarantee of payment, no time period set for payment, no enforcement mechanism, and Utah State will unconditionally transfer all subject lands at the beginning of the transaction and hope for the best in the future.

From the outset, I objected to the almost total reliance on royalties from unleased coal reserves to provide the revenue to the state school trust. Section 7(a) sets forth a specific list and limits the exchange to "only" those lands or interests in lands. Jake Garn shared my concerns and we worked together to amend the bill to allow Utah to receive up to 50% of the value from other lease royalties, including oil and gas and hard rock minerals. This provision is now in section 7(b) of the legislation, however, very serious defects still remain. The legislation requires the State of Utah to transfer fee title of its trust lands to the United States within 60 days, but there is no time specified when the United States must complete transfer of total value of the trust lands to Utah. In addition, there is no mechanism in the legislation to provide for enforcement of the debt owed by the federal government to the state school trust in the event that the full value of that portion of the exchange concluded under the section 7(a) provision is not realized. Section 7(b)(4) authorizes the United States to offer other lands identified as suitable for disposal to the State of Utah if the total value under sections 7(a) or (b) is less than the total value of State lands, but does not include a time period or any provision for relief in the event that the State does not wish to accept the other lands offered.

For the balance of this testimony, assume the following example for discussion purposes. Under the legislation as now drafted, assuming the value of the school trust land inholdings were \$200 million, [an estimate which has appeared in public news stories] it appears that the following would be the result:

a) 10% of value to be exchanged for specific parcels of land (ie: Blue Mountain transmitter location, Beaver Mountain Ski Resort area, etc.), total value approximately \$20 million. [Section 7(a)(1)&(2)]

b) 50% of value paid in cash (not to exceed \$12.5 million per year) from mineral royalties received by the federal government on existing leases operating under an approved plan of reclamation (ie. oil & gas, hard rock mineral), total value approximately \$100 million. [Section 7(b)]

c) 40% of value paid from future royalties to be received on coal production (one parcel under lease and the remainder from specified unleased coal reserves), total value approximately \$80 million. [Section 7(a)(3)(4)(5)(6)&(7)]

The future market for coal production in Utah is far from certain. There are numerous tracts adjacent to operating coal mines currently under lease which are not being developed. Environmental activists have shown a propensity to appeal the permitting process for new coal leases and production, effectively increasing the costs and delaying production

sometimes indefinitely. The newly proposed BTU tax could impose an additional tax on coal estimated at over \$5.00 per ton, with a predictable impact on market demand.

If the market demand for Utah coal dropped, production slowed, and the land tracts specified in section 7(a) were not leased or placed into production, when would the State of Utah receive the \$80 million royalties from unleased coal and what would be the source of revenue from which the United States would pay the \$80 million? There is no provision in the legislation which requires the United States to provide payment from any other source than the royalties from these specific unleased coal reserves and there is no date upon which such payment must be made to the State of Utah. It would be prudent to provide language within the statute to require the federal government to complete the transaction and transfer funds to the state within a specified period of time. It is not prudent to limit the federal government's source of revenue for payment to royalties from unleased coal reserves.

The failure to provide for a mechanism to guarantee payment to the state within a specified and reasonable time period is, in my view, a serious defect in the proposed legislation. My proposed amendment to this legislation would provide a date certain when the proceeds must be paid to the State of Utah and a mechanism for enforcement. Refer to proposed amendment #1 attached.

2) Avoid negative financial impact upon the Utah State Treasury. If a proper mechanism described above is adopted in the legislation, then it is reasonable to assume that the Utah School Trust will receive the total value agreed upon in exchange for the trust lands. However, under the proposed legislation and assuming the estimated value of trust lands at \$200 million, the State of Utah could lose as much as \$40 million in royalty payments because of the exchange of "unleased coal reserves".

As you are aware, mineral royalties from public lands are divided 50% to the federal government and 50% to the state. If the school trust were to receive royalties from leased coal reserves, the \$80 million the federal government pays for the trust lands would come entirely from the federal government's 50% share of the royalties. The state of Utah would also receive its 50% share of the royalty payments. However, under the terms of the proposed legislation, 100% of the future royalty from "unleased" coal reserves is treated as the federal payment. The State of Utah would not receive its 50% share of future royalties when the coal is leased and under production, and therefore could lose as much as \$40 million in revenue which would otherwise be paid to the general fund of the Utah Treasury. It is interesting to note that once the full value of state lands is paid to Utah, all mineral interests revert back to the United States. Future mineral production after reversion to the United States would again be subject to the 50% state share of mineral royalties. As the bill is now drafted, there is no provision in the legislation which would prevent this loss of royalty income to the state treasury or which would provide an alternate source of replacement income to the State of Utah.

The failure to adjust for the loss of the state share of royalty income or to provide for a future source of revenue to replace lost royalty payments to the state of Utah is, in my view, a serious defect in the proposed legislation. My proposed amendment to this

legislation would require the federal government to dispose of an equivalent amount of public land within the state of Utah as the trust lands acquired through this legislation. These federal lands, once sold to the public, will produce property tax revenue and income tax on income generated thereon to the State of Utah to replace royalties lost in this transaction. Refer to proposed amendment #2 attached.

3) Avoid negative financial impact on the United States Treasury. During this time of budget crisis and exploding federal deficit spending, in my opinion it is improper to increase the federal debt to purchase additional public lands. To curtail federal deficit spending, in 1990 the Congress passed the Budget Enforcement Act which contains a "pay as you go clause". This means that any legislation which is not budget neutral, which spends more money than it offsets in decreased spending or tax increases, is subject to a "point of order" and may not be voted upon in either House of Congress.

Again assuming our above example, of the \$200 million total value of school trust land inholdings acquired by the federal government, the total value of federal land being given in exchange is only 10% or approximately \$20 million. The balance is to be paid by the federal government in cash, 50% from existing lease royalties (approximately \$100 million) and 40% to be paid in cash from future royalties on one coal lease and several unleased parcels of coal reserves (approximately \$80 million). Once the total value of trust lands is paid to Utah, the mineral interests (and therefore royalties) revert to the United States. There is no offsetting income to the federal government. If the federal government did not acquire the Utah trust lands, it would receive and retain mineral royalties of approximately \$180 million. The federal government is purchasing approximately \$180 million of land from the State of Utah. This \$180 million will increase our deficit and become part of our national debt.

Under the Budget Enforcement Act of 1990, in my view, the legislation as drafted would be subject to a point of order on the floor of the House or Senate, and therefore, may not even be eligible for a vote.

The failure to provide for a mechanism to make this legislation budget neutral and avoid a "point of order" against it, is in my view, a serious defect. My proposed amendment to this legislation, as noted above, would require the federal government to sell an equivalent amount of public land within the State of Utah as the trust land purchased by the federal government through this legislation. This amendment will make this legislation budget neutral and will cure the technical defect. Refer to proposed amendment #2 attached.

4) Avoid negative financial impact on rural Utah communities and counties. In many counties of rural Utah, federal and state lands exceed 90% of the county. The payment-in-lieu-of-taxes (PILT) on public lands is inadequate to even cover the cost of services provided by the county on public lands.

The increase of federal ownership of lands within Utah will further exacerbate the situation and have a continued short-term and long-term depressant impact upon the economy of Utah and especially upon rural economies because there is less land available to generate

property taxes and for private ownership and economic development. There is no provision in the legislation, as it is presently drafted, which will offset the economic impact upon the counties resulting from the increase of federal ownership of lands within the counties.

Failure to provide for a mechanism to ameliorate the economic impact upon rural Utah communities and counties is, in my view, a serious defect in the proposed legislation. My proposed amendment, as described above, would require the federal government to dispose of an equivalent amount of public land within the counties of Utah as the trust lands acquired within each county through this legislation. These federal lands, once sold to the public, will produce property tax revenue and allow economic development and jobs within the rural counties of Utah. Refer to proposed amendment #2 attached.

SUMMARY

In my view, the original intent of a land exchange of equal value between Utah State and the United States has been lost in the negotiation process and is not reflected in the proposed legislation. What is set forth in HR 677 is a partial land exchange (approximately 10% of value is land for land), and a sale by Utah to the United States of the balance (approximately 90% of value) for cash to be paid from future royalty income.

The first amendment which I urge you to consider is simple and merely provides a date upon which the entire transaction must be completed, lands transferred, and payments made.

The second amendment which I urge you to consider is also simple and merely prohibits the federal government from increasing its land ownership in Utah. The United States would be required to dispose of an equivalent amount of public lands within Utah as the lands acquired from Utah.

Some may argue that this is a "killer amendment" which goes contrary to the intent of the Federal Land Policy Management Act (FLPMA). In fact, just the opposite is true. It is the policy of the federal government to acquire state land inholdings by "exchange" of other lands identified as suitable for disposition or exchange under FLPMA.

It is clear that the State of Utah could exchange its land inholdings for federal lands and then immediately sell the former federal lands received in the exchange, thereby converting the federal lands into cash or an income stream. However, for a variety of reasons, the State of Utah and the United States have failed to agree upon a land-for-land exchange and the State of Utah has requested cash or an income stream in exchange for its lands. My recommendation for the United States to sell public lands and use the income to pay Utah State for its lands is totally consistent with public policy and statutes and accomplishes the exact same result as if Utah State exchanged land and then converted it into an income stream. However, if Utah State merely sells its lands to the United States, and the United States does not dispose of an equivalent amount of public lands, the final result is much different. The federal deficit is increased, and both the state and local governments are deprived of a source of future revenue.

Mr. VENTO. Fine. Thanks very much, Bill.

For awhile there, I was thinking you were bringing our experience in the Banking Committee over here, but we have to leave our Banking Committee hats behind, and start dealing with the land use questions.

You know these issues and the specifics about Utah, as do the members of the delegation, far better than I.

But I noticed your colleagues, I think they probably would agree with everything that you've said, as I watched them squirm, because they've already evolved to a different position, I think, on these issues.

But I'll let them speak for themselves.

But I understand the effort you're trying to make to deal with the idea of no net increase in national land, but obviously it's been a determination here made, after a lot of agony, I take it. There's obviously a great concern about the significant Federal ownership of land to in fact make the adjustment and accept the cash flow. Most of the lands that would be available for trade simply are not, at least immediately, marketable by the National Government, and I presume that would carry through with the state, and anyway large scale sales could have some impact on the whole real estate market or land values relative to those public domain lands that would be available, because obviously some lands, forests and parks, fish and wildlife areas, obviously Native American Reservations, would not be eligible.

And I think the other issue is that trying to load this will in different ways is already a problem.

I think that trying to balance it off in terms of revenue flow on the basis that has been presented is workable.

I know that the Senators have to get back to the other side to meet their obligations and responsibilities, but I would just point out that we'll continue to need your help, Senator Hatch and Senator Bennett, and Representative Orton, and the other members of the delegation that sit with me on the Committee, in terms of reconciling this with the Budget Act and the House's rules.

As I've noted here, as an example, this bill before us has a provision in it to make an assessment and to pay interest going back to a certain date, at which time a value would be determined.

This is obviously another effort, in your view, to bring about parity. But I think today, moving from a situation where we're static, where there's no income being produced, and obviously when these lands are passed over to the National Government, we can do a lot of things, but we can't change base metal into gold. We can't make those lands begin to produce. And we don't have a revenue flow coming from them immediately.

And so I would hope that we would look at this, if we can't deal with the interest issue, that especially, I think, adds to the problems with the overall PAYGO provisions, and/or scoring provisions of the Budget Act.

But we will consult the Budget Committee. And if anything this year, with my colleague from Minnesota on there, and not necessarily because he's the chairman, they have become very tough in terms of scoring almost any provisions we're putting in authorizing bills.

So I want to work with you so you get the best break that you can with regards to a payoff here, while still being fair to the U.S. taxpayer.

I think it's especially helpful in the bill, although I know more uncertain, to have unleased lands because I think then we can avoid some problems. I think all of us recognize that the second largest flow of income, other than the IRS, in the National Government, is from the production of mineral resources from the National lands.

So it's a big flow of income. And if we can deal with the unleased, then at least we could claim it is new land.

If we're trading lands, which has apparently been the preferred alternative for the past decade, as opposed to cash payments, with the PAYGO limitations, then we can make some sort of argument that we're basically trading, and we're picking up lands that have inherent value that we'll be able to manage and do things with to possibly produce income on the other side.

And I expect some of that may have some mineralization in those areas, or facilitate and reduce administrative costs in terms of doing what we do.

So I think in trying to move ahead here, it's sort of a win-win proposition it's a win for the State of Utah in getting a cash flow out of unleased lands, and we really want that to work. I think it's the intention that it work.

And it's also a win to have a better management of the national lands in Utah, which again will benefit the National Government and the citizens of Utah, in terms of their economic future.

I know it's been a long time coming to this. You didn't need to listen to me reiterate what's been going on, but I wanted you to know I heard what Representative Orton has been saying and others have been saying here this morning, so you know what my principal concerns are, rather than going through back and forth questioning.

Senator Hatch, if you had any comments?

Senator HATCH. No, Mr. Chairman.

We trust in you and the Committee to help us on this problem.

I think all of us, if we had the sole authority to make this bill what we wanted it to be, would change it in some respects.

On the other hand, we've brought together a wide variety of people who really have worked very hard to try and come up with something that will bring everybody together.

We haven't fully succeeded on that, but we've got most everybody.

Mr. VENTO. Well, I think that Congressman Orton's idea of having a date certain would be something we could perhaps work on to try to bring certainty there.

But some of the other issues, frankly I think that are raised in this, really kind of open up the whole process again, and would take us down a different path.

I think you're right to advocate that particular position for Utah, but I think they may not be workable positions with regards to our other realities, Bill. That's my concern.

Mr. ORTON. Mr. Chairman, if I might, I also sit on the Budget Committee, and in looking at this bill, I have significant concerns

about the PAYGO provisions, and whether or not the bill, as drafted, would meet that requirement.

Therefore, my recommendation authorizing the Federal Government to sell the additional public lands does, in fact, generate the revenues necessary to offset the losses through transferring the royalties to the state.

And so I think it is a perfecting amendment that helps us achieve the goal and requirement of the 1990 Budget Act.

I'd be very happy to work with staff.

Mr. VENTO. Well, if you've had that amendment scored by CBO, I would be very much interested in seeing that.

Mr. ORTON. Okay.

Mr. VENTO. I find it difficult sometimes to get them to score things the way I would like them to be—the results I'd like to see come out. Contrary to the views of some about the pliability of the CBO, I find them not easily led.

Mr. Hansen, did you have any questions of your colleagues?

Mr. HANSEN. No. I thank them for their testimony.

I appreciate your comments, Mr. Chairman.

I could agree with many things that my friend from the Third District brought up.

If I may, that's shades of 1981 when we had Scott Mathesen in front of us, and when I want to negotiate a deal, Bill, I want you to do it for me, because you'd get the best. I'm sure of that.

Mr. VENTO. He's tough.

Mr. HANSEN. And I appreciate the comments that you've made.

You know, this is a value-for-value exchange, and there's just some things that you have to work out.

I thank you for holding this, and of course the three witnesses we have here, and I would hope we could reconcile some of these problems that have come up.

But it seems to me we ought to move this bill forward.

Mr. VENTO. Ms. Shepherd, did you have any questions of your colleagues?

Ms. SHEPHERD. No. I'd just like to thank them again for coming, and to say one last time that the people we need to be thinking about first and foremost here are the school children of Utah, and what a difference that will make in the quality of education there.

So that becomes, for me, the primary incentive to compromise and finds ways to accomplish this bill.

Mr. VENTO. Thank you, Karen.

If there are no further comments, I'd thank our colleagues from the Senate and our friend from the House here, Bill Orton. Thank you very much, gentlemen, for your participation, and we look forward to working with you.

I would welcome Congressman Orton or either of the Senators to sit with us, as we hear the other witnesses, if your schedules permit, and if you have the time.

I'll understand obviously if you have other responsibilities.

PANEL CONSISTING OF KEMP CONN, DEPUTY ASSISTANT DIRECTOR FOR LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MATTHEW MILLENBACH, CHIEF OF LANDS, OFFICE OF THE ASSISTANT SECRETARY; AND MARK REIMERS, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. VENTO. Let me ask Mr. Kemp Conn, the Deputy Assistant Director of the BLM, Department of the Interior, and Mark Reimers, the Deputy Chief, Forest Service, to come forward to the witness table.

I think we have received both Mr. Conn's and Mr. Reimers' testimony.

And so, Mr. Conn, let me invite you to present your statement, summarize it, or read the relevant portions.

Mr. CONN. Mr. Chairman, if I may, I'd like to ask permission to invite Matt Millenbach to the table with me.

Mr. VENTO. Yes. Would you repeat his name?

Mr. CONN. Millenbach, Mr. Matt Millenbach. He's our Chief of Lands, and he's currently in the Office of the Assistant Secretary.

Mr. VENTO. Very good.

STATEMENT OF KEMP CONN

Mr. CONN. Mr. Chairman, I appreciate the opportunity to appear here today to discuss H.R. 677, legislation which would be entitled the "Utah Schools and Lands Improvement Act of 1993."

The Administration supports the concept of H.R. 677.

Consolidating the intermingled lands described in the bill will result in better land management by each of the entities involved.

The land inholding problems of the State of Utah are similar to those facing the United States Government, the Goshute Indian Tribe, and the Navajo Nation.

The bill represents the consensus solution developed among many private and public parties that worked together to solve these complicated problems.

The state has a legitimate need and expectations that require our attention and action. The people of Utah deserve to be compensated for the school land sections which are encompassed by the Federal and tribal land, and for which the management, use, and economic development have been curtailed due to such location.

The state is seeking lands or interests in lands from which they can derive revenues to benefit the education of its children, a rationale that fully is consistent with its Statehood Act.

From the Federal perspective, conveyance of the encompassed state lands to the United States will directly benefit the National Park Service, the National Forest Systems, and the Indian Tribe and Nation involved.

The elimination of state inholdings will allow lands to be managed more efficiently and more effectively.

The lands acquired by the United States would become a part of the unit within which they are geographically located. For example, acquired state lands located within the Navajo Indian Reservation in Utah would become a part of the Reservation in trust for the

Navajo Nation. And those lands located within the National Park would become an integral part of that park.

Within 30 days after enactment of the proposed bill, the Secretary of the Interior would be required to send the State of Utah a list of lands or interests in lands within the State of Utah for transfer to the state in exchange for specified state lands.

The list would include only those Federal lands or interests in lands identified in the bill.

And we suggest, for clarity, that the bill specifically exclude any Indian lands and minerals that may be a part of any lands included in the list.

The proposed bill would require that all exchanges under the Act be for equal value and would provide a procedure to be followed in reaching agreement on the appraised lands.

We note that Section 3(a) provides that there are approximately 1,360 acres of state-owned surface and subsurface within the Goshute Indian Reservation.

We've been informed that the records indicate a discrepancy in that acreage figure, and we, along with the Bureau of Indian Affairs, will be examining this discrepancy, and hope to have further information for the Committee.

We commend all those parties who worked to resolve these issues, and indeed it is a complicated bill, but we're assured of a solution that will benefit many.

H.R. 677 does have PAYGO implications, we believe, and an accurate estimate of PAYGO costs will be developed and provided to the Committee. And we would like to work with the Committee to address the PAYGO issue.

This concludes my statement, and I'd be pleased to answer questions at the appropriate time.

[Prepared statement of Mr. Conn follows:]

MAY - 4 1993

STATEMENT OF KEMP CONN, DEPUTY ASSISTANT DIRECTOR FOR LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS, COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R. 677, A BILL TO PROVIDE FOR THE EXCHANGE OF CERTAIN LANDS WITHIN THE STATE OF UTAH.

I appreciate the opportunity to appear here today to discuss H.R. 677, legislation which would be entitled the "Utah Schools and Lands Improvement Act of 1993."

The Administration supports the concept of H.R. 677 but notes that the bill has potential Pay As You Go (PAYGO) costs from the reduced royalties to the Federal Treasury.

Consolidating the intermingled lands described in the bill will result in better land management by each of the entities involved. The land inholding problems of the State of Utah are similar to those facing the United States government, the Goshute Indian Tribe, and the Navajo Nation. H.R. 677 represents the consensus solution developed among many public and private parties that worked together to solve these complicated problems.

The State has legitimate needs and expectations that require our attention and action. The people of Utah deserve to be compensated for school land sections which are encompassed by Federal and tribal land and for which the management, use, and economic development have been curtailed due to such location. The State is seeking lands or interests in lands from which they

can derive revenues to benefit the education of its children, a rationale that is fully consistent with its Statehood Act.

From the Federal perspective, conveyance of the encompassed State lands to the United States will directly benefit the National Park and National Forest Systems and the Indian tribes involved. The elimination of State land inholdings will allow the Federal and tribal lands to be managed more efficiently and effectively. In effect, a final settlement of the long-standing issue and the conveyance of the lands in question will benefit all of the concerned parties: the State and its residents, the State education system, the Indian tribes, the Federal land managers and the Federal taxpayers.

H.R. 677 would provide for the transfer to the Secretary, subject to valid existing rights, of certain lands owned by the State within the Navajo Indian Reservation, the Goshute Indian Reservation, the National Forest System, and the National Park System in exchange for other Federal lands or interests in Federal land. The lands acquired by the United States would become part of the unit within which they are geographically located. For example, acquired State lands located within the Navajo Indian Reservation in Utah would become part of the Reservation, in trust for the Navajo Nation, and those located within a National Park would become an integral part of the park.

Within 30 days after the enactment of the proposed bill, the Secretary of the Interior would be required to send the State of Utah a list of lands or interests in lands within the State of Utah for transfer to the State in exchange for specified State lands. The list would include only those Federal lands or interests in lands identified in the bill. We suggest that the bill specifically exclude any Indian lands and minerals that may be a part of any lands included in this list.

The proposed bill would require that all exchanges under the Act be for equal value and would provide a procedure to be followed in reaching agreement on appraised values.

H.R. 677 would also provide for payments under the Payments In Lieu of Taxes Act (PILT) for lands acquired by the United States from the State pursuant to the new Act.

We commend all of those parties who worked to resolve these issues.

We note that section 3(a) provides that there are approximately 1,360 acres of State-owned surface and subsurface within the Goshute Indian Reservation. However the records of the Bureau of Indian Affairs (BIA) indicate that there are approximately

820 acres of State-owned land within the Reservation. The BIA is examining this discrepancy and hopes to have further information for this Committee soon.

As mentioned earlier, H.R. 677 has PAYGO implications. An accurate estimate of the PAYGO costs will be developed and provided to the Committee. We would like to work with the Committee to address the PAYGO issue.

This concludes my prepared statement. I will be pleased to answer questions.

Mr. VENTO. Thank you, Mr. Conn.

Is it Mr. Millenbach, is that right? Have I got that correctly?

Mr. CONN. Yes.

Mr. VENTO. Did you have any statement at this time, Mr. Millenbach?

Mr. MILLENBACH. No, sir.

Mr. VENTO. Okay. You're there obviously to assist Mr. Conn.

Mr. Reimers, we're pleased to welcome you. Your testimony has been placed in the record. You may feel free to summarize or read the relevant portions of your statement.

STATEMENT OF MARK REIMERS

Mr. REIMERS. Yes, Mr. Chairman and members of the Committee.

We're pleased to be here, and we're glad to see the progress on this legislation. I'm aware that you have a lot of the background as it was presented this morning.

So I'll just highlight my testimony.

The Department of Agriculture supports the provisions of H.R. 677. We do defer to the Department of the Interior with regard to their lands, questions of mineral interests, and the PAYGO aspects of this legislation.

As you are aware, there are some 80,000 acres of school trust lands within the National Forest boundaries, and we look forward to the exchange that would be completed under this Act, making some 76,000 acres part of the National Forest in which they are now located.

Section 7 provides a list of the Federal lands and interests that the Secretary shall offer for exchange, and we are aware of that and supportive of that.

We're also of course aware that the equal-value requirement of the legislation is well established.

We have several technical amendments that we have recommended in our statement, and they have been provided to you.

We support H.R. 677, with the suggested technical amendments, and we look forward to action by the Committee.

Thank you.

[Prepared statement of Mr. Reimers follows:]

STATEMENT OF
MARK REIMERS, DEPUTY CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on National Parks, Forests and Public Lands
Committee on Natural Resources
United States House of Representatives

Concerning H.R. 677
Utah Schools and Lands Improvement Act of 1993

May 4, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the opportunity to present the views of the Department of Agriculture regarding H.R. 677, the "Utah Schools and Lands Improvement Act Of 1993".

The Department of Agriculture supports the provisions contained in H.R. 677 insofar as they directly affect National Forest System lands. We defer to the Department of the Interior (DOI) regarding the DOI lands and interests proposed for exchange under H.R. 677, the valuation of mineral interests referred to in the bill, and the specific pay-as-you-go impacts of the bill under Title XIII of the Omnibus Budget Reconciliation Act of 1990.

At the time of Statehood, the State of Utah received, in trust, 4 sections of land in each township. About 80,000 acres of these School Trust lands are within the boundaries of the National Forests in Utah. Although State inholdings require some special Federal/State land management coordination, if these State lands were transferred to private owners, the latter

would expect access for development, and this could present major problems for both Federal land managers and local governments. Thus, we strongly support the concept on which H.R. 677 is based, which would make it possible for these State lands to be added to the National Forests in which such lands are located.

Section 5 would authorize the Secretary of Agriculture to accept approximately 75,000 acres of lands owned by the State of Utah within units of the National Forest System and provides that any lands acquired by the United States shall become a part of any National Forest within which the acquired lands are located.

Section 6 would authorize the Secretary of the Interior to accept all School Trust lands located within all established units of the National Park System located within the State of Utah.

Section 7 provides a list of the Federal lands and interests that the Secretary of the Interior shall offer for exchange.

Section 8 establishes an "equal value" requirement for all exchanges authorized under H.R. 677 and would authorize the Secretary of the Interior to determine the value of the Federal mineral interests exchanged, by deducting the State's share in all royalties, sales, bonuses, and rentals collected pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181, 201-209) from the appraised value of said mineral interests. We recommend that the word "an" before the phrase "appraisal of the lands and

interests" be deleted from Section 8(a). The need may arise to perform more than just one appraisal for the properties involved. We also recommend that the references to the United States District Court contained in Section 8(b) be changed to provide jurisdiction by the United States Court of Claims.

Section 9 deals with the transfer of title to the lands and interests involved in the exchange authorized by the bill. We recommend that language be added to Section 9(a)(4) that would require the conveyance to be in a form in accordance with the Department of Justice standards for the preparation of title evidence in land acquisitions by the United States.

The estimated value of the approximately 76,000 acres of the State of Utah trust lands within the National Forest boundaries which would be conveyed to the Secretary of Agriculture is approximately \$10 million. We defer to DOI regarding the estimated value of lands acquired by the Secretary of the Interior. In exchange for the lands conveyed to the United States, the State of Utah would receive an equal value of royalties receivable by the United States, interests in unleased coal, and fee estates.

We support H.R. 677, with our recommended amendments. This concludes my prepared statement. I would be happy to answer any questions you or members of the Subcommittee may have.

Mr. VENTO. Thank you very much, Mr. Reimers, for your statement.

There remains obviously some areas that are excluded from this. I don't know what the basis of that was, but do you know how much is excluded in terms of school trust lands that are excluded from being included here that are in the National Forest or the National Parks?

Mr. Conn?

Mr. CONN. Nothing.

Mr. VENTO. Nothing at all excluded from the Parks. Okay.

How about Fish and Wildlife Service?

If you don't have the specifics on that, I think we need to know that because obviously we can ask the same questions or the basis for it, and will ask that of some of the witnesses from Utah, so they can prepare themselves.

But if there are lands excluded that are trust lands, obviously if they're highly mineralized or they have a gold mine on it or something operating, then I guess that would explain it. I don't know—obviously I'm guessing.

Mr. Conn, Representative Orton has suggested that there be a date certain to conclude this by. Do you have any view on that?

Mr. CONN. I appreciated his comments. The bill does provide that within 30 days a list be prepared and forwarded. There is also provision that any differences in appraisal be resolved within 2 to 5 years, or the courts decide.

And generally the issue that inhibits appraisals or exchanges from being implemented on a timely basis is the resolution of differences between appraisals. We can certainly put something in there. We would not have an objection to it. But we also feel that the main things that inhibit an exchange are covered in the bill.

Mr. VENTO. I tend to agree with you. The conclusion is if something is being litigated and someone ends up appealing to, let's say, the various courts, by virtue of an appeal and a nonresolution of the issue, you have to go through the ceiling on a date.

I guess the concern, though, is that, if we set a date in here, unless it is involved in litigation in terms of difference of value, that we must be sure that particular event would not precipitate a nullification of the basic law. Something along those lines, I think, would be of concern based on the response that you made.

Mr. CONN. Yes, sir. I don't have a problem with that.

Mr. VENTO. Let's try to work out the specifics, as we work on this bill.

Mr. Conn, you also suggest the bill needs to specify that no Indian lands or minerals would be offered to the state. Obviously the coal is from the lands that are being offered, the leased and the unleased—but what is the basis for the mineral concern?

Mr. CONN. That is just a safeguard, Mr. Chairman. The lands that are being submitted by a list have been identified here. And we just want to make sure that there were no Indian lands identified for exchange.

Mr. VENTO. I don't think that is of concern.

The other reference is to Indian minerals, would be offered to the state. In other words, excluding coal. They are all specified?

Mr. CONN. Yes, sir.

Mr. VENTO. Just coal?

Mr. CONN. Just coal.

Mr. VENTO. They are specified in the bill. Is there any reason to think that there are any Indian lands involved or other minerals involved?

Mr. CONN. Not that we know of, sir.

Mr. VENTO. Obviously, we want to be clear about it. I didn't think that there was anything that the staff was able to pick up in terms of issues here.

The gentleman from Utah, do you have a time problem? May I yield to you so that you can proceed if you do have a time problem? I would be happy to do so.

Mr. HANSEN. I appreciate that, Mr. Chairman.

I really don't. I appreciate the statements and I don't have any questions at this time.

I am sure we can work out the amendments you're referring to.

Mr. VENTO. Ms. Shepherd, do you have a question? I have other questions myself.

Ms. Shepherd?

Ms. SHEPHERD. Mr. Chairman, I yield to your questions.

Mr. VENTO. This measure resembles the House-passed bill of last year by providing disputes over valuation of lands involved in exchange to be resolved in federal court. However, the House-passed bill would have given jurisdiction to any U.S. District Court, while this measure specifies that a case must start in District Court in Utah.

Do you have any views with regard to that, Mr. Conn or Mr. Reimers?

Mr. CONN. I have none, Mr. Chairman.

Mr. VENTO. Mr. Reimers?

Mr. REIMERS. We had a suggested amendment to Section 8[b] that the jurisdiction be in the United States Court of Claims where it would normally rest, but it is not a major point; it is a suggested change.

Mr. VENTO. That's what I assumed; the Court of Claims would normally deal with this. But you do think there is any advantage having it in the Court of Claims, for that to be the forum to resolve this in the first instance?

Mr. REIMERS. Our general counsel had a preference toward the Court of Claims since this is the normal venue for these kinds of claims and would have background and experience. But again, we did not make it a major point in our testimony.

Mr. HANSEN. If the gentleman would yield on that point?

Mr. VENTO. Yes, I would be happy to yield.

Mr. HANSEN. The Court of Claims is just so complicated—they are so backed up, you can hardly get to it. Also, it is kind of a practical thing. We've got witnesses from all over the State of Utah. Surely, no one would dispute the idea that the competent federal district judges we have are just as good in the West as they are here. It seems to be the pattern with some groups to bring their actions here and we have to truck everybody back here.

To me, it is just an impractical thing to work out in the Court of Claims. It would take forever to get something adjudicated. I would be a little concerned about it.

Mr. VENTO. I didn't know that there is a deadline problem. You know, I really want to get the response from the Administration.

Mr. Conn, did you have any further comments on this matter?

Mr. CONN. No, sir.

Mr. VENTO. If you do, I don't know if you want to point this out to your legal counsel, the solicitor, or others. If there is any concern about it, we would like to learn of it. I don't think it is a major point, as Mr. Reimers has indicated.

The bill the House passed in 1992 would have given the Secretary the option of offering the state a share of the federal receipts from mineral leases in Utah—that is, cash—in addition to the land and minerals that are required to be offered. In other words, an option.

But as I read the version we have now, there is a requirement for offering both the specified lands and minerals and also cash.

Does that interpretation have any practical effect if you have certain ceilings with regard to valuation here, Mr. Conn?

Mr. CONN. I don't think so, Mr. Chairman. I am not sure that I exactly followed your question.

Mr. VENTO. I think there was an option we had about offering the state a share of the federal receipts from mineral leases in Utah; that is, cash. But now it is mandatory that we do so. It says that you must offer both cash and mineral leases in the bill.

But my point is, what is the practical effect of that? I don't really know what the purpose of that is. Does it mean that there is a quicker payoff, is that the goal of the authors?

I would be happy to yield to my colleague from Utah, Mr. Hansen, if you can tell me what the purpose of that is.

Mr. HANSEN. I think we have a subsequent witness who will be able to respond to that in some detail, Mr. Chairman.

Mr. VENTO. Okay, fine. But I'm interested in the Administration's point of view.

The Forest Service obviously is yielding to BLM in terms of this particular provision, I assume.

Mr. CONN. Mr. Chairman, I believe that this is a concern that we may have as far as PAYGO is concerned.

Mr. VENTO. Okay. Well, I know that it does appear to me that this version moves away from the land exchange on that basis.

Mr. CONN. Yes, it does.

Mr. VENTO. Insofar as you are extracting minerals and the mineral exchange, if we can think of a property value exchange toward a purchase for cash, that is the net effect of it in my judgment. I think that your point with regard to the budget issue is relevant, so I hope that we can work through that.

As long as we are being asked to revise the mix of lands and minerals to be offered to the state, would it be appropriate to revisit the specific list of lands and minerals to see if that part of the bill should also be revised?

Now, the BLM under a former director actually did a lot of work on this with Governor Bangert. And I think that everyone has recognized the former director's efforts and the BLM's efforts on this.

But in terms of listing it, it may be that if we are going to go the cash direction and put more emphasis on cash, that it would

not be necessary to then open up all of the other unleased lands. It simply may not be necessary.

Mr. CONN. Our main interest, Mr. Chairman, is moving forward with this. And in any way we can assist, we would be happy to do it.

Our position now is that I believe that we feel that the way they are listed in the bill is sort of a state priority. And I could be corrected, but we would be willing to adjust the way they are listed in the bill if that is not a priority in any way that would further—

Mr. VENTO. We will direct that question to the state. My staff counsels me, that maybe we could take out the surface use issues and leave it with the lease issues, if that would be agreeable to the state.

I don't want to appear to be here negotiating for the state, but if you have a different mix, it seems to me to be reasonable then to look at what the property right transfers are that are going on here in the mineral rights. That's all I'm saying.

I cannot negotiate for anyone and I would be, obviously, led and seek guidance from my colleagues before doing anything like that. But I just wanted to raise and put that issue on the table. I think this is a consequence of what is in the bill.

I don't know if there is a reason for it, you're just trying to get double insurance here for it or make sure it gets done. And I understand that.

But I think that there is a reasonable expectation, Mr. Conn, that the types of unleased lands, leased lands, and the other types of sites here will produce a flow of revenue that will address the need and fulfill what the values are. Is that correct?

Mr. CONN. Yes, sir.

Mr. VENTO. That is the expectation. So when we start adding in additional resources or flows of revenues, then I guess you wonder whether or not we should put all of these other elements into it because, in any case, it takes them off the table in terms of managing, you know, in a holistic manner, the resources of that state with regard to mineral leasing, doesn't it? And/or other activities. Until we resolve this issue and make the payoff, is that correct?

Mr. CONN. Yes, sir, it could. I follow your point.

I think the intent is the Blue Mountain Telecommunications site and Beaver Mountain Ski Resort would—if the state selects that off the list and we appraise it and we have a time period for resolution on the appraisal—be turned over to them. And there is immediate cash flow from the Blue Mountain Telecommunication site because there is an income flow there.

The unleased coal lands have had everything done to them that is required for pre-leasing. They have been drilled, they have been before the regional coal team, they have done everything except be appraised. So they are basically ready for leasing. And they are extensions of ongoing operations that is just extending the lease. So you really have an operation there that has already been started.

So it seems logical then to move right into that same area and extend that lease so there is very likely the possibility of an immediate income flow there.

Mr. VENTO. Let me ask one more question. Mr. Reimers, about this transfer of 76,000 surface acres to the Forest Service? What does that mean in terms of the management of the Forest system in Utah in terms of your forest planning and the other activities in terms of the sale for harvest of timber and other activity uses?

Mr. REIMERS. It will be a major benefit in that these sections are, in fact, scattered throughout the existing National Forests and fairly difficult to maintain and know where the boundaries are. With these included in the National Forests, it will make our management easier, easier to coordinate any timber harvest that might be planned. More likely, any grazing allotments or other uses on those lands, and access for recreation purposes.

So I think it will ease the administration of the National Forest System by having these lands transferred to us, in essence, blocking up our ownership in a more solid pattern.

The concern would be, if it did not occur, that some of these lands might eventually be sold off into private ownership and you would have more complex questions of access and coordination. But they would be included and managed as part of a National Forest if there was any adjustment in the Forest Plan that was necessary.

We would make those adjustments as those lands were included in the National Forest.

Mr. VENTO. So from the standpoint of administration, you would have lower costs. From the standpoint of income production, it would be enhanced by virtue of the addition of these lands to the National Forest Service in Utah; is that correct?

Mr. REIMERS. That's right. Except with the potential for minerals, most of the other revenue would be modest, I think, with regard to the benefits that might possibly be greatest in some of the wildlife and recreation uses. They would continue to be available to the people of the United States and the people of Utah.

Mr. VENTO. We have instances where the state has disposed of some lands in the National Forest today. And we have you end up, in essence, with private landholdings that are non-state holdings.

Mr. REIMERS. Yes. You would find private inholdings now in a number of places. The historic pattern was where the lands were open to homesteading in some of the key valleys where there was water, and they were developed and maintained through the years, and remained private. There is no intent that we ever would block up all of the non-Federal lands within the National Forest boundaries, but in this case, with regard to the state lands, it makes a lot of sense.

I would like to comment on Section 7 to the degree that we would have no objection if, as you work with this, areas were deleted. We would have concerns if additional areas were added in, only from the standpoint that there seems to be an understanding of what is proposed here. We are hopeful that what is outlined here is pretty close to what the committee—

Mr. VENTO. I expect the perimeters are before us. That, based on the cash out, a different mix might be possible. I don't expect, at this particular point in time, that there would be new areas brought in that would be a surprise, for instance, to the Forest Service or the other land management agencies. I expect that BLM,

which has taken the lead here, has narrowed the focus of this after a long time to these particular areas.

Mr. REIMERS. I think that is the situation.

Mr. VENTO. That is my judgment of where we are at.

Mr. HANSEN. With regard to Section 7 and some of the questions you brought up, I am quite confident the next panel will be able to respond to a number of these. And I have been kind of waiting here to see.

Mr. VENTO. I did want to ask that last question concerning land management, because I think it is the predicate for why we want to really get this done, what it means to the Department of Agriculture.

But that did conclude my questions, and we appreciate the ongoing work of the BLM. Mr. Millenbach and others have provided some help to the subcommittee staff as we try to wrestle with this.

Thank you very much, Mr. Conn and Mr. Reimers, and Mr. Millenbach.

I am pleased to welcome the Honorable Jan Graham, the Attorney General of Utah, accompanied by Mr. Steven Boyden, John Harja, and Kevin Carter. John, I am sorry if I mispronounced your name.

Ms. Graham, we're proud to introduce you, the new attorney general of Utah.

STATEMENT OF JAN GRAHAM, ATTORNEY GENERAL, STATE OF UTAH, ON BEHALF OF HON. MICHAEL O. LEAVITT, GOVERNOR OF UTAH, ACCOMPANIED BY KEVIN CARTER, ASSISTANT DIRECTOR, DIVISION OF LANDS, AND STEVE BOYDEN, JOHN HARJA, AND GERALD JENSEN, OFFICE OF THE ATTORNEY GENERAL

Ms. GRAHAM. Mr. Chairman, it is my great honor. This is my first official appearance before this body as newly elected Attorney General of Utah. And even though I have lost my representative, Karen Shepherd, for the moment—I know that she had another matter scheduled at 11:30—I do want to say it is my great privilege to appear before all of you. And as I look up, I see a lot of people that I admire greatly.

But it would be remiss of me not to note the role that Representative Shepherd has played as an inspiration and leader in our community and to me personally. So, in her absence, I offer that.

It is my great pleasure to be here. First let me state I have the gentleman that you introduced with me. I also am joined on my right by Gerald Jensen, who is an assistant attorney general in the Attorney General's Office of Utah as well.

And at the conclusion of my testimony, we will be happy to answer questions. And I believe by and among these four gentlemen, they know almost everything. So we will be happy to address the concerns that you have been talking about.

I have submitted a written statement which I need not and will not review. It contains some important background and it has been well addressed here this morning.

My purpose in being here is to respond in my role as the state's Attorney General to the dilemma that I face now and our office faces as the Hobson's choice becomes clearer and clearer. I would

like to talk a little bit about the legal arguments that are pressing us, and legal arguments can be very boring. But they get quite interesting when you see your name on the pleadings that are filed in the court.

Representative Shepherd, for the record, I just said something very nice about you. [Laughter.]

Because Congress has created a trust relationship between the state of Utah as trustee and school children of the state as beneficiaries, the school trust lands must be managed prudently by the state to produce income for our school children. The state has a legal mandate to proceed with all diligence to develop its trust lands and produce income consistent with its fiduciary responsibility to school children.

Conversely, the National Park and Forest Services are committed to producing areas of scenic beauty for public enjoyment of parks and forests. With the creation of these parks and forests in Utah which encompass the school trust lands, Congress has put the state's legal mandate and the National Park and Forest Service mandate at cross-purposes.

Because of the critical need for additional revenue to fund education in Utah, a number of prominent educators in our state have suggested that the state proceed to develop trust lands in national parks and forests. Additionally, recent oil and gas findings in the general area of some of these parks and forests have increased the pressure to consider the development of these trusts.

The National Park and Forest Service quite naturally have told state officials they will not allow such development. And if development does commence, litigation will ensue. As Utah's Attorney General, I am confronted with the pressing reality every day now of the state's legal duty as trustee for the school children.

As we speak today, there is a case pending in the Federal District Court in Utah, brought by the Utah Education Association with claims including that the State Division of Lands has abrogated its fiduciary duty to manage these lands on behalf of the school children.

The State of Utah is not interested in creating problems in National Parks or Forests. We cherish those lands, as we all do.

However, we must acknowledge some indication from the courts that if the state did commence development on these precious lands within the national reserves, it may be on sound legal footing, at least.

While there are no cases pertaining specifically to these inholdings encircled by National Parks and Forests, the case of *State of Utah v. Andrus* is close.

In 1979, it held that the State of Utah or its lessee must be allowed reasonable access across Federal BLM lands to state school trust lands "so that those lands can be developed in a manner that will provide funds for the common schools."

The United States, in the *Andrus* case, had filed suit for a restraining order to prevent the Cotter Corporation from building a road on federal land that was being considered for designation as a Wilderness Study Area. The State of Utah intervened, stating that by denying Cotter access to Utah's school trust land, the Unit-

ed States was interfering with Utah's right to fully utilize its trust lands.

The court held that the United States may regulate such access to prevent impairment of wilderness characteristics, but the State of Utah, or its lessee, must be allowed access to state school trust lands to realize the full value from economic development.

The United States did not appeal the *Andrus* case, and subsequent cases have cited it favorably. We are of the opinion that the State of Utah has valid existing rights within National Parks, National Forests, and Indian Reservations, which must be recognized. The State's right to commercially develop school trust lands could well be recognized by the courts, so long as the state does not unnecessarily cause undue degradation of surrounding federal lands.

As stated in *Andrus*, "the state must be allowed access which is not so narrowly restrictive as to render the lands incapable of their full economic development."

Should the Federal Government take the position that actions of the United States in establishing the National Parks, National Forests, and Indian Reservations, were tantamount to taking school trust lands by eminent domain, then we claim that Utah is entitled to just compensation.

In another jurisdiction, the United States Bureau of Reclamation claimed that the State of Washington had granted an easement for the Columbia Basin Project over school trust lands granted to that state under its Enabling Act. The court, in *United States v. 111.2 Acres of Land*, held that a mere donation of the state school trust lands to the United States was a breach of trust, and that "the principle of indemnity requires that no land or proceeds be diverted from the school trust land until the trust receives full compensation."

In an effort to be of assistance to this Committee, I've attached to my statement a side-by-side comparison of H.R. 5118 of the 102d Congress, which was passed by the House, to this year's H.R. 677. I will not review the summary of those changes. You have the exhibit. And I believe that the importance of some of those changes has been fully addressed this morning. We're obviously prepared to answer questions about the specifics of those changes.

In conclusion, we believe that H.R. 677 represents the best solution to the long-standing dispute between the United States and the State of Utah over land within our state. H.R. 677 removes archaic administrative roadblocks and fashions an exchange eminently fair to all the parties, ensuring a realistic value-for-value exchange.

I thank you for allowing me this opportunity to testify on this important piece of legislation to the school children of the State of Utah. In essence, I believe they are here pleading with the Federal Government to make good on a promise long unfulfilled.

For them and for all of us, I thank you for hearing from us today. And, as I said before, we are prepared to address the specifics of your questions.

[Prepared statement of Ms. Graham and attachment follow:]

STATEMENT OF JAN GRAHAM, ATTORNEY GENERAL, STATE OF UTAH
BEFORE THE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
103rd CONGRESS, 1st SESSION
MAY 4, 1993

MR. CHAIRMAN, on behalf of Governor Michael O. Leavitt and the State of Utah, I want to express to you our personal appreciation for scheduling this hearing regarding H. R. 677, the Utah Schools and Lands Improvement Act of 1993. Last year a similar bill passed the House, was amended in the Senate, but was not voted on again in the House in the waning days of the 102nd Congress.

As historical background for this legislation, beginning with the admission of Ohio to the Union in 1803, Congress has granted sections of land to new states "for the support of common schools." While there are 35 different variants of this policy, Utah was granted four sections of every township - 1/9 of the entire State - for the benefit of education.

In a practical sense, however, how these school trust lands in Utah relate to education and to the federal government, is somewhat unique. First, on a percentage basis, Utah has the highest number of children in public schools of any State in the nation. During the 1980s school enrollment in Utah grew by almost 30% - the fastest growth rate of any State in the nation. Expenditures for public education in Utah during that time increased by 90%, but it was insufficient to keep pace with per capita school expenditures of other states. During the 1980s, per pupil expenditures in Utah fell from 78% of the national average to 53%. And in spite of having one of the highest education expenditures as a percent of the total state budget - almost 70% - we have the lowest per pupil expenditure in the country.

In 1989, state and local governments in Utah received \$2.1 billion from the State's three major taxes: sales, property, and individual income, but during that same year, state and local governments spent \$1.9 billion on education. In other words, it takes the equivalent of almost all of the State's three major taxes just to pay for public and higher education in Utah, and we spend less than any other state per student. Faced with these challenges, Utah educators have looked at every possible resource for increased revenue for public education.

Second, responding to Utah's scenic beauty, Congress has created five national parks, six national monuments, and two national recreation areas in Utah -- more than any other State. Utah also has vast acreage within national forests. These "national reserves," created after statehood, were superimposed over land granted to the State as school trust lands. In many cases, these scenic lands are very attractive for development.

Because Congress has created a trust relationship between the State of Utah, as trustee, and the school children of the State as beneficiaries, the school trust lands

must be managed prudently by the State to produce income for our school children. The State has a legal mandate to proceed with all diligence to develop its trust lands and produce income consistent with its fiduciary responsibility to school children.

Conversely, the National Park and Forest Services are committed to preserving recreation areas of scenic beauty in our country for public enjoyment of parks and forests. With the creation of these national parks and forests in Utah, which encompass Utah school trust lands, Congress has put the State's legal mandate and the National Park and Forest Services' mandate at cross purposes.

Because of the critical need for additional revenue to fund education in Utah, a number of prominent educators in our State have suggested that the State proceed to develop trust lands in national parks and forests. Additionally, recent oil and gas findings in the general area of some of these parks and forests have increased the pressure to consider the development of these trust lands.

The National Park and Forest Services, quite naturally, have told State officials that they will not allow such development, and if development does commence, litigation will ensue. The State of Utah is not interested in creating problems in national parks or forests; however, there is some indication from the courts that if the State did commence development on trust lands within the "national reverses," it may be on sound legal footing.

While there are no cases pertaining specifically to these "in-holdings" encircled by national parks and forests, the case of State of Utah v. Andrus (1979) is close. It held that the State of Utah, or its lessee, must be allowed reasonable access across federal BLM lands to state school trust lands "so that those lands can be developed in a manner that will provide funds for the common schools." (486 F. Supp. 995 at 1009.)

The United States in the Andrus case had filed suit for a restraining order to prevent the Cotter Corporation from building a road on federal land that was being considered for designation as a Wilderness Study Area. The State of Utah intervened, stating that by denying Cotter access to Utah's school trust land, the United States was interfering with Utah's right to fully utilize its trust lands. The court held that the United States may regulate such access to prevent impairment of wilderness characteristics, but the State of Utah, or its lessee, must be allowed access to state school trust lands to realize the full value from economic development.

The United States did not appeal the Andrus case, and subsequent cases have cited it favorably. We are of the opinion that the State of Utah has valid existing rights within national parks, forests, and Indian reservations which must be recognized. It is our judgment that the State's right to commercially develop school trust lands may well be recognized by the courts, so long as the State does not unnecessarily cause undue degradation of surrounding federal lands. As stated in Andrus, "the state must be allowed access which is not so narrowly restrictive as to render the lands incapable of their full economic development." (At 1009.)

Should the federal government take the position that actions of the United States in establishing the national parks, forests, and Indian reservations were tantamount to taking State school trust lands by eminent domain, then we claim that Utah is entitled to just compensation. In another jurisdiction the United States Bureau of Reclamation claimed that the State of Washington had granted an easement for the Columbia Basin Project over school trust lands granted to that State under the Enabling Act. The court in United States v. 111.2 Acres of Land held that a mere donation of the State school trust lands to the United States was a breach of the trust and that "the principle of indemnity requires that no land or proceeds be diverted from the school trust unless the trust receives full compensation." (293 F. Supp. 1042 at 1045.)

In an effort to be of assistance to this Committee, I have attached to my statement a side-by-side comparison of H. R. 5118 of the 102nd Congress, which was passed by the House, to this year's H. R. 677, modeled after last year's Senate-passed version of H. R. 5118. You will notice that there are a number of changes which were technical in nature; however, some significant changes appear in H. R. 677 that should be brought to your attention.

The changes underscore some of the problems the State of Utah had with last year's House version of the land exchange. The new, significant provisions of H. R. 677 that this Committee has not previously considered in connection with last year's proposed legislation are as follows:

1. Section 7(b)(1)- H. R. 677 makes the Secretary's offer mandatory rather than permissive.
2. Section 7(b)(3)- Changes the \$25 million cap on royalty payments to an annual cap of \$12.5 million.
3. Section 8(b)(1)- Specifies the United States District Court as the District of Utah, Central Division.
4. Section 8(c)- Recognizes the state's portion of federal royalties for valuation purposes.
5. Section 8(d)- Allows the state to receive reasonable interest on the balance owed by the federal government until paid.

In conclusion, we believe that H. R. 677 represents the best solution to the long-standing dispute between the United States and the State of Utah over land use within our state. H. R. 677 removes archaic administrative roadblocks and fashions an exchange eminently fair to all the parties, ensuring a realistic value for value exchange. I thank you for allowing me this opportunity to testify on this important piece of legislation to the school children of the State of Utah. Thank you.

COMPARISON OF H. R. 677 to H. R. 5118 VERSIONS OF UTAH SCHOOLS AND LANDS IMPROVEMENT ACT

H.R. 5118 102nd Cong.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Utah Schools and Lands Improvement Act of 1992".

SECTION 2. UTAH-NAVAJO LAND EXCHANGE. (a) **ADDITIONS TO RESERVATION.**---For the purpose of securing in trust for the Navajo Nation certain lands belonging to the State of Utah, which comprise approximately 38,500 acres of surface and subsurface estate, and approximately an additional 9,500 acres of sub-surface estate, as generally depicted on the map entitled "Utah-Navajo Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Navajo Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.

(b) **AUTHORIZATION.**---The Secretary of the Interior is authorized to acquire through exchange those lands described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.

H. R. 677 103rd Cong.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Utah Schools and Lands Improvement Act of 1993".

SECTION 2. UTAH-NAVAJO LAND EXCHANGE. (a) **ADDITIONS TO RESERVATION.**---For the purpose of securing in trust for the Navajo Nation certain lands belonging to the State of Utah, which comprise approximately thirty-eight thousand five hundred acres of surface and subsurface estate, and approximately an additional nine thousand five hundred acres of sub-surface estate, as generally depicted on the map entitled "Utah-Navajo Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Navajo Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.

(b) **AUTHORIZATION.**---The Secretary of the Interior is authorized to acquire through exchange those lands described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.

SEC. 3. STATE LANDS WITHIN THE GOSHUTE INDIAN RESERVATION.

(a) ADDITION TO RESERVATION.---For the purpose of securing in trust for the Goshute Indian Tribe certain lands belonging to the State of Utah, which comprise approximately 980 acres of surface and subsurface estate, and an additional 480 acres of subsurface estate, as generally depicted on the map entitled "Utah-Goshute Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Goshute Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.

(b) AUTHORIZATION.---The Secretary of the Interior is authorized to acquire through exchange those lands described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.

(c) OTHER LAND.--(1) The following tract of Federal land located in the State of Nevada, amounting to about 5 acres more or less, together with all improvements thereon is hereby declared to be part of the Goshute Indian Reservation, and shall be held in trust for the Goshute Indian Tribe: Township 30 North, range 69 East, Lots 5, 6, 7, 9, 11, and 14 of Section 34.

(2) No part of such lands shall be used for gaming or any related purpose.

SEC.4. IMPLEMENTATION.

The exchanges authorized by sections 2 and 3 of this Act shall be conducted without cost to the Navajo Nation and the Goshute Indian Tribe.

SEC. 3. STATE LANDS WITHIN THE GOSHUTE INDIAN RESERVATION.

(a) ADDITION TO RESERVATION.---For the purpose of securing in trust for the Goshute Indian Tribe certain lands belonging to the State of Utah, which comprise approximately nine hundred eighty acres of surface and subsurface estate, and an additional four hundred eighty acres of subsurface estate, as generally depicted on the map entitled "Utah-Goshute Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Goshute Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.

(b) AUTHORIZATION.---The Secretary of the Interior is authorized to acquire through exchange those lands described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.

(c) OTHER LAND.--(1) The following tract of Federal land located in the State of Nevada, comprising approximately five acres more or less, together with all improvements thereon is hereby declared to be part of the Goshute Indian Reservation, and shall be held in trust for the Goshute Indian Tribe: Township 30 North, range 69 East, Lots 5, 6, 7, 9, 11, and 14 of Section 34.

(2) No part of such lands shall be used for gaming or any related purpose.

SEC.4. IMPLEMENTATION.

The exchanges authorized by sections 2 and 3 of this Act shall be conducted without cost to the Navajo Nation and the Goshute Indian Tribe.

SEC.5. STATE LANDS WITHIN THE NATIONAL FOREST SYSTEM.

(a) AUTHORIZATION.---The Secretary of Agriculture is authorized to accept on behalf of the United States the school and institutional trust lands owned by the State of Utah within units of the National Forest System, comprising approximately 76,000 acres as depicted on a map entitled "Utah Forest Land Exchange", dated May 18, 1992.

(b) STATUS.---Any lands acquired by the United States pursuant to this section shall become a part of the national forest within which such lands are located and shall be subject to all the laws and regulations applicable to the National Forest System.

SEC.6. STATE LANDS WITHIN THE NATIONAL PARK SYSTEM.

(a) AUTHORIZATION.---The Secretary of the Interior is hereby authorized to accept on behalf of the United States all school and institutional trust lands owned by the State of Utah located within all units of the National Park System located within the State of Utah on the date of enactment of this Act.

(b) STATUS.---(1) Notwithstanding any other provision of law, all lands of the State of Utah within units of the National Park System that are conveyed to the United States pursuant to this section shall become a part of the appropriate unit of the National Park System, and be subject to all laws and regulations applicable to that unit of the National Park System.

(2) The Secretary of the Interior shall, as a part of the exchange process of

SEC.5. STATE LANDS WITHIN THE NATIONAL FOREST SYSTEM.

(a) AUTHORIZATION.---The Secretary of Agriculture is authorized to accept on behalf of the United States the school and institutional trust lands owned by the State of Utah within units of the National Forest System, comprising approximately seventy-six thousand acres as depicted on a map entitled "Utah Forest Land Exchange", dated May 18, 1992.

(b) STATUS.---Any lands acquired by the United States pursuant to this section shall become a part of the national forest within which such lands are located and shall be subject to all the laws and regulations applicable to the National Forest System.

SEC.6. STATE LANDS WITHIN THE NATIONAL PARK SYSTEM.

(a) AUTHORIZATION.---The Secretary of the Interior is hereby authorized to accept on behalf of the United States all school and institutional trust lands owned by the State of Utah located within all units of the National Park System, comprising approximately eighty thousand acres, located within the State of Utah on the date of enactment of this Act.

(b) STATUS.---(1) Notwithstanding any other provision of law, all lands of the State of Utah within units of the National Park System that are conveyed to the United States pursuant to this section shall become a part of the appropriate unit of the National Park System, and be subject to all laws and regulations applicable to that unit of the National Park System.

(2) The Secretary of the Interior shall, as a part of the exchange process of

this Act, credit to the State of Utah the fair market value of 580.64 acres within Capitol Reef National Park that were conveyed by the State of Utah to the United States on July 2, 1971, for which the State has never been compensated. The fair market value of these lands shall be established pursuant to section 8 of this Act.

SEC. 7. OFFER TO STATE.

(a) SPECIFIC OFFERS.--Within 30 days after enactment of this Act, the Secretary of the Interior shall send the State of Utah a list of lands, or interests in lands, within the State of Utah for transfer to the State of Utah in exchange for the State lands and interests described in sections 2, 3, 5, and 6 of this Act. Such list shall include only the following Federal lands, or interests in lands:

(1) Blue Mountain Telecommunications Site, fee estate, approximately 640 acres.

(2) Beaver Mountain Ski Resort Site, fee estate, approximately 3,000 acres, as generally depicted on the map entitled "Beaver Mountain Ski Resort" dated September 16, 1992.

(3) The unleased coal located in the Winter Quarters tract.

(4) The unleased coal located in the Crandall Canyon tract.

(5) All royalties receivable by the United States with respect to coal leases in the Quitcupah (Convulsion Canyon) tract.

(6) The unleased coal in the Cottonwood Canyon tract.

(7) The unleased coal in the Soldier Creek tract.

this Act, compensate the State of Utah for the fair market value of five hundred eighty and sixty-four one-hundredths acres within Capitol Reef National Park that were conveyed by the State of Utah to the United States on July 2, 1971, for which the State has never been compensated. The fair market value of these lands shall be established pursuant to section 8 of this Act.

SEC. 7. OFFER TO STATE.

(a) SPECIFIC OFFERS.--Within 30 days after enactment of this Act, the Secretary of the Interior shall transmit to the State of Utah a list of lands, or interests in lands, within the State of Utah for transfer to the State of Utah in exchange for the State lands and interests described in sections 2, 3, 5, and 6 of this Act. Such list shall include only the following Federal lands, or interests in lands:

(1) Blue Mountain Telecommunications Site, fee estate, approximately six hundred forty acres.

(2) Beaver Mountain Ski Resort Site, fee estate, approximately three thousand acres, as generally depicted on the map entitled "Beaver Mountain Ski Resort" dated September 16, 1992.

(3) The unleased coal located in the Winter Quarters tract.

(4) The unleased coal located in the Crandall Canyon tract.

(5) All royalties receivable by the United States with respect to coal leases in the Quitcupah (Convulsion Canyon) tract.

(6) The unleased coal located in the Cottonwood Canyon tract.

(7) The unleased coal located in the Soldier Creek tract.

(b) ADDITIONAL OFFERS.--(1) In addition to the lands and interests specified in subsection (a), the Secretary may offer to the State of Utah the right to receive a portion of the royalties receivable by the United States with respect to Federal geothermal, oil, gas, or other mineral interests in Utah which on August 1, 1992 were under lease and covered by an approved permit to drill or plan of development and plan of reclamation, were in production, and were not under administrative or judicial appeal.

(2) No offer under this subsection shall be for royalties aggregating more than 50% of the total appraised value of the state lands described in sections 2, 3, 5, and 6.

(3) The Secretary shall make no offer under this subsection which would enable the State of Utah to receive royalties exceeding a total amount of \$25 million unless such offer has been approved by enactment of an appropriate joint resolution of Congress.

(4) If the total value of lands and interests therein and royalties offered to the State pursuant to subsections (a) and (b) is less than the total value of the State lands described in sections 2, 3, 5, and 6, the Secretary shall provide the State a list of all public lands in Utah that as of August 1, 1992, the Secretary in Resource Management Plans prepared, pursuant to the Federal Land Policy and Management Act of 1976, had identified as suitable for disposal by exchange or otherwise, and shall offer to transfer to the State any or all of such lands, as selected by the State, in partial exchange for such

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(2) No offer under this subsection shall be for royalties aggregating more than 50 per centum of the total appraised value of the state lands described in sections 2, 3, 5, and 6.

(3) The Secretary shall make no offer under this subsection which would enable the State of Utah to receive royalties under this section exceeding \$12,500,000 annually.

(4) If the total value of lands and interests therein and royalties offered to the State pursuant to subsections (a) and (b) is less than the total value of the State lands described in sections 2, 3, 5, and 6, the Secretary shall provide the State a list of all public lands in Utah that as of December 31, 1992, the Secretary in Resource Management Plans prepared, pursuant to the Federal Land Policy and Management Act of 1976, had identified as suitable for disposal by exchange or otherwise, and shall offer to transfer to the State any or all of such lands, as selected by the State, in partial exchange for such

State lands, to the extent consistent with other applicable laws and regulations.

SEC. 8. APPRAISAL OF LANDS TO BE EXCHANGED.

(a) **EQUAL VALUE.**--All exchanges authorized under this Act shall be for equal value. No later than 90 days after enactment of this Act, the Secretary of the Interior, the Secretary of Agriculture, and the Governor of the State of Utah shall arrange for an appraisal of the lands or interests therein involved in the exchanges authorized by this Act. A detailed appraisal report shall utilize nationally recognized appraisal standards including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.

(b) **DEADLINE AND DISPUTE RESOLUTION.**--(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, any appropriate United States District Court shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

(2) The United States District Court shall be empowered to order appropriate actions by the Secretary, including the conveyance of as many Federal lands or interests therein or the right to receive payments described in section 7 and offered by the

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(b) **DEADLINE AND DISPUTE RESOLUTION.**--(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

Secretary, as may be required to provide the State of Utah value equal to the value of the lands described in sections 2, 3, 5, and 6 the State conveys to the United States as part of an exchange authorized by this Act.

(3) Any action provided for in this subsection can be filed with the court no sooner than 2 years and no later than 5 years after the date of enactment of this Act. Any decision of a District Court under this Act may be appealed in accordance with applicable laws and Rules.

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(c) Adjustment. -- If the State shares revenue from the selected Federal properties the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.

(d) Interest. -- Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five year treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).

SEC. 9. TRANSFER OF TITLE.

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(a) TERMS.--(1) The State of Utah shall be entitled to receive so much of those lands or interests in lands and additional royalties described in section 7 that are offered by the Secretary of the Interior and accepted by the State as are equal in value to the State lands and interests described in sections 2, 3, 5, and 6.

(2) For those properties where fee simple title is to be conveyed to the State of Utah, the Secretary of the Interior shall convey, subject to valid existing rights, all right, title and interest, subject to the provisions of subsection (b). For those properties where less than fee simple is to be conveyed to the State of Utah, the Secretary shall reserve to the United States all remaining right, title and interest of the United States.

(3) All right, title, and interest in any mineral rights described in section 7 that are conveyed to the State of Utah pursuant to this Act shall revert to the United States upon removal of minerals equal in value to the value attributed to such rights in connection with an exchange under this Act.

(4) If the State of Utah accepts the offers provided for in this Act, the State shall convey to the United States, subject to valid existing rights, all right, title and interest of the State to all school and institutional trust lands described in sections 2, 3, 5, and 6 of this Act. Except as provided in section 7(b), conveyance of all lands or interests in lands shall take place within 60 days following agreement by

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(b) INSPECTIONS.--Both parties shall inspect all pertinent records and shall conduct a physical inspection of the lands to be exchanged pursuant to this Act for the presence of any hazardous materials as presently defined by applicable law. The results of those inspections shall be made available to the parties. Responsibility for costs of remedial action related to materials identified by such inspections shall be borne by those entities responsible under existing law.

(c) CONDITIONS.--(1) With respect to the lands and interests described in section 7, enactment of this Act shall be construed as satisfying the provisions of section 206(a) of the Federal Land Policy and Management Act of 1976 requiring that exchanges of lands be in the public interest.

(2) Development of any mineral interest transferred to the State of Utah pursuant to this Act shall be subject to all laws, rules, and regulations applicable to development of non-Federal mineral interests, including, where appropriate, laws, rules, and regulations applicable to such development within National Forests.

SEC. 10. LEGAL DESCRIPTIONS.

(a) IN GENERAL.--As soon as practicable after enactment, a map and legal description of the lands added to the Navajo and Goshute Indian Reservations and all lands exchanged under this Act shall be filed by the appropriate Secretary with the

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Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and each such map and description shall have the same force and effect as if included in this Act, except that the appropriate Secretary may correct clerical and typographical errors in each such legal description and map. Each such map and legal description shall be on file and available for public inspection in the offices of the Secretary of Agriculture and the Secretary of the Interior and the Utah offices of the appropriate agencies of the Department of the Interior and Department of Agriculture.

(b) PILT.--Section 6902(b) of title 31, United States Code, is amended by striking "acquisition," and inserting in lieu thereof "acquisition, nor does this subsection apply to payments for lands in Utah acquired by the United States if at the time of such acquisition units, under applicable State law, were entitled to receive payments from the State for such lands, but in such case no payment under this chapter with respect to such acquired lands shall exceed the payment that would have been made under State law if such lands had not been acquired".

(c) INTENT.--The lands and interests described in section 7 are an offer related only to the State lands and interests described in this Act, and nothing in this Act shall be construed as precluding conveyance of other lands or interests to the State of Utah pursuant to other exchanges under applicable existing law or subsequent Act of Congress. It is the intent of Congress that the State should

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(d) COSTS.--The United States and the State of Utah shall each bear its own respective costs incurred in the implementation of this Act.

(e) DEFINITION.--As used in this Act, the term "school and institutional trust lands" means those properties granted by the United States in the Utah Enabling Act to the State of Utah in trust and other lands which under State law must be managed for the benefit of the public school system or the institutions of the State which are designated by the Utah Enabling Act.

SEC.11. AUTHORIZATION OF APPROPRIATIONS.

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Mr. VENTO. Well, thank you very much, Attorney General Graham.

We appreciate your insights, and obviously the responsibilities that you have that especially lead you into an issue of contention with the Land Managers, based on your responsibilities.

And you know, I think that there is an effort here, obviously, to come up with a resolution of what has been a long outstanding issue.

And so we're looking to that.

A major part of the offer that would be made in the legislation to the state consists of unleased Federal coal located within the National Forest System, as you know.

From last year's hearing, I seem to recall that the state indicated that it would develop that coal through underground mining, rather than strip mining. Is that correct? Or do you have someone on the staff that can respond to that?

I hadn't fully reviewed the Governor's statement, but his statement, incidentally, will be put in the record.

[EDITOR'S NOTE.—See appendix.]

Ms. GRAHAM. Let me introduce, if I may, Kevin Carter, who is the Assistant Director of our Division of Lands, and let him speak to that specific issue.

Mr. VENTO. Yes, Mr. Carter, welcome.

Mr. CARTER. Thank you, Mr. Chairman.

It is indeed true that all of the mineral resources that we are hoping to acquire in this bill are deep coal reserves that will be extracted through underground mining. They are adjacent to existent underground mines, and the mining will just continue on into those lands.

Mr. VENTO. We obviously have a keen interest in that because once the mining has concluded the lands would be returned to their different responsibilities and different impacts from these types of activities.

Would there be objection to us trying to spell out some of that in the bill in a manner that's agreeable, based on the representations made today?

Mr. CARTER. Are you asking us whether or not the bill could spell out that the lands would go back after mining was completed?

Mr. VENTO. No. The type of mining that would occur and the processes which are intended.

Mr. CARTER. I certainly don't have any trouble with that. I don't see what choices there are. I mean, there's only one way they're going to get that coal. There's no way they can possibly strip mine it; it's way too deep. So I don't see any problem with that at all.

Mr. VENTO. Well, I expect it would just be helpful in terms of dealing with the issues in terms of some concerns that might arise, probably in the comfort zone, if nothing else.

But I would like your response to that obviously, and I think you've obviously indicated that you don't see any difficulty with it at this point. But you can temper that with further remarks as we go forward and work on this.

Mr. CARTER. If what you're talking about is restrictions as to whether it's long wall or post and those kinds of things, then we'd

have concerns about that. But if you're just talking about the fact that it would be underground mined—

Mr. VENTO. Deep mining versus strip mining is what I'm talking about.

Mr. CARTER. No problem at all with that type of amendment.

Mr. VENTO. Attorney General Graham, I raised the issue with the different mix of lands. Obviously, this process has been a detailed process with the Federal Land Manager, led by the BLM, doing the negotiating with the state.

And based on the different mix of cash versus the unleased and other types of sites that are specified under Section 7 of the bill, do you have any response to my comment?

Do you know why, for instance, I asked Representative Hansen, I yielded to him, but he suggested that I pose that same question to this panel.

So both on the cash and the different mix, and the basis for that particular change in the bill, and what you believe the impact will be.

Ms. GRAHAM. Yes. Actually, Mr. Steve Boyden is here from my office, and he was directly involved in that process, so it may be quicker to have him explain.

Mr. VENTO. Surely. Mr. Boyden?

Mr. BOYDEN. Thank you, Mr. Chairman.

The compensation under Section 7 that is to be received by the state in exchange for state lands conveyed to the Federal Government, consists, as mentioned before, of three types of land interests.

First was a total fee interest, and that was a telecommunications site and a ski resort. And it is anticipated that those would be conveyed soon after the passage of the bill because of the nature of that exchange.

All that would have to be done is an appraisal of those lands, and then the appropriate amount credited to the Federal Government for those lands.

The second category deals with coal lands. Now, the coal lands are in two parts. Some are leased and some are unleased.

The leased portion already has a cash flow attached to it. The others that are unleased shortly will be developed. That's why they were chosen.

Now the reason for the list being inclusive of all of the interests that the Federal Government would offer is to prevent a bunch of lands which were unacceptable to the State of Utah being offered, and wasting everybody's time.

There's also a question of having property offered which would have environmental concerns by a large segment of our community.

There are lots of lands in the State of Utah owned by the Federal Government but a lot of those lands have significant archaeological problems or they have problems with the habitat of various species.

So when you start doing land-for-land exchanges, you run into a huge problem. And perhaps Mr. Carter could explain more about those and why we've had so many difficulties in times past doing exchanges.

So we have been able to locate lands which will have enough cash generated to pay the state for the value of its lands.

Now the third category was mineral royalties. Now mineral royalties happen to be very appealing to the state inasmuch as they are presently being generated, and that's something we can get our hands on.

And Congressman Orton mentioned, you know, how important those were in the mix, because it allows the state to immediately be able to credit money to the trust fund, rather than sit on undeveloped lands for a hundred years, as we've already done.

So it becomes difficult to select lands throughout the state which turn over revenue for us.

Now the whole concept in this exchange was to provide, for the State of Utah, adequate compensation.

Now, we understand there are accounting problems. The problem is that the Office of Management and Budget, and also CBO, don't care what the inherent value of the land is, for instance, in the National Park; that isn't of interest to them.

What they care about is how much money is it producing. If the Federal policy says there'll be no commercial development, we already know what that will be. The answer is, nothing.

And so that's why we're interested in an exchange, because Federal policy has prohibited any kind of development, without getting into the litigation that Attorney General Graham has just mentioned.

So we have had to find a way around the problem of accounting here. We have tried to find lands which would produce income. But the fact of the matter is that we don't have anything located in our Federal enclaves, known as inholdings inside of the Federal lands, which produces a lot of income in return.

That's why we want out, and that's why the Federal Government wants them. That preserves the integrity of the lands, and so we're always going to be faced with a PAYGO problem, as it's called, regardless of how we do an exchange.

The question is, how can you spread that out so that OMB is not going to score it or at least look the other way when we do this.

And it was our understanding that last year, the way this was finally crafted, we had final approval from the Federal agencies with regard to that.

Now, again, this is a Congressional problem, and we recognize that we can do some things to help with that, and we're certainly in a position to talk to you about that.

Mr. VENTO. Well, I don't know that we have the same problem with the mineral. The granting of the unleased areas especially would probably be the best point where there is no problem because it's land that's not producing and obviously can be brought into production and provide a stream of revenue then that would sustain the state.

I think when you start going back up to actually diverting revenue from leased areas, there may be some questions raised about that.

Obviously, I want this to work. I'm not raising these issues now because I'm looking for stumbling blocks. I want this to be accomplished, as you do.

So then of course we go directly to cash that's derived from the minerals, which is the most direct but also most difficult to pass muster with the rules that we have.

So that's a concern.

I was thinking, when you were talking about this, obviously ending the litigation. At least we won't have to worry about all the lawyers being employed in this particular area. We won't have to have economic dislocation for this for the attorneys, do we, Attorney General Graham?

We might not score that as much savings, no.

Well, I also note that Mr. Boyden, and Mr. Carter, and other witnesses are pointing out some of the problems that are inherent in the transfer of land for land are the same problems that the National Government is really reviewing, such as the mineral leasing laws that we have that govern. And the patents and the unperfected patents that exist, obviously, is a major aspect. Obviously, the Endangered Species Act, as you point out, and some other environmental ones.

But I thought that first on the list was the hard rock carining leasing laws that we have that obviously, with these patents, make the lands encumbered in the view of the state.

And you're not willing to take lands that are encumbered in such a manner.

So I find that interesting. We may in fact, of course, resolve that at some point in this session of Congress. At least we hope to.

Mr. CARTER. We had our eye on some very good parcels and we thought they were excellent, until we did a title search, and then we found out that the Federal laws made them something we would really not like to own.

Mr. VENTO. Well, I think a lot of conservation groups and others would like rational management of these lands. Bring this into the twentieth century, or at least the twenty-first century, perhaps, would cause applause.

But I think this is the sort of problem that we're facing in terms of dealing with land use questions, and it's surprising. You know, I hadn't even thought of it until I sat down and began looking at what is in the state.

And I think there are other factors here. That is, the land management agencies are sometimes reluctant to give up a piece of what they have been holding for some time, which I think is not surprising, but it's a reality.

Did you have questions at this particular point, Congresswoman Shepherd?

The Attorney General made some great comments about you and your role in providing her with assistance and guidance.

Ms. SHEPHERD. Well, I thank her for her comments. I'll look them up.

And I have no questions.

Thank you.

Mr. VENTO. It's clear to us that you're a great contribution to the Committee and to the Congress, so we're already benefitting from the abilities of the gentlewoman from Utah in terms of her role on the Committee on this matter, and many others, I might add.

I did have an additional question.

Attorney General Graham, after the Committee and the House had acted on last year's version of this bill, there were some suggestions raised that the idea of referring to the District Court disputes over the values of such lands involved here might present a problem because it might be construed as asking the court to provide an advisory opinion, which, of course, the Federal courts will not do.

Is this a realistic problem? Would it make sense for us to use the Claims Court to avoid that?

Can you provide us any guidance, or do you want to yield to anyone on your staff to explore this issue briefly here this morning, since it was raised?

Ms. GRAHAM. Well, again, I'm sure any comments from Mr. Boyden on this would be edifying, but I think this is an important change for us, and maybe I could ask him to explain briefly.

Mr. BOYDEN. Well, the advisory opinion question, I think, was raised by—

Mr. VENTO. By the Congressional Research Service.

Mr. BOYDEN. I'm not sure where that came from, but I was aware of the question.

There can be, through specific statute, a referral of a case from Congress to a Federal Court. The issue that has to be determined is whether or not there is really a case or controversy, and whether or not there's finality in that.

And in this case, I think we have both.

We have both the issue in dispute, the Federal Government will obviously want to claim one value, the state another. And it depends on whose property it is as to who's going to be high and low.

But we always assume that if we're selling, we're going to ask high, and if we're buying, we're going to ask low, and vice versa with the Federal Government.

So we anticipate a lively controversy, and hopefully a lot of that can be handled without going to the Court.

But in the event it does go to the Court, we're going to have people with a difference of opinion.

The next question is, does the Court have authority to do something other than issue an advisory opinion.

And yes, it does. It settles on a final amount which then becomes an obligation of the parties to compensate one or the other, according to the provisions of the law.

So I think that this is going to be satisfied without any question, with the language that's in the statute. I don't see any kind of constitutional issue that can be raised with that with any success.

Mr. VENTO. And could you comment, Mr. Boyden, on the venue change. Obviously I've asked more than one question here, trying to elicit a general discussion of the issue concerning the probability of an advisory opinion, and the issue of the Court of Claims versus the District Court.

Mr. BOYDEN. Well, I've practiced before the Court of Claims and also the Federal District courts, and the venue question involves, as Congressman Hansen said, some very practical problems.

As you know, the U.S. Claims Court is located here in Washington, and it's designed to handle claims against the Federal Government. And the only jurisdiction that it has is to give a decision

which then, if liability is found, compensates from the Federal Treasury, the aggrieved party.

I don't imagine that the Federal legislation we're talking about now would contemplate an open door to the Federal Treasury.

Now that might be an amendment that we would look at if you were interested and the Court of Claims seems appropriate. Otherwise, we're talking about finding a neutral ground where neither party is aggrieved about the outcome, for fear of bias.

And our idea of a fair court would be the Utah District Court in the state system. But the compromise would be the Federal District Court, and we have confidence in that system.

And then the question is, which Federal District Court. You'll notice in the House language of last year, it did not specify the Utah District. It just said an appropriate Federal District Court.

Well, I think there are only two appropriate Federal District Courts, one here in Washington, and the other one out in Utah.

And if you talk about conflicts of law, the significant contexts probably are in Utah, because that's where the land is located, and that's where the majority of witnesses would be.

It really becomes an economic problem for, I think, the United States, as well as the State of Utah, to try to carry on any extended litigation in Washington, as opposed to the State of Utah, where the action really would be taking place, where all the people are located.

Mr. VENTO. Well, you spoke to remedies in terms of that, and of course, I think there is a beneficial aspect in building up an expertise in the court with regards to a certain area in terms of land law, and the valuation and so forth.

So I think that there are some advantages there.

As long as we're on legal questions here, just sort of backing up and looking at the entire bill, how does this impact—I guess the answer that I want back is that it doesn't—but how does it impact outstanding litigation with regards to anything that may be pending, or any claims that somebody may make or have made, such as the cases that the Attorney General had, herself, outlined here?

Attorney General Graham, did you want to comment on that, or would you want to yield to Mr. Boyden on that?

Ms. GRAHAM. Yes, let me yield to Mr. Boyden.

That's a very untenable and unfortunate position, I think it's safe to say, for us, to be against people moving the suit, who are there really on behalf of the school children.

Those claims have been brought most earnestly, and so the state obviously is in a position of, sadly, having to try and deal with one of the most difficult dilemmas in resolving what positions to take in that litigation.

Mr. Boyden is involved in that litigation, and at least is an observer on behalf of the state. Maybe he could speak to the issues there.

Mr. VENTO. Mr. Boyden?

Mr. BOYDEN. Thank you.

The Federal Government and the State of Utah are in identical positions. We're both acting as trustees.

And in that capacity, the highest fiduciary obligation has to be exhibited on behalf of the trustee for the beneficiaries.

I see this legislation as allowing both the State of Utah and the United States to discharge that fiduciary responsibility very vigorously, because it has a forum to go to.

There is no preconceived value. Everyone can go there and make its case, and represent their interests as best they can.

And I see this as having really no particular application to existing law or existing litigation, because what we're going to be doing here is what they are requesting us to do in these other cases.

They're saying that the state has not been vigorous enough. They have not gone out and represented the interests of the beneficiaries, the school children.

And they've allowed sweetheart leases or other kinds of deals to take place administratively, where the beneficiaries did not get the full value of the land.

I see this legislation as premised on the concept of value-for-value exchange.

And the Federal Government is going to protect its value and the State of Utah is going to protect its value.

And if we can agree, so be it. If we can't, then we have a forum to go to where we can litigate it.

And I don't know how else one can discharge those kind of fiduciary responsibilities, other than this way.

Ms. GRAHAM. Maybe I could just add, if I could, Mr. Chairman, briefly, I think it's fair to say that that litigation is in part motivated by the tremendous frustration felt right now by education leaders about the lack of the state's ability to deliver on trust lands and to make them contribute to the permanent school fund.

I think that if there was hope indicated from Washington that there's going to be some serious attention paid to this problem, such as is presented in this bill, I think a lot of that frustration about lack of activity would be reduced. And a more optimistic view of the Federal Government working with the State of Utah in the future, would probably take away some of the motivation to file this litigation, and bring more of a partnership about working with future problems.

I'm speaking for a whole lot of people there, but I believe, fairly.

Mr. VENTO. Well, thank you, Attorney General.

You know, if this were to be enacted, it's my hope that it would make that type of case and that litigation moot.

Obviously, the very agreement itself and the subsequent could be attacked on the same basis, either from a national or state perspective, representing those interests.

Is that correct?

Of course, whether it would be successful is another matter, but—

Ms. GRAHAM. Right. The claims could be made.

I don't know, Steve, if you've reviewed the possibility of that. We would certainly be hopeful that there would not be continued litigation.

Mr. VENTO. Oh, I would agree, but I am interested, and I think that we need to state the expectation. Maybe it's all something that is being taken for granted. I don't think it's being taken for granted by the Attorney General, from what I hear.

So there is the expectation and the hope that it would end. But, obviously, any laws we've passed are always subject to that.

But in this case, because it has been an on-going issue specifically, it raises the question to a more prominent level.

Mr. Boyden?

Mr. BOYDEN. Well, I think most of the parties that would be involved in this kind of litigation have been party to the formulation of the legislation.

And that process has been very helpful in coming up with legislation; while not being perfect, it at least is acceptable to the majority of the parties.

No one has any way to insulate himself from litigation. Frivolous litigation is one of the biggest concerns of the bar right now.

But I would assume that the legislation we have here is not opening its flank up to some sort of prima facie breach of fiduciary duty on the part of either the state or the Federal Government. I think we're both in the same forum, scratching for what we think is right. And I don't see where that's going to be attacked.

Mr. VENTO. Well, your opinions on it and insights are most helpful to the Committee, Mr. Boyden, and Attorney General Graham.

I have two questions really. They're unrelated to this stream of questions I've asked, and I'd be happy to yield to the gentlewoman from Utah if she had any questions on this matter.

If it's helpful for continuity, on occasions, to interrupt me, please do.

I understand that the state intends or wants to have the opportunity, to acquire the fee title to the Blue Mountain and the Beaver Mountain sites in particular.

Can you comment or reaffirm that view?

Mr. Carter?

Mr. CARTER. That is indeed the case. We do want to acquire the fee title to those two sites, primarily because the income stream from those sites comes from surface use.

Mr. VENTO. Yes.

And so that'll obviously be an issue of valuation.

And the final thing is that our colleague from Utah, Mr. Orton, raised the point that we don't have an enforcement mechanism, we don't have a date certain.

Do you have any views with regards to an enforcement mechanism to the issue of a date certain that Congressman Orton raised in this morning's discussion?

Mr. Boyden?

Mr. BOYDEN. Let me address that, if I may.

There are a couple of problems that are raised by that issue.

The first question is getting to finality. We are engaged in an exchange where the parties don't know the value of the property. So that's always been one of the hangups in any kind of exchange. There has to be a mechanism in place to make that determination.

Once the determination is made, then I don't see any problem in inserting a time certain within which the conveyance should be made.

And I believe there is provision for that in the legislation, so I'm not worried about that one.

The other problem that we have involved in this certainly is the question of when we come to the table to negotiate. The state has the opportunity, I suppose, to turn down offers, and to back out of the deal if what is being offered is not adequate.

I don't know that you can force any party, short of condemnation, to give a property right up. And I suppose that if you were to make that an element in here, that it would cause some problems.

I think the state's got to retain the right to reject an offer which is inadequate.

Perhaps Mr. Harja would like to respond to that further.

Mr. VENTO. Mr. Harja?

Mr. HARJA. I'm not sure what more I could say than that actually.

Mr. VENTO. It's sort of like after everything's been said, but hasn't been said by everyone. [Laughter.]

Mr. HARJA. Yes. You want me to repeat it again, or not?

Mr. VENTO. Well, just to put the last statement to rest in terms of the state backing out, you mean that once they've triggered the mechanism, they go to court, then they accept the court's decision, so at that point it would not be reversible, although subject to appeal of course.

Mr. BOYDEN. Well, I think that there are those that would want to say that if the court decision comes out badly, we could still say, oh, never mind, and that way we have wasted everybody's time.

Mr. VENTO. No. I mean, since the state triggers it and has the appeal process, and I don't expect that any of those would be given up.

But once you've gone down the road—

No, I agree, and you're troubled by the predicate of having a date on which everything falls apart. I mean, that's the concern I have. I can't predict. Ten years seems like a lot of time, but clearly if you're within an appeal process or something, and you decide to exercise that, and since you haven't consummated the transfer of land and the agreement on minerals, does the entire package fail, or just a segment of it?

I don't know. That's why I raise the question. It's good to have an enforcement mechanism. But I suppose that one looks at the bill and says, we're confident with the precepts that are included here, they will bring about the proper change.

Mr. BOYDEN. I can tell you what my personal fear is: We decide on value, either through negotiation or through the court system, and then we find that the payment schedule is going to be so attenuated that payout may never happen in the lifetime of the kids who are not conceived as of this date.

I think that that is the reason why, number one, we have insisted on interest being in there. We could be harmed severely by an installment payment without any interest. I would love to buy a home on that kind of a basis.

And number two, the compensation that we would get from royalties, if that kicks in, at least assures us a source of income which will pay it out over a reasonable period of time.

And I think that's what most of us in the state have concerned ourselves about.

That listing that's in section 7a, by the way, at one time I think during the negotiations, was a prioritized list. But it was our intent, as that moved along, to be able to use all of those lands and develop whatever we could, and then as soon as we hit the mark of the value, all of those interests would revert to the United States. So that the United States wouldn't be harmed in that process, provided of course, that the development was done in an orderly way, and that we're not handing junk back to you that's going to cost a lot of money.

Mr. VENTO. Well, let me just tell you, on the interest issue, the other questions it's raised—assuming everyone operates in good faith. But, you know, the U.S. Government's made a lot of mistakes operating in good faith in terms of its flow of revenue from public lands.

And if we're going to pay interest and the state is going to make a determination as to what the agreements are under the lease without any ability of the National Government to monitor or to have a role in it, and that's as is intended, so that you can take your resources and have this flow of revenue, that then with the interest, and maybe a policy that may not be achieving, in terms of either leasing or receiving the right amount back, that we would end up with interest payments for a longer period of time.

So the concern, in terms of an attenuated payment schedule, could actually operate to the detriment of us paying interest when in fact you have more, or significant control over what the flow of revenue would be, based simply on the judgments that you make in terms of leasing. You may say, well we want to charge less for this ski area or have a different lease so that we can promote tourism and do other things, so, to the cash offer, okay.

It does that. But the point is that until the revenue flow extinguishes whatever the cash offer would be and/or the royalty, but then we would pay interest.

Obviously I can't negotiate with you here, but we will obviously pay close attention to that because we have PAYGO problems.

And I think then the predicate of all of this underlines that, if we don't move ahead, then we're not going to have the enhanced opportunity and everyone remains in paralysis in terms of accomplishments.

It is, I think, helpful to have the dialogue and the testimony concerning what the fears are. But I did want to put on the record that these concerns could and should be stated, not just for the State of Utah, but for the National Government and management of land, as well, which I am trying to do, if inarticulately.

Ms. Shepherd, did you have any further questions?

Ms. SHEPHERD. No, Mr. Chairman.

Mr. VENTO. Okay, well I—

Yes, Mr. Carter?

Mr. CARTER. Thank you, Mr. Chairman.

I have an answer to a question that you asked a previous panel about why we didn't select some lands. I'd be happy to give that to you now, or pass that along to your staff.

Mr. VENTO. Could you give that to the Committee at this time.

Mr. CARTER. If I recall, your question was why there were certain lands within the National Forest that the Federal Government would not be acquiring.

Mr. VENTO. Yes, I did ask that question.

Mr. CARTER. And then there was the subsequent follow-up question about whether or not there were other Department of the Interior lands that were also not included in the exchange.

Did I clearly restate the questions?

Mr. VENTO. Yes, that's correct.

Mr. CARTER. The lands that were not included in the Forest Service portion of the exchange are primarily small parcels that are already surrounded by private lands within the forest, and therefore the Forest Service was not particularly interested in acquiring them.

The second reason was that they had been leased by the state previously, and the type of use to which they were being put was something that the Forest Service did not want to acquire.

And the third reason was that the lands had a mineral development in place where ownership of the surface was important for the development of the minerals.

So those are the three reasons why approximately 4,000 acres of land within the National Forest were not included in the exchange.

Mr. VENTO. And I asked the question with regards not to National Parks. They said that all of the inholdings in National Parks are being conveyed.

And then I asked about Fish and Wildlife Service, and they didn't answer that.

Mr. CARTER. To my knowledge, there are no school and institutional trust lands administered by the Department of the Interior, except for the BLM, that are not included in this exchange, with the exception of two small parcels inside the Navajo Indian Reservation that have producing oil wells on them, 40-acre parcels.

Mr. VENTO. Okay. That was going to be the other question.

I think it's important for the record to reflect that. We appreciate your bringing the response, Mr. Carter, to that, and the insight.

I have no further questions of the panel. It's an excellent panel, people that have done, obviously, a lot of work on this, and we appreciate that. And we hope that we can bring this to fruition.

Thank you Attorney General Graham.

Ms. GRAHAM. Thank you very much for your good thinking and leadership on this issue, Mr. Chairman. Also if I could recognize the obvious ability of this group beside me, but in particular, Steve Boyden who is sadly not going to be with us much longer in the Attorney General's office.

Mr. BOYDEN. Thank you.

Ms. GRAHAM. He has been a real moving force in the analysis and realistic solution that's been proposed, so I want to thank him and everyone.

Mr. VENTO. Thank you, Mr. Boyden, Attorney General Graham. Thanks.

PANEL CONSISTING OF HON. PETERSON ZAH, PRESIDENT, NAVAJO NATION; JOHN KENNEDY, ESQ., ON BEHALF OF THE GOSHUTE INDIAN TRIBE; KAREN RUPP, LEGISLATIVE VICE PRESIDENT, UTAH PTA, ON BEHALF OF THE EDUCATION COALITION IN UTAH; AND CINDY SHOGAN, D.C. REPRESENTATIVE, SOUTHERN UTAH WILDERNESS ALLIANCE, ALSO ON BEHALF OF THE NATIONAL PARKS AND CONSERVATION ASSOCIATION AND THE SIERRA CLUB

Mr. VENTO. We have the final panel then.

Peterson Zah, the President of the Navajo Nation is with us this afternoon. John Kennedy for the Goshute Tribe. Ms. Karen Rupp, the Utah PTA officer. And finally, Cynthia Shogan, of the Southern Utah Wilderness Alliance.

All of your statements have been made part of the record, and so you can feel free to summarize or read the relevant portions thereof.

Welcome, President Zah. Please proceed with your statement. We're pleased to have you here today.

STATEMENT OF HON. PETERSON ZAH

Mr. ZAH. Thank you, Mr. Chairman, members of the Committee, staff.

I wanted to thank the Committee for holding these hearings, so that we can have our say-so in terms of how we feel about the piece of legislation that has been introduced. I wanted to first say that as Native American people in this country, any time you are receiving just a little, little piece of land that comes back to you, we're always happy about that.

And I wanted to thank Congressman Hansen and Congresswoman Shepherd for what they have done.

I hope they can introduce another bill that returns more land to the Indian Nations of this country.

But we're just so happy that this is happening, we like to think that we have a good relationship with the state government, with the Attorney General's office, people who are responsible for land in the West. And we are fully endorsing this piece of legislation.

The Navajo Nation has a land consolidation plan by its own law, that was established back in 1988, and that piece of legislation, or that law says that we have to consolidate all Indian lands so that there's a better way of patrolling those areas where you have jurisdictional issues all the time with the state and the counties. And by consolidating these lands, it will make the work of those individuals a lot easier.

The second reason why we're supporting this piece of legislation is that the Navajo Nation, the Navajo people are already living on that land and their lifestyle is such that we utilize the land from day to day, grazing on those lands, raising sheep for our economy and for our survival.

And they are already existing there on that land, and the land will be given back to the Navajo Nation for them.

The other reason why we're supporting the legislation is the elimination of a checkerboard area. We have a situation like in New Mexico and some in Utah, where we have checkerboarded areas. Some lands are checkerboarded within the aboriginal bound-

aries of the Reservation. Some lands are owned by BLM; some are owned by railroad companies and others. By consolidating all of these, it just makes our work a lot easier.

In terms of the land we'll be giving back, there are already some high schools that are built on this education land. One in particular is the Monument Valley High School there in Monument Valley.

And we're very thankful to the state for turning that piece of land over to us for school purposes years back, and we're happy that that has also occurred.

There's only one question I think the Navajo Nation would like to have the Committee become aware of. And that is the conveyance of Section 32.

Section 32 is located right at the intersection, the highway that goes from Cheyenne all the way up to Blandon. And there's a road that goes off to your right to Monument Valley, the Navajo Nation Park. That's where you get all of your visitors.

And we are not so clear on this bill if that Section 32 land will be given over to the Navajo Nation, and we'd like to make that clear.

Under last year's agreement that we had with the Governor, and other entities and individuals that were involved in this land exchange, it was very clear that that was what was going to happen, but we're not so clear on this piece of legislation.

And I think we wanted to convey this so that is done in such a way that all parties understand what we are doing.

So, Mr. Chairman, in conclusion, I'd like to thank members of the Committee, Congresswoman Shepherd and others, Congressman Hansen, for introducing this piece of legislation, and we would urge the full support of the Committee for its passage.

Thank you very much.

[Prepared statement of President Zah follows:]

THE NAVAJO NATION

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-55

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

Testimony of the Navajo Nation before the Subcommittee on National Parks, Forests and Public Lands of the House Committee on Natural Resources regarding the Utah Schools and Lands Improvement Act of 1993

May 4, 1993

Mr. Chairman and distinguished members of the Subcommittee, my name is Peterson Zah, President of the Navajo Nation. I appreciate the opportunity to express the Navajo Nation's support of H.R.677, the Utah Schools and Lands Improvement Act of 1993. Mr. Marshall Plummer, Vice-President of the Navajo Nation, testified in support of similar legislation last Congress before the Subcommittee on National Lands and Public Lands of the former House Interior and Insular Affairs Committee. The Navajo Nation, once again, urges this Subcommittee and Congress to support the reintroduced bill, H.R.677. We would like to thank Congressman Hansen and Congresswoman Shepard for sponsoring this bill.

Navajo Land Consolidation Plan

H.R.677 conforms to the goals and mandates set forth in the Navajo Land Consolidation Plan enacted by the Navajo Nation Council in 1988 and approved by the Secretary of Interior pursuant to the Indian Land Consolidation Act of 1983, (25 U.S.C.2203, as amended). Under this plan, the Nation desires to eliminate checkerboarded lands within the aboriginal boundaries of the Navajo reservation. The proposed legislation would address many complicated land management problems which have plagued the Navajo Nation, Utah and the federal government. Through land consolidation, tribal, state, and federal agencies would have an opportunity to more effectively apply good land use planning and management techniques.

By consolidating Navajo lands, the Navajo Nation is in a better position to plan proper natural resource and economic development and build necessary infrastructure. Land rights issues at a local level would be less confusing for the Navajo Nation, individual occupants and residents. Moreover, problems of uncertainty in the administration of criminal justice should be eliminated, especially

Statement of President Zah

May 4, 1993

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in San Juan County because there would no longer be checkerboarded lands for jurisdiction disputes. A land consolidation and exchange program would also eliminate duplication of the administration of federal lands by the Bureau of Land Management, the Bureau of Indian Affairs, and the Navajo Nation. Overall, the Navajo Nation could more effectively administer the planning and management of the Utah portion of the reservation.

Benefits to Navajo Lifestyle

In addition to the benefits of land consolidation and use, this legislation returns land to the Navajo people of religious, cultural and historical importance. Long before our reservation was created, these lands were inhabited, cultivated, and used by Navajos as they have been for centuries. Many of the lands slated for transfer have ancient religious shrines and ceremonial sites that are sacred to my people. We believe that the land is integrally significant to one's daily life. Navajos utilize these lands to cultivate and manage their livestock and gather plants or other natural materials for medicinal or religious purposes. The care and management of these lands should be under the jurisdiction of the Navajo Nation. It is important that we secure these lands for the future of our children and our people.

Elimination of Checkerboarded Areas

Another benefit of H.R.677 is the bill would authorize implementation of a comprehensive federal and state land exchange program to eliminate in-held and checkerboarded state school sections situated within the Navajo reservation, other federal reservations, National Parks, National Forests, and the Glen Canyon Dam Recreation Area. This legislation would secure in trust for the Navajo Nation 38,500 acres of surface and subsurface estate, and approximately an additional 9,500 acres of subsurface estate (generally depicted on the map entitled "Utah-Navajo Land Exchange" dated May 18, 1992). In return for relinquishing school lands in favor of the Navajo Nation and Goshute Indian Tribe, Utah will receive a combination of federal land and royalties from selected federal leases. As a result, the checkerboard pattern of state lands intermingled with selected federal lands would be eliminated to produce uniform tracts of state and federal land.

Education Interests

A key component of H.R.677 is the benefit for state public schools. There are an estimated forty-six (46) school sections of land, including subsurface

Statement of President Zah
 May 4, 1993
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estates, which lie within the boundaries of the Utah portion of the Navajo Nation. Most of the Utah State school sections are used or occupied by Navajo people. These residents do not distinguish between state schools and federal trust lands. H.R.677 would relinquish the 46 sections to the Navajo Nation, which would greatly benefit both Indian and non-Indian children alike, who are, by law, beneficiaries of the school trust and public institution trust fund established by the Utah Statehood Act. Royalties generated from activities conducted on the lands will provide important revenue for education purposes. A primary goal of the bill is to maximize the stream of income which will become available to educate Indian and non-Indian children so that all our children may enjoy a better quality of life. Current Governor Michael Leavitt has indicated a desire to establish a working relationship with the Navajo Nation, stated in a letter dated January 6, 1993, to improve the quality of education within the state, beginning with a cooperative effort between Utah and the Navajo Nation to support H.R.677. We submit this letter as Appendix A to indicate our working relationship with the new Utah administration.

Conveyance of Section 32

Last year, Mr. Plummer conveyed the Navajo Nation's support for this legislation conditioned upon assurances from Utah that Section 32, near the Navajo Nation's Monument Valley Tribal Park (Township 43 South, Range 16 East, Section 32, S.L.M.), would be conveyed to the Navajo Nation less the parcels granted to the Monument Valley High School and the Utah State Roads Department. The Navajo Nation continues to seek conveyance of Section 32.

Although both Utah and the Navajo Nation agreed to the conveyance of Section 32, this is not expressly clear in the present legislation. For purposes of clarity, I wish to submit the letters from the former Governor of Utah, Mr. Norman Bangerter, and myself, as confirmation of the understanding reached between the Navajo Nation and Utah. I have attached these documents to my testimony as Appendix B and C and incorporated them by this reference. Governor Leavitt has expressed his support for the overall bill as indicated in a letter dated February 4, 1993, addressed to me shortly after the current legislation was introduced. This is attached as Appendix D. But, to date I have not received any written confirmation that Governor Leavitt agrees to convey Section 32 to the Navajo Nation as was previously agreed to by former Governor Bangerter. I request that the Subcommittee make this clear in legislation and legislative history. I am pleased we have continued to keep good relations with the Governor and new administration. We look forward to working with them in other areas of importance to the Navajo

Statement of President Zah
May 4, 1993
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Nation and Utah.

Utah Land Exchange Memorandum of Understanding

On December 28, 1992, in an effort to maintain progress and public support for this legislation within the Navajo Nation and Utah, the Navajo Nation Council Intergovernmental Relations Committee authorized me, on behalf of the Navajo Nation, to enter into a Memorandum of Understanding among the Navajo Nation, the Goshute Indian Tribe, Secretaries of Interior and Agriculture, and the State of Utah to ensure that the concerns and goals stated herein are met. This legislation is imperative to resolve the long-standing problems that I have described to you. I believe that the Utah land exchange legislation is a good example of how the various parties involved can work together for a common goal.

Conclusion

In summary, a land consolidation and exchange program would eliminate duplication of administration by federal, state, and tribal entities, provide a greater sense of security for Navajo residents, relinquish lands of significant religious and cultural importance to the Navajo people, correct uncertainty in the administration of criminal justice, encourage tribal, state and federal agencies to coordinate and apply improved land use planning and management techniques and help the parties resolve jurisdictional problems and disputes that would lead to greater cooperation. Most importantly, our Navajo children benefit because this legislation will help secure a unified land-base to maximize revenue for education purposes.

In closing, the Navajo Nation thanks the Subcommittee for allowing me the opportunity to express the Navajo Nation's support for H.R.677. This land exchange program is fully consistent with our land consolidation efforts.



APPENDIX A

MICHAEL O. LEAVITT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0001



January 6, 1993

COPY

Honorable Peterson Zah
President
The Navajo Nation
P.O. Drawer 308
Window Rock, Arizona 86515

Re: Utah Federal Land Exchange Legislation

Dear President Zah:

I would like to thank you for your cordial congratulatory letter of November 18, 1992. I look forward to establishing a close working relationship with you personally and with the Navajo Nation in general since we share so many common concerns.

One of the main goals of my administration is to improve education within the State of Utah. Legislation such as the Utah Federal Land Exchange, which nearly passed in the last Congress, is one way to start this process. I fully support the effort to pass this legislation in the 103rd Congress, using H.R. 5118, as amended by the Senate on October 7, 1992, as the starting point.

My representatives will be in Washington D.C. during the last week of January to work on the legislation. It would be most helpful if you could send your representative, Mr. Melvin F. Bautista, Director of Navajo Land Administration, to join them. They will be coordinating the State's effort to secure this legislation, and Mr. Bautista provided great help to them last year.

The warmest personal regards to you and your staff.

Sincerely,

Michael O. Leavitt
Governor

cc Marshall Plummer
Anderson Morgan
Melvin F. Bautista

APPENDIX B



NORMAN H. BANGERTER
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

June 11, 1992

Honorable Peterson Zah
President
The Navajo Nation
P.O. Drawer 308
Window Rock Arizona 86516

Dear President Zah:

This letter is to confirm that the State of Utah offers all of the surface and subsurface estate in Section 32 (T43S, R16E, SLM), near Monument Valley Tribal Park, except the school and county roadshed tracts, as part of the property to be transferred to the Navajo Nation in the Utah Federal Land Exchange Act of 1992. I must, however, request written confirmation from you that the Nation intends to enter into joint planning, management and construction efforts, or some combination of these efforts, mutually suitable to the State and Nation, for a tourist information and visitor's center upon Section 32, in addition to whatever else the Nation may wish to construct on the Section.

Sincerely,

Norman H. Bangerter
Governor

NHIB/clg/jlh



THE
NAVAJO
NATION

APPENDIX C

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-55

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

June 15, 1992

The Honorable Norman H. Bangertter
Governor
State of Utah
Salt Lake, Utah 84114

RE: Section 32 Near Monument Valley Tribal Park (T43S, R16E, S1M)

Dear Governor Bangertter:

This letter will confirm the understanding reached between the Navajo Nation and the State of Utah regarding Section 32. The Navajo Nation agrees to enter into a joint planning, management, and construction effort with the State of Utah regarding Section 32 near Monument Valley Tribal Park. This agreement will also cover the planning, construction, and management of a tourist facility or any additional structures the Nation may construct on the property. The Navajo Nation desires to build a premium tourist attraction on Section 32 with the assistance and cooperation of the State.

I also want to take this opportunity to thank you and the State of Utah for offering all the surface and subsurface estate of Section 32 under the proposed Utah Federal Land Exchange Act of 1992. We understand that 530 acres of Section 32 will be conveyed to the United States in trust for the Navajo Nation of Indians. We also understand that the State will not convey 103.96 acres of the Section because such lands were sold or previously conveyed to the Monument Valley School District and San Juan County; these sections were referred to in your letter of June 11, 1992 as the "school and county roadshed tracts."

Your letter and this response will be attached to the Navajo Nation's testimony and made part of the hearing record on various Utah Land Exchange bills before the House Interior and Insular Affairs Committee. This will inform Congress that conveyance of Section 32 is a condition precedent to obtaining the Navajo Nation's support of this proposed legislation.

Once again, thank you for your cooperation and working with us.

Sincerely,

THE NAVAJO NATION



Peterson
President

APPENDIX D



STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0801

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

February 4, 1993

Mr. Peterson Zah, President
The Navajo Nation
P.O. Box 308
Window Rock, Arizona 86515

FEB 1993
Received
Navajo Nation
Washington
Office



Dear Mr. Zah:

You had written to me shortly after my election to lend support to the federal legislation authorizing a land exchange and consolidation program. Your letter was helpful to me in forming my decision to support this legislation which has now been introduced into both Houses of Congress. While I was in Washington this week I met with our congressional delegation and also Secretary Babbit regarding this particular legislation. I believe that there is sufficient support that a bill could be passed during this congressional legislative session. You will be kept informed as to the progress of this legislation.

Once again, I appreciate your support in these matters which are important to all of us and I look forward to my continued involvement with you.

Sincerely,

Michael O. Leavitt
Governor

MOL:lk

Mr. VENTO. Thank you, Mr. Zah.

Mr. Kennedy, did you have a statement at this time?

Since I assume it relates to the Native American concerns and the Goshute Tribe, I thought probably for the purpose of continuity, we'd ask you to present a brief statement now.

STATEMENT OF JOHN KENNEDY

Mr. KENNEDY. Thank you, Mr. Chairman.

I have submitted a written statement on behalf of Harlan Pete, who is the Chairman of the Goshute Indian Tribe, supporting this bill.

I've also submitted my own statement relating to some of the legal aspects confronting the Goshute Tribe in support of the bill.

I appreciate being given the opportunity to be here and to submit those statements.

We, too, feel strongly about the opportunity to have some of this land restored to the Goshute People. We feel very good about the opportunity to participate in a bill that will do a lot of good for the school children of the State of Utah.

We have high regard for Chairman Zah, who is the President of the Navajo Nation.

We're grateful that President Clinton hasn't acted on the Assistant Secretary's position, and we hope that he will do it as soon as possible, now that President Zah has been able to testify today. [Laughter.]

I also have three daughters who look to Congresswoman Shepherd as an inspiration, and also to our Attorney General, Jan Graham, as an inspiration. Having been educated in the Minnesota School System at Washburn High School, I would like to see Utah benefit in some of the same ways that other states have benefitted, and have the opportunity for a great education.

So, again, we support this strongly.

Thank you for the opportunity to make a comment.

[Prepared statement of Harlan Pete follows:]

STATEMENT OF HARLAN PETE, CHAIRMAN OF THE GOSHUTE TRIBE IN SUPPORT OF H.R. 677 BEFORE THE NATIONAL PARKS, FORESTS, AND PUBLIC LANDS SUBCOMMITTEE OF THE NATURAL RESOURCES COMMITTEE OF THE U.S. HOUSE OF REPRESENTATIVES 103D CONG., 1ST SESS. MAY 6, 1993

Mr. PETE. My name is Harlan Pete. I am the duly elected Chairman of the Goshute Business Council which is the governing body of the Confederated Tribes of the Goshute Reservation, located at Ibapah, Utah. Our Reservation consists of about 95,000 acres and straddles the Utah-Nevada line, about fifty miles south of Wendover and interstate 80. About half of the Reservation is in Nevada and the other half is in Utah. Salt Lake City is the nearest large city and is about a three-hour drive from the Reservation.

Our area is remote, but it is beautiful. The Goshutes have occupied and possessed this land since time immemorial. When the pony Express routes were established in the 1860's, the main East-West trail passed directly through our area, only a few hundred yards from where I now live.

As the West was settled, our lands were taken from us. Our treaty was broken by the federal government and all that we had once enjoyed was gone. Our present Reservation is but a small fraction of our aboriginal area which in 1870 totaled more than 7,000,000 acres. Resources which we had once controlled were taken by the federal government and many private interests.

I have submitted my testimony to you because my people feel that this pending legislation is very important to the Goshute Tribe. The Goshute Tribe wishes to state its strong support for H.R. 677 (sponsored by James Hansen and Karen Shepherd from Utah).

Our Tribe consists of approximately 450 members, about half of whom reside on the Goshute Reservation. Most of our Tribal members who live on our native lands have a very hard time earning a living. Unemployment on the Reservation would probably reach 75 or 80 percent. Those of us who do have jobs work as ranchers or in the few available Tribal positions.

Establishing and maintaining our land base is a major priority for all of the Tribal members. And so, this legislation is welcomed by us because it adds area to our Reservation. The parcels in question have long been like isolated islands, kind of a "no man's land." We know that the land belongs to the State and so we have been forced to work around the parcels. Water lines and trails have been routed over longer distances because of these "islands."

With the prospect of obtaining title to these parcels, the Tribal members are very encouraged. It now is possible that the problems we have had to deal with over the years can be eliminated. Our Tribe is not wealthy. Our people struggle to their day to day existence. We would like to be able to purchase some of the neighboring ranches in our valley when they are offered for sale. Even though the prices have not been high, we have still been unable to make large acquisitions. This legislation will enable us to accomplish a small addition to our Reservation without having to expend resources which are much needed for other programs such as education and health.

Our Lawyer has a suggestion for a small amendment to that bill, which I am sure Congress will find acceptable.

The members of our Tribe truly appreciate the assistance of Mr. Hansen and Ms. Shepherd as well as the work by all the members of the Utah delegation. We know that you, as Members of Congress, are all very busy people. This Subcommittee has many important issues to deal with. I want you to be aware, however, that this legislation is very important to my people, who really need our help.

The Goshute People pray for your well being and for your success. We recognize that you intend to do what is right for all America. I tell you that this legislation is right. Please take action on it. Thank you.

Mr. VENTO. Thank you for your testimony and your reference to the Minneapolis school system.

I represent St. Paul, but I taught in Minneapolis, so you obviously have a sympathetic audience here.

Mr. KENNEDY. We had great teachers.

Mr. VENTO. Well, let me then yield to someone else that's interested in education at this point, and recognize Karen Rupp, who's representing the Utah PTA Association.

Don't they have students in their PTA, PTSA now?

Ms. RUPP. Oh, we do, yes.

Mr. VENTO. Please proceed.

STATEMENT OF KAREN RUPP

Ms. RUPP. Thank you, Mr. Chairman.

I'm happy to be here today on behalf of the parents and also representing the Education Coalition in Utah.

And to give you an indication of who is part of that coalition, we have the State Office of Education, the State Board of Education, the Elementary and Secondary Principals, the Superintendents, the Teacher Associations, the Local Boards of Education, Classified Employees, and Parents.

So it's a broad group of people who have come together on an issue. It's not often that we agree, this group, on anything, and so it's wonderful when we do agree on something. And for this purpose, we are in one hundred percent agreement.

It's interesting to note that over the last few years, we feel a real landmark has come about. These lands have finally been referred to as school trust lands.

For years and years, they were referred to as state lands, and we feel a real accomplishment just to have people now refer to them as school trust lands. And I think it's a real indication of the direction we want to see going.

As has been indicated, we have a real concern for the children in our state being educated. I was trying to get the information and could not reach our State Office of Education because of the time difference.

But I don't know what you spend in the State of Minnesota on education, but I am quite certain it's at least double ours.

We're trying to educate our children about \$2,500 per year for each child, and it's becoming increasingly difficult to find the resources to educate them.

We have shared textbooks; we have limited access to technology; we have antiquated textbooks.

A few years ago, we did research for our own legislature, and we found that some teachers were using textbooks from the year 1945. Our legislature that year was very quick to appropriate \$14 million to help us update our textbooks.

But, because of the number of students we have, we are falling behind again.

We have shortened school weeks, and we have reduced educational opportunities. And this is not in any way to put down our educational system in Utah. We have a marvelous system, with teachers who are extremely dedicated regardless of the things that they are forced to deal with.

Our class sizes are also some of the largest in the nation, so we think that anything that can come to the teachers and the students is going to be very beneficial.

I would just explain a great frustration that we feel, as parents. In the last session of Congress, we felt a compromise was worked

out between the state and Federal Government. We followed the session with great anticipation and excitement, as we watched the House proceed and pass the bill that they did, and then watched the Senate proceed.

The phone calls were going back and forth between the Capitol and back into our state. And we realized that, my gosh, this is a real possibility, it is almost here.

And when, on the last day of the session, the phone call came that because of what happened back here, that the bill was lost, I can't even begin to express to you the disappointment that was felt in our state.

And a lot of people just threw their hands up in the air, and said the Federal Government doesn't really want to work out this situation. And that was the first indication that was given.

And of course the phone calls went to the state, and we chewed on their ears for a little while. And so we just had a real sense of frustration, as parents, about education in the state.

After a few days of calming down, we decided we wanted to redouble our efforts and put an additional pressure on our Governor and the Division of State Lands and Forestry, and on Attorney General Jan Graham. Because of that, I think we are back here with a renewed effort and a greater emphasis on how much this needs to be done this session.

I think we have started much earlier. We're in a much better position to do that.

I think it's going to take some courage on the part of Congress, and I think it's going to take some courage on the part of our state to move away from the bandaid effort that we seem to want to do to cure the ills of education, and really move forward in a progressive manner.

And I think, for the first time, this bill gives us a great deal and a great step forward to be able to accomplish this.

I will tell you that since we have started getting out this information to the people in the State of Utah concerning the trust lands and their intent for the school children, we have been receiving phone calls from across the western states from other constituent organizations, asking, do we have trust lands in our states.

The awareness out there is terribly lacking, and all of a sudden the excitement is starting to get into other states, and questions are being asked, are we using our lands to their wisest and fullest benefit for our children.

And so I think that Congress has a great opportunity to move forward in this area.

We feel that this proposal should receive a positive response from Congress. It will enable you to better protect your irreplaceable resources in Utah's National Forests and Parks and Reservations, and will enable us to better serve the irreplaceable children found in Utah.

My final comment to you is, never should a piece of real estate become more valuable than a child.

And on behalf of the children from the State of Utah, we appreciate you letting us come and be part of this, and especially to Congressman Hansen and to my Congresswoman Shepherd, who is a friend of mine, I appreciate this opportunity, and ask that this one

move forward really soon, and not get caught up in that political process.

And the children will call you blessed.

Thank you.

[Prepared statement of Ms. Rupp follows:]

**STATEMENT OF KAREN RUPP, LEGISLATIVE
VICE PRESIDENT UTAH PTA
BEFORE THE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
103rd CONGRESS, 1ST SESSION
MAY 4, 1993**

Mr. Chairman:

My name is Karen Rupp. I am the Legislative Vice President for the Utah State PTA. Our organization is based on advocacy for children and is grass roots driven by parents, grandparents, aunts, uncles, students, educators, anyone and everyone who is concerned about children. Despite the heavy workload, our efforts are well worth it. There is nothing more important right now to the future of America than the children of the present.

I am also representing the Education Coalition. The members of the coalition are the Utah State Board of Education, State Office of Education, Elementary and Secondary Principals, Superintendents, Teachers, Local Boards of Education, Classified Employees, and Parents.

We face special problems in Utah. One of the biggest problems is the fact that most of the State belongs to the Federal Government--almost 70% of the land in Utah is under Federal ownership. That land does not pay taxes to the schools, nor is most of it available for business operations that could pay taxes to the schools. Compared to the States in which most of you live, this puts us at a great disadvantage. The losses to our schools were supposed to be made up at least in part by revenues from school trust lands given to Utah at the time of statehood to hold in trust for its schoolchildren, but that theory has never held up in practice. As Sigmund Freud is reported to have said, "Theory is good, but it doesn't prevent things from being true."

One of those truths is that Utah's schools are in serious trouble. We have the largest class sizes in the United States, 49% higher than the national average. Our taxes for schools are also among the highest in the nation. Nevertheless, our teacher salaries are below the national average. Our expenditures per pupil are the lowest in the nation, only about half the national average, and we also receive less per pupil from federal funds than any State in the nation. We have a solid commitment by the citizens in Utah for public education, through income tax, sales tax, and property tax. Not only is a large portion of their paycheck designated for taxes, we have fewer adults to support the school age population. Currently

almost half of the state budget goes to fund public education. We have a high commitment to excellence. Some would try to shift the blame to administrative costs, but we also have the lowest administrative cost burden in the United States. We are having a terrible time trying to figure out where to cut next. But rather than continue to cut educational quality, we have decided that we must first bring in every bit of revenue to which our children are entitled.

We are well aware that Utah has a lot of natural beauty and that environmental issues are important and also make attractive issues for political candidates. Utah's national parks and national forests are national treasures. But so are our children. A lot of other interests have been taking a free ride on the backs of Utah's schoolchildren. One of those is the national interest as declared by the Federal Government. Congress decreed that Utah could not tax Federal lands. In return, Congress gave Utah lands in trust that were to replace those lost taxes. These lands were to be held in trust for our little children and the interest generated from our children's lands were to ensure an equitable education for every child. It was Congress that established national parks, national forests, national wilderness study areas, Native American reservations, and national recreation areas that included within their boundaries many of the lands that were supposed to earn revenue to support the schools. Congress thus created a classic conflict--we own resources but are prevented from using them, all the time watching our children suffer from crowded schools, shared textbooks, limited access to technology, antiquated textbooks, shortened school week, and reduced educational opportunities. This has simply got to stop. We are here because Congress played a major role in creating the problem, and we believe Congress must play a major role in solving it. These trust lands have an owner and its not the Federal Government.

We appreciate the importance of the natural beauties in these special areas that the Federal Government has set aside. We have tried repeatedly to reach agreement with Federal authorities to transfer ownership of school trust lands in those areas through purchase or exchange, to no avail. We have difficulty understanding that reticence, since the lands in question amount to only a small fraction of the massive Federal holdings in Utah. Surely it should not prove to be an impossible task to exchange our lands for equivalent lands in the Federal inventory. And surely, given the fact that Federal restrictions have prevented Utah's schoolchildren from receiving their just earnings from these captured lands for many, many years, it is not asking too much for the Federal Government to be generous.

For their part, Utah's schoolchildren have certainly been generous with Federal land managers who have had the use of the children's lands in national parks and other Federally protected areas. Those uses have typically been for free, in some

cases for almost one hundred years. We seek a fair and honorable resolution to this matter, but the current financial crisis in our schools has convinced us that if agreement cannot be reached, we will be forced to undertake development of the school trust lands in Federally protected areas to obtain the revenues which our children were promised so many years ago but have never received. In so doing, we would strive to ensure that developments would be consistent with those previously permitted in similar Federally protected areas, and would seek to avoid serious harm to values recognized in the protective designation, but we will proceed with development of these lands if we must.

In the last session of Congress we felt a compromise was worked out between our State and the Federal Government. This was certainly not all we wanted and I'm sure it was not everything you wanted.

Utah is raising the next generation of workers. We do have a large population of children. These children can either grow up to be educated contributing members of society, or because of a lack of financial resources, become a cost to society and end up on welfare. It seems that we are very adept at a bandaid approach, when with insight and a little courage, we could be well on our way to a solution.

We can not state strongly enough that the families of Utah are depending on Congress to get this legislation completed during this session.

The Education Family in Utah appreciates the efforts of those who have prepared the proposal which is before you today, which would eliminate the need for development of protected lands. We sincerely hope that this proposal will receive a positive response from this Congress, a response which will enable you to better protect the irreplaceable resources found in Utah's national forests, parks and reservations, and will enable us to better serve the irreplaceable children found in Utah's schools. Never should a piece of Real Estate become more valuable than a child. Our Children must come First.

Mr. VENTO. Well, thank you. I need all the help I can get. [Laughter.]

But I think the point is that the work that was accomplished last year has not been for naught. I mean it's obviously represented in a renewed effort this year.

It's a very important bill, and obviously, if the folks from Utah didn't have a lot of determination, it wouldn't have persisted over this past decade, when it was first introduced, or the idea was first brought forward.

Finally, we have on this panel, Ms. Shogan.

Cindy.

STATEMENT OF CINDY SHOGAN

Ms. SHOGAN. Mr. Chairman, today I'm representing my organization, the Southern Utah Wilderness Alliance, and the views of the National Parks and Conservation Association, and the Sierra Club.

I want to thank you for scheduling this hearing, and also for giving us the opportunity to testify.

It was just about a year ago that we came before this subcommittee to endorse Congressional efforts to address the problem of school trust land inholdings within Utah's National Parks, Forests, and Indian Reservations.

Today, I'm here to fully support H.R. 677, legislation that with two technical improvements is identical to the Senate-amended, House-passed bill, H.R. 5118, which we all know died in the waning moments of the last Congress.

Our community, the environmental community, is really proud of last year's efforts to resolve one of Utah's thorniest public lands issues.

For years, the environmental community and the education community have been looking for solutions to the problem of scattered school trust lands around the state.

Passage of this legislation would remove a real potential land use conflict that exists between generating trust revenues and managing our public lands.

The proposal before you today is a showcase of cooperation between the state, the environmental community, education community, and business interests.

This coalition of diverse interests is committed to working towards passage of this year's legislation, as introduced by Representatives Shepherd and Hansen.

Passage of the Utah Schools and Lands Improvement Act of 1993 will be precedent-setting in two respects.

First of all, it would demonstrate that diverse constituencies can forge an acceptable solution to controversial issues when all the groups are committed to a common goal. And that's an important lesson to learn in Utah.

And second, I think this exchange could provide a model for future exchanges, definitely within Utah and perhaps in other states.

This legislation is a very fragile compromise. I think all parties have shed a little blood over the legislation that's before us.

For example, the environmental community agreed to a provision whereby 3,000 acres of environmentally sensitive Forest Service lands near Beaver Mountain Ski Resort in Cache County would be

traded to the state for 17,000 acres in Franklin Basin near an important area of the Naiomi Wilderness.

In addition to our support, which is 100 percent for H.R. 677, I'd like to make one additional point, which I don't think I can stress enough or over-emphasize.

And that is, this legislation before you is a very very fragile compromise. It's imperative that the bill remain intact.

I believe that any change of a substantive nature would mean the unraveling of the legislation, and probably the unraveling of the coalition. I don't think I can stress that enough.

In my written statement, I just mention two technical changes that I assume could be brought up in mark-up, and shouldn't be controversial, since it was the intent of all parties to introduce legislation that was identical to last year's.

Thank you.

[Prepared statement of Ms. Shogan follows:]

Statement of Cindy Shogan, D.C. Representative
 Southern Utah Wilderness Alliance
 Before the Subcommittee on National Parks
 Forests, and Public Lands
 on H.R. 677,
 "Utah School and Lands Improvement Act of 1993"
 May 4, 1993

Mr. Chairman, today I am representing the views of the Southern Utah Wilderness Alliance, Sierra Club and National Parks and Conservation Association. Thank you very much for the opportunity to comment on H.R. 677, the "Utah schools and Lands improvement Act of 1993."

Almost one year ago, we appeared before this Subcommittee to endorse Congressional efforts to address the problem of school trust land inholdings within Utah's National Parks, National Forests, and Indian reservations. Today, I am here to fully support H.R. 677 -- legislation that is, with the exception of two technical flaws, identical to the Senate amended House bill (H.R. 5118) which died in the waning moments of the 102nd Congress.

The environmental community is proud of the last year's effort to resolve one of Utah's thorniest public land issues. For years, environmental interests, together with education interests have sought a solution to the scattered distribution of school trust lands. Such tenure patterns could engender serious land use conflicts including: commercial developments within national parks and homesite development in the national forests. Development would fragment wildlife habitat, harm watersheds and degrade scenic and recreational values. The proposal before you represents an unprecedented effort by a diverse array of interests to resolve these problems in parks, forests and Indian reservations, and sets up an important precedent to resolve such future conflicts which will draw heavily from this model.

Last year's effort was a showcase of cooperation between state, education, environmental and business interests. This coalition of diverse interests is committed to working towards passage of this year's legislation introduced by Representatives Shepherd and Hansen. Compromises were made by all sides; for example, environmentalists agreed to a provision whereby 3,000 acres of environmentally-sensitive lands near Beaver Mountain Ski Resort in Cache County would be traded to the state for 17,000 acres in Franklin Basin.

The public interest benefits of H.R. 677 are numerous. Though it is unreasonable to expect that revenue from school trust lands will remedy the budgetary shortfalls in Utah's education system, additional monies could be generated in this legislation. Similarly, its passage will realize a consolidation of landholdings which will decrease the management costs of trust lands for state taxpayers as well as federal properties for federal taxpayers.

Most importantly, in our opinion, passage of this legislation will remove potential land-use conflicts between generating trust revenues and National Forest and National Parks Service management.

Passage of the "Utah Schools and Lands Improvement Act of 1993" would be precedent setting in two regards. It would demonstrate that diverse constituencies can forge an acceptable solution to a controversial issue when each group is committed to a common goal. Secondly, it provides a model for future exchanges in Utah out of public land wilderness.

For the environmental community, the heart of the exchange and H.R. 677 is contained in Section 7 entitled "OFFER TO STATE." Section 7 includes the following key components:

- * Lists the specific offer of federal lands/interests to be offered to the state. The entire premise of the exchange is dependent on the specificity of the list of offers contained in Section 7 (a).
- * The stipulation that any exchange of Utah trust lands for leased federal mineral interests must already be under lease and operating under an approved permit to drill or plan of development and plan of reclamation, and must not be under administrative or judicial appeal. This language is necessary to implement the understanding among all parties that the Additional Offers in section 7 (b) include only those interests actually in production.
- * Federal interests available to the state under Sections 7 (a) and (b) must be exhausted first before moving on to any surplus BLM lands. Section 7 (b)(4) thus provides that interests identified in these two subsections are of first priority for selection by the state.

There are some minor differences between H.R. 677 and last year's consensus language that should be corrected during markup. Since it was the intention of all parties that H.R. 677 mirror the Senate amended House bill, implementing these changes should be non-controversial.

In Section 9., Transfer of Title, (c) Conditions refers to "interests described in section 7." Senate amended H.R. 5118 referred to "interests described in section 7(a)." Since the only specific interests described in Section 7 are under (a) specific offers, and since the lands offered in Section 7 (b)(4) are identified in accordance with FLPMA's public interest requirement, the language should be amended to refer to Section 7(a) for consistency and coherence.

Section 10 (e) Definitions should include definitions for public lands, state and Secretary as were contained in last year's bill.

The environmental community strongly supports H.R. 677 and appreciates the efforts of the Subcommittee's Chairman toward passage of this important legislation. Thank you.

Mr. VENTO. Thank you.

I note that the changes that you propose, Ms. Shogan, are technical in nature. I guess they give you some comfort level.

I think you can tell from my questions that really we don't anticipate significant changes where there is disagreement, but just trying to provide certainty with regards to the issue.

Mr. Zah, your statement highlights the Navajo interest in a specific section of land near the Monument Valley National Lands. I'd yield to Ms. Shepherd on this issue.

Ms. SHEPHERD. Thank you.

Mr. Zah, Steven Boyden assures us that that parcel of land is absolutely included in the transfer, and that there's no question about that.

If you still have questions, why don't the three of us get together afterwards and resolve that?

But I'm assured that that is there, and that it's been accomplished.

Mr. ZAH. Good.

Mr. VENTO. One of the other issues I note is that Mr. Conn had pointed out that there are approximately 1,360 acres of state-owned subsurface within the Goshute.

The bill states that.

Section 3(a) says there are 1,360 acres of state-owned land within the Goshute Indian Reservation.

However, the Administration says the records of the BIA, the Bureau of Indian Affairs, indicate that there are only 820 acres of state-owned land within the reservation.

Mr. Kennedy, or Mr. Zah, can you explain the difference here?

Mr. KENNEDY. I don't know where the BIA gets its numbers, but there are 640 acres, township 11 south range, 19 west, section 36, and about 280 acres, township 11 south range, 20 west, section 36, which is a partial section on the state line.

Those two add to about 920 acres. That's surface and subsurface.

And then there is subsurface only, township 11 south range, 19 west, section 16, about 480 acres.

That was the acreage that was in the bill last time, and I think those numbers are correct.

We have given additional suggestions of state lands that are along the southern boundary of the Reservation, which is kind of a jagged, sawtooth situation, that we feel ought to be resolved, if we could, in this legislation. And we've made a proposal for that to be done.

But other than that, the numbers that I think I've given you with respect to the acreage are correct, and I think they are the same as they were last time.

Mr. VENTO. So apparently for the BIA numbers, there must be some disparity in terms of not reflecting subsurface rights.

Do you know the origin of those lands that are now state-owned or state-held subsurface rights?

Were they all on state school sections?

Mr. KENNEDY. Section 16 was a section that the Tribe purchased in 1991, but purchased only the surface. And the subsurface would be conveyed as a part of this exchange. It's completely surrounded by the Reservation.

The status of the title on various pieces of the Goshute Reservation is really complicated, and it does not surprise me that the BIA may have some different numbers.

I'm sure, as Mr. Conn indicated, that when we sit down and work that out, that we can resolve those apparent conflicts.

Mr. VENTO. Well, I would hope so.

When was the Goshute Reservation established?

Mr. KENNEDY. The first pieces were put together back in 1914. And there have been subsequent additions through the years. A major portion was added in the 1930s, and then there've been several smaller portions since.

The latest one, that was done by Congressional enactment, I think in 1988, when about 2,400 acres were added to the Reservation that lie right along the Utah-Nevada border. They were inside Utah, but again, probably because of a surveying error, were not included within the description of the Reservation back then. And Congress corrected that in 1988 through legislation that was sponsored by Congressman Hansen.

Mr. VENTO. So this will bring it to what size?

Mr. KENNEDY. Well, the total Reservation size will be about 95,000 acres and approximately half of that is in Nevada, and the other half in Utah.

Mr. VENTO. So this is a substantial increase in terms of its size with the state school sections?

Mr. KENNEDY. It would be a meaningful increase.

I should note, at one time the Goshutes had 7 million acres, which was taken by the United States back in the 1870s.

We would love to have that back. [Laughter.]

Mr. VENTO. That probably would not be looked at as a technical amendment. [Laughter.]

Is that right Cindy, not a technical amendment?

Well, I better quit asking questions about that.

What is the total state budget at this time for elementary-secondary education, do you know?

Ms. RUPP. I think it's about \$1 billion.

Mr. VENTO. It sounds like it probably is at least that, based on the population.

Ms. RUPP. Oh, \$2.1 billion.

Mr. VENTO. Oh, 2.1. I was going to say, you're getting by a lot cheaper than we are then, in Minnesota.

Actually, we've had a lot of problems maintaining our support level, but you know, in the end, I think it is a good investment, investment in people.

I was just trying to compare the amount that would be going in.

You expect revenue flow from this would be how much a year?

Ms. RUPP. I'm not sure of the exact determination until the valuation is there.

But I will tell you that, as it goes into the permanent account—and our state treasurer is going to be vigorously investing that—I think it's going to be, in the long term, a substantial revenue to the children.

And we have learned to move by increments. I asked a teacher one time a question, will \$10,000 make a difference to your school. Maybe not, but no one wanted to return it.

And so I submit that it's going to be substantial.

Mr. VENTO. Yes, that's how those teachers are, I know.

Ms. RUPP. They are.

Mr. VENTO. Mr. Hansen?

Mr. HANSEN. As a past what? Chemistry teacher?

Mr. VENTO. Science, yes.

Mr. HANSEN. I apologize to the panel and the one just prior to it for not being here. I had to run over to this other Armed Services meeting, but my staffers tell me they were excellent, persuasive and some of the best testimony they ever heard, and that everyone was thrilled with the testimony.

Is that correct, Mr. Chairman?

Mr. VENTO. I'm in a heightened state of ecstasy. [Laughter.]

Mr. HANSEN. I'm glad to see that.

Anyway, thank you so much for your testimony.

I honestly pick up on what my colleague Karen Shepherd says, and what many of the people have said here.

I think back to the agony when I was Speaker of the Utah House, that also makes you Chairman of the Executive Appropriations Committee, and in that situation, there's just not enough money in Utah to go around.

I stand ready to be corrected, but I think we're the only state that education is the biggest part of our budget.

Is that right?

Because it was when I was there. I can tell you in 1978, 1979, in that area, that was the biggest part of our budget. And we love our kids and we think they're wonderful, but it takes some real fertile minds to come up with every idea you possibly can to educate these youngsters.

So I compliment the folks who are here for coming up with some good ideas. I appreciate the Forest Service and the BLM for being here and agreeing to talk to us at this particular time.

But even at that, we don't put out enough money for education. We all believe that the children should be educated, but sometimes we get a little tight on our voting for bond issues and other things to raise money.

So if we could get this one through, I think, over the long haul, it will be very beneficial to the children, and I compliment those who started this all the way back to Governor Matheson, Bangerter and others.

And thank you especially, Mr. Chairman. It was very kind of you to hold this hearing today.

Mr. VENTO. You're welcome. I'm happy to do it.

Congresswoman Shepherd, do you have any questions of the panel, or final comments before we wrap things up?

Ms. SHEPHERD. Yes, Mr. Chairman.

I wanted to add just a bit to our education information session that we're heaping on you here.

I think Utah may very well be also the only state in the Union where 100 percent of its considerable state income tax is spent on education.

And in addition to that, every single year, a variable amount of the general fund goes into education.

So we are really already giving it, literally, all that we have. And yet we have a dependency ratio in Utah which is extraordinary, and it makes us look both to our own system for savings, and to other ways that we haven't seen before, to find additional sources of revenue.

And that's precisely what you're seeing in this bill.

I want to thank Mr. Kennedy, President Zah, Karen Rupp and Cindy Shogan for coming.

I've worked with all of them, in particular with Cindy and with Karen, and I can tell you they are people who really have courage.

The education system in Utah would be an entirely different place if it were not for Karen Rupp and the people that she works with.

And it is true, we have changed the language from state lands to trust lands, and that has been a major consciousness-raising exercise, which has been very valuable.

And I'm going to remind Cindy of her remarks about the strength of this process, because we have many other things to discuss in Utah, and this is a process that has worked, and I believe can serve as a model for working together further.

Thank you all very much for coming.

And thank you, very much.

Mr. VENTO. Thank you, Congresswoman Shepherd and Congressman Hansen, my friends.

I am beginning to understand this bill. I've learned something. I apologize for my rather basic questions perhaps this morning, but they, I think, are helpful to me in terms of making this decision.

I think I even understand it better than I did last year, when we passed it. Probably that's both a help and a hindrance, I expect, to some of you.

But in any case, we will try and work it out and hammer out the differences, and hopefully we'll have a better result for the citizens of Utah.

I was thinking about Utah and the discussions that went on about parks today.

I remember the last time we wrote into law the establishment of a National Park, one in Nevada. Although I know that Utah is concerned about its parks, and it was happy to claim credit for that park being part of Utah, even though it was in Ely, Nevada. They were claiming it was part of Utah.

The Utah students were there with their band and they did a great job in helping us inaugurate and christen that new park, the Great Basin National Park in Nevada.

So I know they at least consider themselves one of the midwives in terms of that particular park, the members from Utah.

Thank you all. You've been very patient and helpful.

The meeting stands adjourned.

[Whereupon, at 12:32 p.m., Tuesday, May, 4, 1993, the Committee was adjourned, subject to call of the chair.]

APPENDIX

Tuesday, May 4, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

February 19, 1993

The Hon. Orrin G. Hatch
135 Russell Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

We have followed with great interest the introduction of legislation introduced into both the U.S. Senate and House of Representatives designed to accomplish an exchange of land and other resources between the Utah state school trust and the federal government. It has been our understanding that the intent of these bills is to mirror the Senate amended House bill (H.R. 5118) which died in the waning moments of the 102nd Congress.

Last year's effort was a showcase of cooperation between state, education, environmental, and business interests. The amended version of H.R. 5118 provided a delicate balance, including fiscal amendments which we did not oppose. All interests made compromises and all were optimistic about the benefits of passage. We continue to support the language of H.R. 5118 as amended. Unfortunately, a side-by-side comparison of the bill introduced this session in the Senate (S. 184) with last year's amended version of H.R. 5118 reveals substantial incongruities.

We have been told that Senate legislative counsel is responsible for the major changes in the language of the bill introduced by you and Senator Bennett. We are aware of the letter addressed to Senator Wallop, dated February 9, 1993, in which you state your intention to introduce a substitute to S. 184 which reflects the specific consensus language from the 102nd Congress. Subsequent discussions between our representatives and Senate staff have made clear that you and Senator Bennett support the language of the Senate-amended H.R. 5118 from the last Congress. We strongly support your efforts to substitute the language of H.R. 677 for that found in S. 184 as introduced.

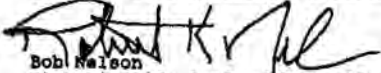
In addition, a side-by-side comparison of H.R. 677 with H.R. 5118 as amended has indicated a minor oversight in Sec. 9(c)(1) which can easily be corrected during Committee hearings.

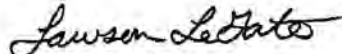
We have a strong interest in preserving the progress made through last year's intensive negotiations and compromises as embodied in the Senate amended version of H.R. 5118. Thank you for your cooperation. We look forward to hearing from you soon, and subsequently, to passage of this important piece of legislation.

Sincerely,


Rod Greene
National Parks and
Conservation Association


Ken Rait
Southern Utah Wilderness Alliance


Bob Nelson
Utah Wildlife Leadership Coalition


Lawson LeGate
Sierra Club


Darrell Knutke
The Wilderness Society

The Utah State Office
of Education

Scott W. Bean
State Superintendent of Public Instruction



UTAH STATE BOARD OF EDUCATION
UTAH STATE BOARD FOR APPLIED TECHNOLOGY EDUCATION

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Noble Brown • Donald G. Christensen
Ruth Hardy Funk • Katharine B. Garff • Harold S. Jensen
V. Jay Liechty • Frances H. Merrill

January 20, 1993

Senator Orrin Hatch
135 Russell Senate Office Building
Washington, D.C. 20510

Subject: Lands exchange

Dear Senator Hatch:

The State Board of Education has again endorsed efforts to obtain approval of legislation which will enable exchange of School Trust Lands which have been captured within restricted purpose Federal holdings. You are well aware of the severe financial crisis facing Utah's public schools and the significant effort by Utah taxpayers to provide funding for those schools. Although resolving the inholdings problem will not also resolve the schools' financial problems, we believe that significant additional revenues could be obtained which would assist in addressing some pressing issues in the schools.

The bill which passed the Senate last year was a compromise, and we are convinced that—while it did not include everything for which we might have hoped—it was reasonable, fair, and workable. We therefore hope that there will be no further delay, and that the present bill can be quickly moved forward to completion.

Thank you for all that you do for Utah and Utah's schools.

Sincerely,

Scott W. Bean, State Superintendent
of Public Instruction

:db



UTAH CONGRESS OF PARENTS AND TEACHERS, INC.
 1037 East South Temple
 Salt Lake City, Utah 84102
 (801) 359-3875
 Joyce W. Muhlestein, President

January 22, 1993

The Honorable Orrin Hatch
 Robert Diblee
 U.S. Senate
 Washington, D.C. 20510-4402

Dear Senator Hatch,

Utah PTA is very pleased that the Inholdings issue will be before the 104th Congress. Your help in seeing that this passes this session will enable the school children of Utah to have much needed revenue for their education.

After last session, we have a greater appreciation of how much time it takes to get a bill passed Congress. We therefore urge you to move expeditiously in this matter.

We are looking forward to working with you on this and other children's issues.

Sincerely,

Joyce W. Muhlestein
 President, Utah PTA

93 JAN 29 AM 8:59

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IN OUR OPINION

THE MOUNTAIN WEST'S FIRST NEWSPAPER • FOUNDED JUNE 15, 1880 • SALT LAKE CITY, UTAH

Utah school trust land bill must have united backing

In trying to work out a deal with the federal government to free up state school lands locked inside federal holdings, Utah officials must feel like Sisyphus, the figure in Greek mythology who was condemned to push a huge stone up a steep hill, only to see it roll back down every time he reached the top.

It is particularly frustrating since the inability to use or sell the state lands while they are surrounded by national parks, forest and Indian reservations is costing Utah's hard-pressed schools anywhere from \$50 million to \$200 million.

Last fall, a bill to trade 200,000 acres of school trust lands came close to final approval, only to falter on the final day of the 1992 congressional session. The measure had been passed by the House and Senate, but the House adjourned before it could act on some amendments added by the Senate.

Now the whole legislative process must now start all over. This week four of Utah's five-member congressional delegation launched the effort with bills in the House and Senate that essentially are the same as last year's legislation.

However, Rep. Bill Orton, D-Utah, who supported the measure last year, is not one of this year's sponsors. He says he wants to make sure that the land swap does not result in the federal government holding an even greater percentage of land in Utah than it already does.

Those sentiments are understandable since the federal government already owns or administers about 70 percent of Utah's lands and many

Utahns are frustrated by rules and restrictions on using that property.

But a less-than-unanimous front by the state's congressional delegation does not help the land-swap effort. Orton says he supported last year's bill because it was the best that could be done at the time. Now that there is a new Congress, he says "we can take our time and work out issues."

Unfortunately, a leisurely approach would make the whole project much more difficult. The coalition that supported last year's effort was a fragile one, with school, environmental, Indian, state and Bush administration groups all with different agendas. As Orton's own backing-away shows, keeping that coalition together won't be easy.

In addition, the new Congress has many new members with many different priorities than was the case last year. The job of educating new members and winning support won't be easy. And there is a new president in the White House who may not be as friendly toward Utah projects as was President Bush.

Under the circumstances, the best approach would seem to be for Utah to present a united front and push for quick action with the argument that everybody was essentially in agreement a few months ago and only about 24 hours of routine procedural time stood between passage and failure last year.

The danger is that more tinkering with the land-swap measure could doom it to legislative limbo once more — and Utah's schoolchildren would be the losers.



STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0801

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

January 22, 1993

Honorable Orrin G. Hatch
United States Senate
Washington D.C. 20510

Dear Senator Hatch:

I want to thank you for your support of the "Utah Schools and Lands Improvement Act of 1993", more informally known as the inholdings exchange bill. Passage of this bill, and completion of the exchanges and other transactions that would be authorized by the bill, are a top priority for my administration, and the first step toward more businesslike management of the school trust lands.

In the past few days, I have met with representatives of the various interest groups concerned about this legislation, including local government, education, industry, the State Land Board, and conservation groups, and have considered their opinions about the bill. It is my opinion and my decision that it is in the best interests of the State to begin the process in the 103rd Congress with the language reported out of the Senate in the 102nd Congress.

I know that negotiations in the 103rd Congress may lead toward proposed amendments. If that is the case, the State will be prepared to seek amendments as well, including, as top priority, an amendment proposed by local government.

I look forward to working closely with you and the other members of the delegation to secure passage of the legislation. Again, thank you for your enthusiastic support.

Sincerely,

Michael O. Leavitt
Governor

MOL/BTB/jh

AMENDMENT TO H.R. 677**OFFERED BY _____**

Page 6, line 19, strike "No offer under this subsection shall be for royalties aggregating more than 50 per centum" and insert "Any offer for royalties under paragraph (1) shall be equal to 50 percent".

Page 11, after line 12, insert the following new subsection:

1 (d) DEADLINE.—(1) Subject to paragraph (2), all
2 lands, interests, and royalties shall be conveyed or trans-
3 ferred, as the case may be, to the State of Utah pursuant
4 to section 7 not later than January 1, 2003.

5 (2) If such lands, interests, and royalties are not con-
6 veyed or transferred, as the case may be, in accordance
7 with paragraph (1), then paragraphs (2) and (3) of section
8 7(b) shall not apply with respect to any offer under such
9 section.

10 (3) The Secretary of the Interior, and where appro-
11 priate, the Secretary of Agriculture, shall submit to the
12 Committee on Natural Resources of the House of Rep-
13 resentatives and the Committee on Energy and Natural
14 Resources of the Senate periodic reports with respect to
15 the lands conveyed and interests and royalties transferred
16 under this Act.

Page 11, after the subsection inserted after line 12 in the preceding amendment, add the following new section (and conform subsequent sections accordingly):

1 **SEC. 10. NO NET INCREASE IN ACRES OF LAND OWNED BY**
2 **THE UNITED STATES IN UTAH.**

3 (a) **INTENT.**—It is the intent of Congress that the
4 United States should not increase the total number of
5 acres of land owned by the United States within the State
6 of Utah as a result of the conveyance of lands under this
7 Act.

8 (b) **SALE TO PUBLIC AUTHORIZED.**—If the number
9 of acres of land acquired by the State of Utah under sec-
10 tion 7 is less than the number of acres acquired by the
11 United States under sections 2, 3, 5, and 6, the Secretary
12 of the Interior shall publish a list of all Federal lands in
13 Utah suitable for disposal and shall offer for sale to the
14 public any or all of such lands of at least an equivalent
15 number of acres equal to the difference of—

16 (1) the total number of acres acquired by the
17 United States from the State of Utah under sections
18 2, 3, 5, and 6; and

19 (2) the total number of acres acquired by the
20 State of Utah from the United States under para-
21 graphs (1) and (2) of section 7(a) and paragraph
22 (4) of section 7(b),

1 to the extent consistent with other applicable laws and reg-
2 ulations.

3 (c) EXCHANGE OR SALE OF LANDS WITHIN COUNTY
4 OF ACQUISITION.—To the maximum extent possible, the
5 Secretary shall transfer by exchange to the State of Utah
6 under section 7, or by sale to the public under subsection
7 (b), or any combination thereof, a substantially equivalent
8 number of acres of land within each county in the State
9 of Utah (in which the United States has acquired acres
10 of land under sections 2, 3, 5, and 6) as the United States
11 has acquired from the State of Utah in each such county.

STATEMENT OF KEVIN S. CARTER, ASSISTANT DIRECTOR
UTAH DIVISION OF STATE LANDS AND FORESTRY, BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
103RD CONGRESS, 1ST SESSION
MAY 4, 1993

Thank you for the opportunity to present this material to you this day. We have attempted to resolve the inholdings issue through administrative processes for many years. To date, the most successful resolution of an inholdings problem in Utah has been with the creation of Canyonlands National Park. That instance was resolved by Congress when the Park was established.¹ In a state where the federal government owns 68.8% of the land base (36,235,433 acres), it seems incredible that Utah cannot find desirable acreage to acquire through normal exchange procedures. However, one should take into account the fact that of the 36 million acres of federal land within the state, 14,160,702 acres (about 40%) are managed by the Forest Service, Park Service, Fish & Wildlife Service, the Military or are part of an Indian Reservation, and as such are unavailable for state selection. Many of the remaining public lands are encumbered, in one way or another, as follows:

Unpatented mining claims

The 1872 Mining Law allows citizens to stake a claim on any unappropriated federal land. If the claimant can demonstrate that an economically viable mineral can be developed, he can ultimately obtain ownership to the federal lands. Many public lands within the state are covered by unpatented mining claims. If the state selected any of these lands, our title would be subject to the mining claimant. This is a risk we cannot afford to take. There are significant costs to validating claims to determine that the mineral is not really economically viable. Consequently, millions of acres are effectively off limits to state acquisition.

Threatened and Endangered Species

The ESA prevents the federal government from transferring land to the state. Although lands containing Threatened or Endangered animals could conceivably be transferred to the state, they would come encumbered by so many restrictions that our ability to develop them would be severely limited. Much of the most valuable public land in Utah is located in southern Utah, where critical habitat for endangered species disqualifies it for acquisition.

Wetlands

The management constraints associated with wetlands make them difficult parcels for the federal government to dispose of, or the state to acquire. These constraints remove wetlands from any consideration for use in exchanges.

¹Even this instance was not entirely successful. Many of the acres Utah acquired in exchange for its lands within Canyonlands were subsequently included within Arches National Park when the Park was created through expanding the Monument.

Wilderness Study Areas

The federal government is unable to transfer lands within wilderness study areas until Congress formally adopts Wilderness legislation releasing lands not left undesignated. For all intents and purposes, federal lands included within bills pending before Congress are off limits. Many environmental groups also oppose any development adjacent to wilderness study areas, which has the practical effect of putting several million acres more off limits.

Cultural Resources

The obligation to manage in accordance with the Antiquities Act (whether Federal or State) imposes management constraints which significantly diminish the land's value. Consequently, we have little interest in acquiring lands upon which are found cultural resources. This disqualifies many acres, particularly in southern Utah.

Areas of Critical Environmental Concern, etc.

The BLM has designated certain areas as "Areas of Critical Environmental Concern", which for all practical purposes has removed those lands from any consideration for acquisition. This would also hold for lands included within BLM recreation areas, or any other area designated for retention by the BLM for special management (i.e. Administrative sites).

Lack of valuable land

A major difficulty in completing exchanges with the federal government is the lack of federal lands with surface values. Utah has seen little value in exchanging our lands, particularly those with development potential, for desert wasteland. Unlike Arizona, which has vast federal land holdings around rapidly expanding communities, Utah's major population growth areas are along the Wasatch front, where little public land is available. The extended period of time between settlement and statehood has placed Utah at a disadvantage for selecting valuable public lands. In the rare situations where a rural community is experiencing significant growth, environmental and conservation issues make selection of land difficult or impossible.

Many public land states are blessed with valuable oil and gas reserves, timber, extractable metals or lush grazing lands. Utah is blessed with scenery. Unfortunately, exploiting scenery often destroys its value. Consequently, there is scant opportunity for Utah to acquire public lands with potential to return revenues so desperately needed for the education of our most priceless resource, our children. We are not interested in trading for public lands which have little or no potential to provide income for our public school system. The compact Utah made with her sister states at statehood prohibits us from taking such an action. This is why trading for producing federal minerals is such an attractive solution. All of the concerns I have listed above do not apply to the selection of public, non-surface interests. The only drawback is that unless some accommodation is made, we will be asked to purchase our own lands with an income stream, half of which is already committed to us. Fairness and prudence dictate that we cannot accept that deal.

STATEMENT OF MICHAEL O. LEAVITT, GOVERNOR, STATE OF UTAH
BEFORE THE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
103rd CONGRESS, 1st SESSION
MAY 4, 1993

Mr. Chairman:

I want to thank you and your staff for scheduling this hearing on H.R. 677, "The Utah Schools and Lands Improvement Act of 1993". I regret I am unable to attend the hearing due to scheduling difficulties. I wish to express appreciation to Utah's Attorney General, Jan Graham, for representing the State on my behalf, and on behalf of the schoolchildren of Utah.

I also wish to thank the Departments of Interior and Agriculture, the Office of Management and Budget, the Navajo Nation, the Goshute Tribe, local government and other citizen groups for continuing to work with us on this legislation.

Resolution of the difficulties related to the management of school and institutional trust lands is one of the primary objectives of my administration. Passage of H.R. 677, as it is currently written, would represent the solution for one of the most troublesome land management problems in Utah; the roughly 200,000 acres of trust lands captured within federally created Indian Reservations, National Forests and National Parks. Passage would be particularly gratifying because the solution would have been reached through negotiation over a particular on-the-ground situation. The model of negotiation would serve well for other land management issues in the West.

There have been many previous attempts to resolve this problem, both legislative and administrative. Most have been sidetracked over disputes concerning the valuation of the state properties and identification of the properties for acquisition by the state. Other issues, such as the valuation of federal leasehold interests, have caused difficulty. H.R. 677 represents a concentrated effort to remove those roadblocks.

A bill identical to this, except for differences in dates, was passed by the U.S. Senate in the waning hours of the 102nd Congress. That bill was different than one which had been previously passed by the U.S. House of Representatives (H.R. 5118). The House agreed to pass the Senate bill, however, this was prevented by the antics of one former House member.

**Statement of Governor Leavitt
May 4, 1993
Page 2**

The reasons for passage of the bill during the 102nd Congress are no different today. Utah's educational system is still in need of revenue, and this bill represents the best opportunity to convert some non-producing school trust assets into cash in the near future.

H.R. 5118, as passed by the House in the 102nd Congress, went a long way toward solving the problem. It established a fair procedure for resolution of the difficult factual questions concerning valuation of the state properties by authorizing the branch of government designed to resolve factual disputes - the courts - to act as the final arbiter of value. The legislation identified properties for the state to acquire, and authorized the Secretary to offer, within limits, a portion of the mineral royalties receivable by the United States from lands in Utah as payment for the state lands. The bill also authorized the Secretary to make payments over a period of time.

I now ask for your consideration and favorable vote on H.R. 677, including changes from the provisions of H.R. 5118. The changes represent the necessary assurance to the state that it will receive fair and just compensation in a timely, businesslike manner.

The significant provisions of H.R. 677 which were not within H.R. 5118 are as follows:

1. Section 8(b)(1) provides that disputes over value will be settled in the United States District Court for the District of Utah;
2. Section 7(b)(1) makes the Secretary's offer of royalty payments mandatory rather than permissive;
3. Section 7(b)(8) provides for an annual royalty payment cap of \$12.5 million, rather than a total payment cap of \$25 million;
4. Section 8(d) provides for the payment of a reasonable rate of interest on the balance owed by the federal government; and
5. Section 8(c) requires recognition of the state's share of federal mineral royalty receipts during the valuation of federal leasehold interests.

H.R. 677 therefore represents the deal in a more complete, clarified manner. The deal is a value for value exchange of state trust lands for federal assets. The courts are again selected as the final arbiter of value, if necessary. The federal

Statement of Governor Leavitt
May 4, 1993
Page 3

assets include first, identified lands and interests in lands. Second, the state may, if it chooses, receive no more than half the total value of its lands, as determined by the court, through royalty payments. Those payments may not exceed \$12.5 million annually. Interest is appropriate, because payment would be made over time. Third, other lands, if necessary, are identified by criteria.

Finally, H.R. 677 makes clear that the state's current portion of mineral royalty receipts, authorized by federal law (30 USC 191), must be considered in the valuation of federal leasehold interests. This provision must be made clear, as a simple matter of fairness and common sense. I can not authorize the state to use its own money as part of any exchange of trust lands.

The state does not believe its lands are worthless. Attached for the record is a preliminary report by the Utah Geological Survey which indicates some of the value of the mineral estate in the lands. These values, if and when substantiated, are the reason that the state must be assured of sufficient value on the federal side of the equation. A return to Congress to authorize more federal assets would be just as time consuming as this effort has been. The Congress should simply authorize the method for full compensation at this time.

The state initiated this process in good faith, seeking fair compensation from the federal government for the restrictions placed upon the school trust lands. Exchanges such as this affect a great many parties. The state made a commitment that entities which receive payments as a result of state ownership of the land would not have those payments altered by an exchange. Section 10(c) of the bill refers to that commitment. In fulfillment of that commitment, the Utah State Legislature passed H.B. 89 in the 1993 General Session. A copy of that bill is attached for the record.

In summary, I ask again for your quick consideration and support for H.R. 677. The state is committed to a resolution of this difficult problem. This bill represents a win-win solution for all parties.

MINERAL LEASE ACCOUNT AMENDMENTS

1993

GENERAL SESSION

Enrolled Copy

H. B. No. 89

By Melvin R. Brown

AN ACT RELATING TO MINERAL LEASE FUNDS; PROVIDING FOR STATE PILT PAYMENTS FROM THE MINERAL LEASE ACCOUNT TO COMPENSATE COUNTIES IN WHICH SCHOOL AND INSTITUTIONAL TRUST LANDS ARE TRANSFERRED TO THE FEDERAL GOVERNMENT AFTER DECEMBER 31, 1992, AND COUNTIES IN WHICH FEDERAL ENTITLEMENT LANDS ARE TRANSFERRED TO SCHOOL OR INSTITUTIONAL TRUSTS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

59-21-2, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 59-21-2, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

59-21-2. Mineral Bonus Account -- Allocation of monies from Mineral Lease Account.

(1) (a) The Mineral Bonus Account is created within the General Fund.

(b) All bonus money received by the state under Subsection 59-21-1 (3) shall be deposited in this account.

(c) The Legislature shall make appropriations from the Mineral Bonus Account in accordance with Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Sec. 191.

H. B. No. 89

(d) The money in the Mineral Bonus Account shall be invested by the state treasurer in accordance with the State Money Management Act of 1974, except that all interest or other earnings derived from the account shall be returned to the Mineral Bonus Account rather than the General Fund.

(2) The following appropriations shall be made from the Mineral Lease Account:

(a) to the Permanent Community Impact Fund established by Subsection 51-5-4 (8)(b), 32-1/2% of all deposits made to the Mineral Lease Account;

(b) to the Board of Regents for allocation to the state's institutions of higher [learning] education, 33-1/2% of all deposits made to the Mineral Lease Account, subject to the limitations described in Subsection (3);

(c) to the Utah State Board of Education, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for education research and experimentation in the utilization of staff and facilities designed to improve the quality of education in Utah;

(d) to the Utah Geological Survey, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state of Utah;

(e) to the Water Research Laboratory at Utah State University, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state of Utah;

H. B. No. 89

(f) to the Department of Transportation, 25% of all deposits made to the Mineral Lease Account, to be distributed by the Transportation Commission to special service districts established by counties for the purpose of constructing, repairing, and maintaining roads or other ~~[single-purpose-special-service-districts-established-by-counties]~~ (i) ~~in fiscal year 1988-89, \$2,000,000;~~ (ii) ~~in fiscal year 1989-90, \$4,000,000;~~ (iii) ~~in fiscal year 1990-91, \$6,000,000;~~ and (iv) ~~in fiscal year 1991-92 and each year thereafter, 25% of all deposits made to the Mineral Lease Account]~~ purposes authorized by law; and

(g) to the extent available ~~[from the remaining unallocated portion of the Mineral Lease Account;]~~ after the allocations provided in Subsections (2)(a) through (2)(f) are made:

(i) to each county in which ~~[are located]~~ school or institutional trust lands are located, lands owned by the Division of Parks and Recreation, or lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, an amount equal to the number of acres of those lands in the county multiplied by (+) 52 cents;

~~[(i) -- \$106; in fiscal year 1988-89;]~~

~~[(ii) -- \$115; in fiscal year 1989-90;]~~

~~[(iii) -- \$130; in fiscal year 1990-91;]~~

~~[(iv) -- \$140; in fiscal year 1991-92; and]~~

~~[(v) -- \$152; in fiscal year 1992-93 and each year thereafter;]~~

(ii) to each county in which school or institutional trust lands are transferred to the federal government after December 31, 1992, an amount equal to the number of transferred acres in the county multiplied by a

H. B. No. 89

payment per acre equal to the difference between 52 cents per acre and the per acre payment made to that county in the most recent payment under the federal payment in lieu of taxes program, P.L. 94-565 as amended, unless the federal payment was equal to or exceeded the 52 cents per acre, in which case no payment shall be made for the transferred lands; and

(iii) to each county in which federal lands, which are entitlement lands under the federal in lieu of taxes program, are transferred to the school or institutional trust, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between the most recent per acre payment made under the federal payment in lieu of taxes program and 52 cents per acre, unless the federal payment was equal to or less than 52 cents per acre, in which case no payment shall be made for the transferred land.

(3) (a) The total amount of federal mineral lease funds allocated by the Board of Regents during any fiscal year may not be increased above the amount allocated during the immediately preceding fiscal year in excess of the percentage increase in the Consumer Price Index published by the United States Department of Labor for the immediately preceding calendar year, but in any event not more than 10%.

(b) If the total amount of mineral lease funds allocated to a recipient agency or institution in any fiscal year is less than the total amount [30] allocated for the immediately preceding fiscal year, the allocation to that agency or institution during the immediately following

H. B. No. 89

fiscal year shall be increased by the amount of the reduction before calculating and applying the percent limitation.

(c) (i) The federal mineral lease funds apportioned to [higher educational] institutions of higher education shall be expended pursuant to institutional work programs.

(ii) Those programs shall be approved by the Board of Regents when they are satisfied that a majority of the funds will be expended for research, educational, or public service programs of benefit to the subdivisions of the state socially or economically impacted by the development of minerals leased under the Mineral Lands Leasing Act in the planning, construction, and maintenance of public facilities, and the provision of public services.

(d) (i) The amount to which each institution of higher [learning] education is entitled is that proportion of the total amount available which the average number of full-time students enrolled during the preceding year in those institutions bears to the total enrollment of all institutions.

(ii) Enrollment at the University of Utah and [the] Utah State University shall first be multiplied by 1.25 and the product shall constitute the enrollment of the University of Utah and [the] Utah State University for the purposes of this allocation.

(4) The federal mineral lease funds allocated to the Water Research Laboratory at Utah State University are in addition to any other money to which Utah State University is entitled under this section.

H. B. No. 89

(5) Federal mineral lease funds distributed by the Transportation Commission under Subsection (2)(f) shall be allocated to county special service districts in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(6) (a) Each county receiving money under Subsection (2)(g) shall give the money to a school district or other special purpose governmental entity within the county.

(b) Beginning in fiscal year 1994-95 and in each year thereafter, the amount per acre provided in Subsection (2)(g)(i) shall adjust to reflect changes in the rate of inflation as measured by the consumer price index.

Preliminary investigation of the hydrocarbon
potential of State Lands in Arches National Park
Grand County, Utah

by the
Utah Geological Survey
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Arches National Monument was formed in 1929 and encompassed 7 square miles and was expanded in 1938 to 53 square miles. The National Park was formed in 1971, expanding the area to 114 square miles.

Arches NP lies within the northern Paradox Basin of southeastern Utah. The Paradox Basin is the second most prolific oil producing basin in the state. Within miles of Arches NP there are numerous oil fields that produce(d) from the Paradox Formation, Leadville Limestone and McCracken Sandstone (figure 1).

Many of the fields in the northern Paradox Basin were discovered in the early 1960s by drilling on surface geologic structures and seismically defined subsurface geologic structures. The area has seen a renewed level of activity with greatly improved seismic acquisition/processing and the use of horizontal-drilling technology. Arches NP encompasses the Salt Valley anticline, a large geologic surface structure. The deeper, Leadville Limestone subsurface structure has never been defined (figure 2). Exploratory oil and gas well and seismic data is greatly limited in the Salt Valley anticline region due to access restrictions and problems associated with the National Monument and subsequent National Park. State-of-the-art high-quality subsurface seismic data does not exist at all over the Salt Valley anticline in Arches

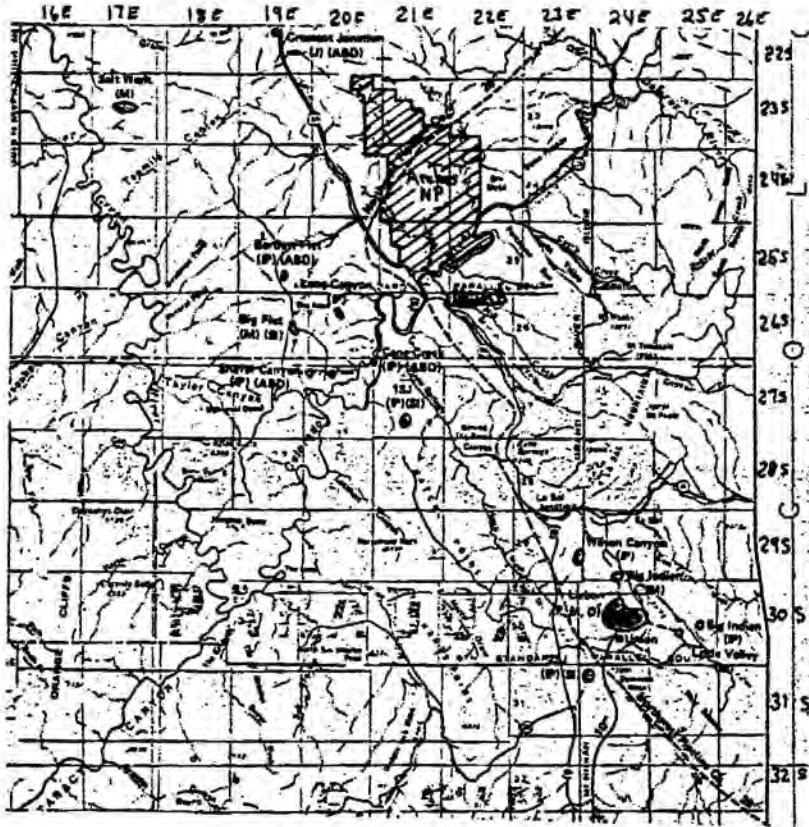


Figure 1.

Oil and gas fields near Arches National Park, Grand County, Utah. Fields that have produced from the Leadville Limestone are: Salt Wash (T22S R17E); Big Flat (T26S R19E); Big Indian (T29S R24E); Lisbon (T30S R24E); Little Valley (T30S R25E). Fields that have produced from the lower Paradox Formation (Cane Creek Shale) are: Bartlett Flat (T26S R19E); Long Canyon (T26S R20E); Cane Creek (T26S R20E); Shafer Canyon (T27S R20E); Lion Mesa (T27S R21E); Wilson Canyon (T29S R23E).

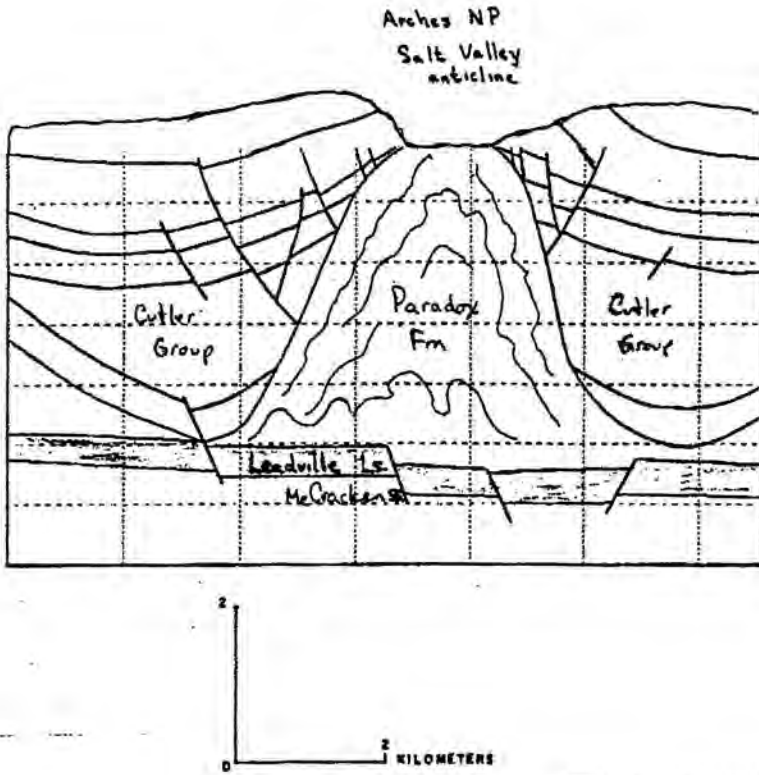


Figure 2.

Cross section of the Salt Valley anticline, based upon a model of a typical salt ridge that was derived from a composite of three seismic profiles, borehole information, and hypotheses about the nature of the shallow faulting. Notice the vast difference between the surface structure formed by the Paradox Formation and the subsurface Leadville Limestone and McCracken Sandstone structures. Modified from Stockton and Beich, 1978.

NP which would be the focus of petroleum exploration.

There are 6,640 acres of State land in Arches NP. The area covered by the park has similar rocks and geologic structures as other parts of the Paradox Basin that are oil and gas productive. Therefore, all of the State lands within Arches NP are considered to have potential for commercial accumulations of hydrocarbons. The hydrocarbon potential is divided into three categories, high, good and significant. No State lands are considered fair or poor. **HIGH POTENTIAL** is assigned to prospective areas where drilling has proven the presence of hydrocarbons. **GOOD POTENTIAL** is assigned to prospective areas where source, reservoir and traps exist but have not been tested in Arches NP due to lack of drilling. **SIGNIFICANT POTENTIAL** is assigned to prospective areas where source and reservoir rock is present and traps are believed to be present but have not been specifically identified by drilling or by modern state-of-the-art high-quality seismic data. Although poorly defined, this latter type of prospect has the potential for the discovery of the largest amount of oil.

Hydrocarbon potential of State lands in Arches NP exists in the Permian Cutler Group, lower and upper Pennsylvanian Paradox Formation, Mississippian Leadville Limestone and McCracken Sandstone Member of the Devonian Elbert Formation. The area is sparsely tested by drilling with only the Cutler Group and upper Paradox Formation having been tested at all. High-quality seismic data that could identify drillable prospects are not available because of access restrictions covering the National Monument and

subsequent National Park. Without the restrictions the State lands in Arches NP would have been more extensively explored for oil and gas.

HIGH POTENTIAL

Paradox Formation (upper)

Only the upper Paradox Formation has high potential for oil and gas accumulations. Shallow wells (approximately 2,000 to 3,500 ft deep) drilled into the upper Paradox Formation have tested hydrocarbons in Arches NP (figure 3). Present day economics and technology, including horizontal drilling, could make this prospective area commercially productive.

The Utah Southern Oil Company No. 1 Balsey well was drilled on State Section 32, T.23S. R.21E., in 1930. A bail test recovered 300 barrels of oil in two days from shows of oil at depths of 3,397 ft, 3,415 ft, and 3,432 ft (Dane, 1935). The well was deepened to 6,120 ft but never put into production and was abandoned in 1935.

The Oil Securities No. 1 Peterson well in Salt Valley approximately 1-1/2 miles northwest of the park boundary (Section 31, T.22S. R.20E.), was drilled as a potash test in 1956. The operator cored 1,900 ft of upper Paradox Formation and reported blowouts in all of the clastic units encountered (Hite, 1977) due to accumulations of high pressure gas and oil.

Summary

State lands in Arches NP which have HIGH POTENTIAL in the upper Paradox Formation are (figure 3):

Sections 3, 35 and 36, T.23S. R.20E.

Section 32, T.23S. R.21E.

Section 3, & 16, T.24S. R.21E.

Section 32, T.24S. R.22E.

GOOD POTENTIAL

Paradox Formation (lower)

The lower Paradox Formation clastics (Cane Creek Shale, for example) have not been tested by a drill hole in Arches NP or anywhere along the crest of the Salt Valley anticline which forms the main valley of the park. However, approximately 1 mile west of Arches NP (Section 18, T.25S. R.21E.) the Delhi-Taylor Utah No. 2 well recovered an over 4,000 ft column of oil during a drill-stem test of the lower Paradox Cane Creek Shale (figure 4).

The Paradox clastic units are organic-rich self-sourced (oil generating) shales. The folding and diapiric movement of salt in the Paradox Formation which forms the Salt Valley anticline of Arches NP is responsible for the development of fractured reservoirs and moderate to large size anticlinal fold traps in the clastics of the formation.

Summary

All of the State lands in Arches NP have GOOD POTENTIAL in the lower Paradox Formation clastics (figure 4).

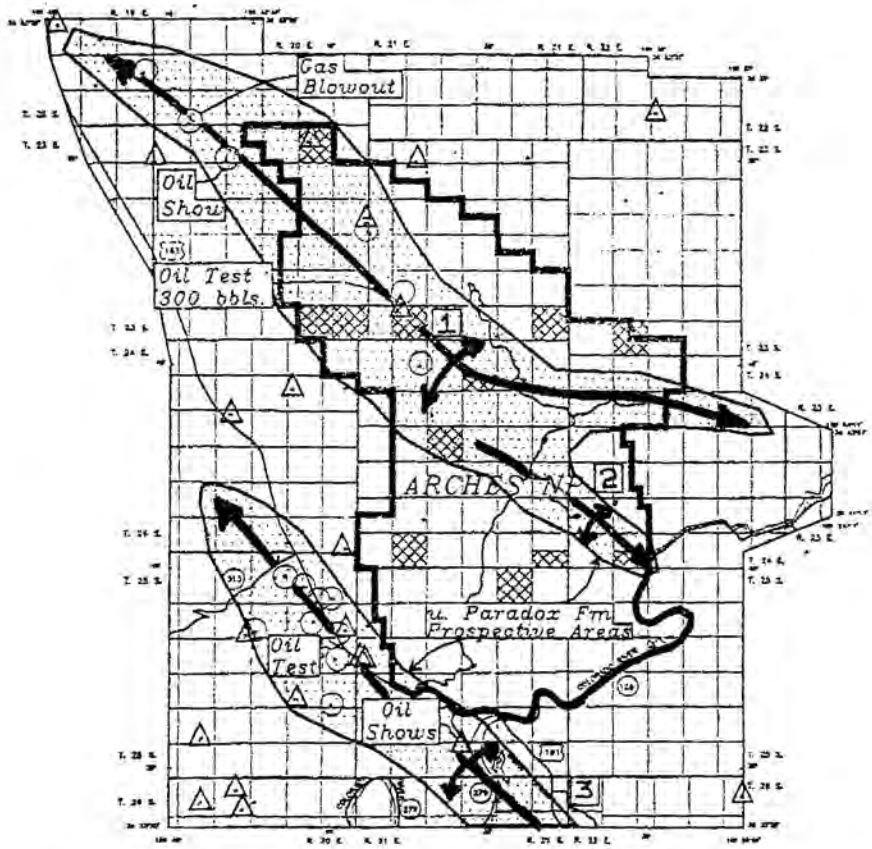
HYDROCARBON POTENTIAL OF ARCHES NATIONAL PARK AND VICINITY, GRAND COUNTY, UTAH



EXPLANATION

- Abandoned oil well
- Dry hole
- State highway
- ▭ U. S. highway
- ▭ Arches National Park boundary
- ▭ State Lands in Arches National Park

HIGH POTENTIAL



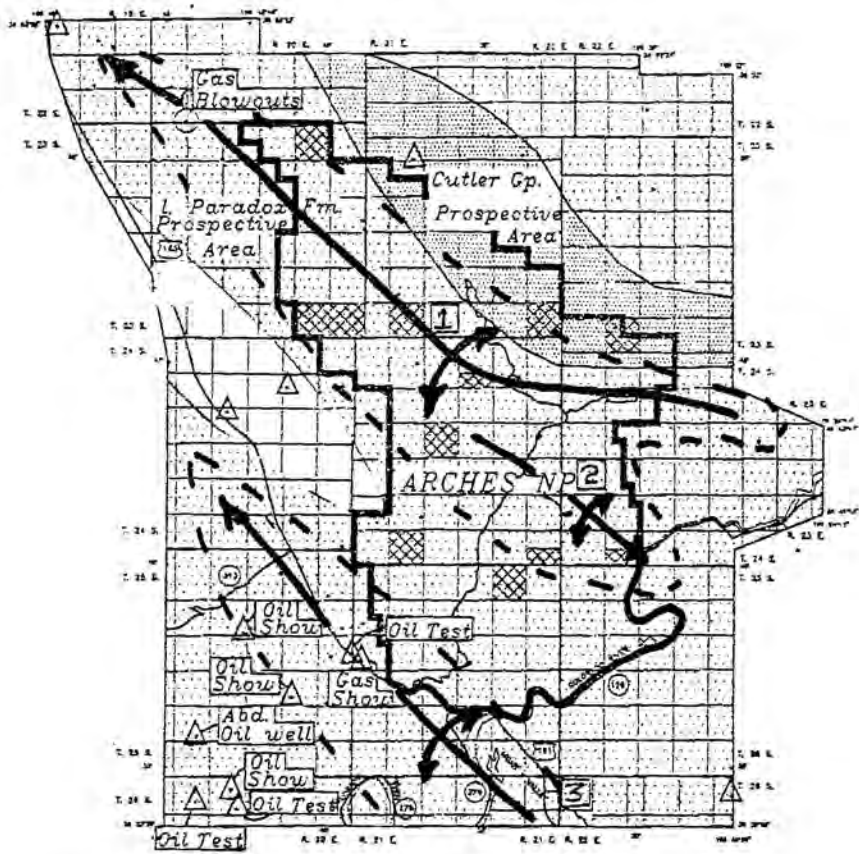
△ Wells penetrating the upper Paradox Formation.

○ Potash test holes penetrating the upper Paradox Formation.

Figure 3.

High potential occurs in the upper Paradox Formation along the crest of surface anticlines. 1 = Salt Valley anticline; 2 = Windows-Elephant Butte anticline; 3 = Moab anticline.

GOOD POTENTIAL



- Δ Wells penetrating the lower Paradox Formation.
 ○ Potash test holes penetrating the lower Paradox Formation.

Figure 4.

Good potential occurs in the lower Paradox Formation throughout most of the area along the crest of surface anticlines and low on the flanks, because in some areas the subsurface structure in the lower Paradox Fm. is vastly different from that seen on the surface (refer to figure 2). The dashed lines outline surface anticlines. Good potential in the Cutler Gr.

Cutler Group

The stratigraphic pinchout of sandstones in the Cutler Group along the rising flanks of the Salt Valley anticline offer potential hydrocarbon traps. The Andy's Mesa field in San Miguel County, Colorado, has produced over 18 billion cubic feet of gas from these same rocks in a similar structural/stratigraphic position.

Summary

The State lands in Arches NP which have GOOD POTENTIAL in the Cutler Group sandstones are (figure 4):

Section 36, T.23S. R.21E.

Section 32, T.23S. R.22E.

SIGNIFICANT POTENTIAL

Leadville Limestone and McCracken Sandstone

The Mississippian Leadville Limestone and McCracken Sandstone Member of the Devonian Elbert Formation have the potential of containing large undiscovered oil reserves in Arches NP. Fault blocks in the Leadville and older rocks were responsible in-part for the diapiric movement of the overlying salt and creation of the Salt Valley anticline. These same fault blocks could provide structural traps for hydrocarbons in the Leadville Limestone and McCracken Sandstone. The sharp change in direction of the Salt Valley anticline from northwest-southeast to east-west in the Windows-Elephant Butte anticline area may be the result of left-

lateral shear movement in the basement rock (Hite, 1975) greatly increasing the potential for structural traps in this area.

The Lisbon field, approximately 30 miles southeast of Moab, has produced over 49 million barrels of oil and 560 billion cubic feet of gas from the Leadville Limestone and McCracken Sandstone. Nearly 5 million barrels of oil and 34 billion cubic feet of gas have been produced from state Section 16 in the field.

Summary

The State lands in Arches NP which have SIGNIFICANT POTENTIAL in the Leadville Limestone and McCracken Sandstone are (figure 5):

Sections 35 and 36, T.23S. R.20E.

Section 32, T.23S. R.21E.

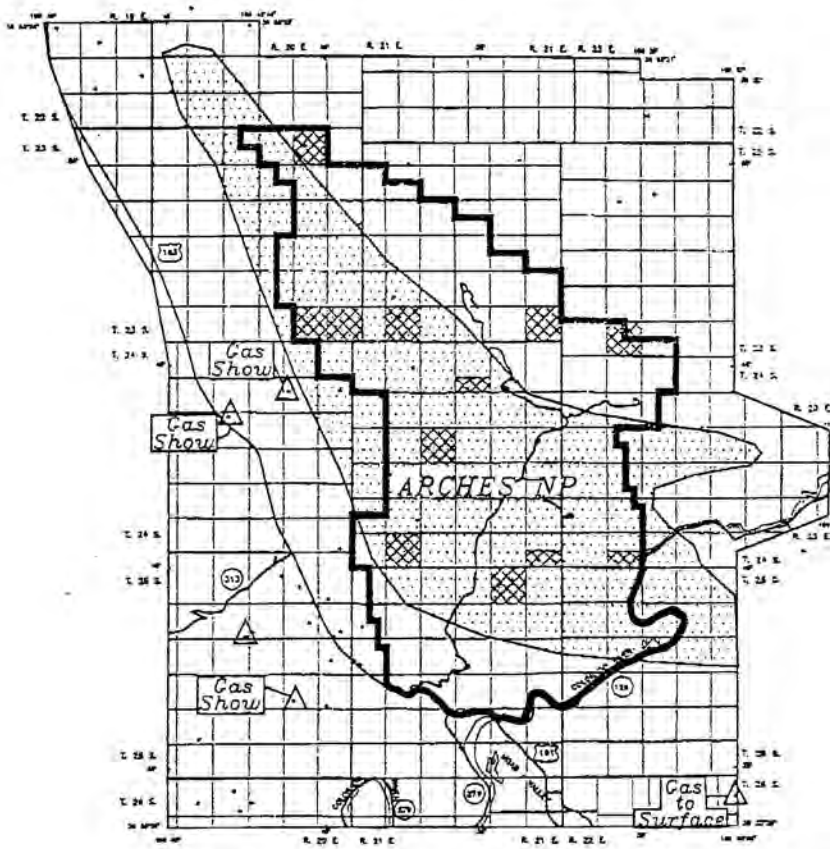
Sections 3, 16, 32 and 36, T.24S. R.21E.

Section 32 T.24S. R.22E.

Section 2, T.25S. R.21E.

Section 16, T.25S. R.22E.

SIGNIFICANT POTENTIAL



△ Wells penetrating the Mississippian Leadville Limest,

Figure 5.
Significant potential occurs in the Leadville Limestone and McCracken Sandstone. Fault blocks in the rocks underlying the Paradox Formation are in-part responsible for the development of the large salt valley anticlines in the Paradox Basin. Structural traps for hydrocarbons in the Leadville Limestone and McCracken Sandstone occur in the fault blocks. The outline of significant potential is the area where

POTENTIAL PETROLEUM VALUE

Oil and gas are currently produced from Leadville Limestone, McCracken Sandstone, and lower Paradox Cane Creek Shale in prolific fields near Arches National Park. We assume that state lands in the park could be equally productive because of 1. proximity, 2. nature of units, and 3. similar geologic structural position.

Thus we estimate that 4880 acres of state lands in Arches NP would be capable of producing 5 million barrels of oil and 34 Bcf (billion cubic feet) of natural gas per section (7812 barrels of oil and 53.125 million cubic feet of gas per acre) as occurs at the Lisbon oil field.

Similarly, we estimate that all 6640 acres of state land in Arches NP would be capable of producing 920,000 barrels of oil per section (1437 barrels of oil per acre) and 1 Bcf of gas per section (1.5 million cubic feet of gas per acre) from the lower Paradox Formation Cane Creek Shale member, as occurs at the Long Canyon oil field.

We make no estimate of production from the Cutler Formation because the nearest production is in Colorado. We also make no estimate for other horizons in the Paradox Formation because none have sustained commercial production to date.

The total recoverable reserves we calculate on state lands in Arches NP is approximately 47 million barrels of oil and 269 Bcf gas.

At an estimated price of \$6 per barrel of oil and \$.30 per Mcf

(thousand cubic feet) of gas for proven reserves in the ground, the value of the reserves would be \$366 million or \$55,228 per acre for all state lands in the park. We recognize that the reserves are not proven but entirely speculative at present.

At the current produced price of about \$20 per barrel and \$1.20 per Mcf, the value of the reserves is \$1.276 billion, or \$192,198 per acre of state lands in the park.

In order to evaluate the actual value of the oil and gas on state lands a risk factor must be applied to determine the probability of actually discovering the estimated reserves. Based on an assumed value of \$2000 per acre for the state lands in the park, it is only necessary to have a success rate of about 1% in order to justify it. In other words, only a 1% chance of finding oil and gas reserves that are equally productive as at the nearby Lisbon and Long Canyon fields would justify a valuation of state lands in Arches NP at \$2000 per acre.

REFERENCES

Dane, C. H., 1935, Geology of the Salt Valley anticline and adjacent areas, Grand County, Utah: U. S. Geological Survey Bulletin 863, 179 p.

Hite, R. J., 1975, An unusual northeast-trending fracture zone and its relations to basement wrench faulting in northern Paradox Basin, Utah and Colorado: Four Corners Geological Society Guidebook, 8th Annual Field Conference, p. 217-223.

Hite, R. J., 1977, Subsurface geology of a potential waste emplacement site Salt Valley anticline, Grand County, Utah: U. S. Geological Survey Open-File Report 77-761, 26 p.

Stockton, S. L., and Balch, A. H., 1978, The utility of petroleum seismic exploration data in delineating structural features within salt anticlines: U. S. Geological Survey Open-File Report 78-591, 36 p.

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