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UTAH RECREATIONAL LAND EXCHANGE ACT

AUGUST 4, 2009.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 1275]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1275) to direct the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 1275 is to provide for a land exchange between the Bureau of Land Management and the Utah School and Institutional Trust Lands Administration in Grand, San Juan, and Uintah Counties, Utah.

BACKGROUND AND NEED

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

Over the past five years, the BLM has disposed of 110,178 acres in Utah while acquiring 112,842 acres through exchange. The vast majority of this was completed under the direction of Congress through the Utah West Desert Land Exchange Act (Public Law 106–301).

H.R. 1275 would authorize and direct the exchange of approximately 45,731 acres of lands managed by SITLA for approximately 35,684 acres of BLM-managed Federal lands. Many of the lands

that the State is proposing to transfer to the BLM are lands that the BLM has a high degree of interest in acquiring because they would consolidate Federal ownership within wilderness study areas, Areas of Critical Environmental Concern, and other sensitive lands, including lands and minerals near Utah's Colorado River Corridor, the Book Cliffs, and Dinosaur National Monument.

LEGISLATIVE HISTORY

H.R. 1275, sponsored by Representative Matheson, passed the House of Representatives by a vote of 423–0 on July 8, 2009. Companion legislation, S. 563, was introduced by Senators Bennett and Hatch on March 10, 2009.

The Committee considered similar legislation during the 110th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 390, also sponsored by Senators Bennett and Hatch, on May 3, 2007 (S. Hrg. 110–91). The Committee ordered S. 390 favorably reported, with an amendment in the nature of a substitute on September 11, 2008. No further action was taken on the bill. Senators Bennett and Hatch also introduced related legislation in the 109th Congress, S. 1135, although no action was taken on the bill.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on August 4, 2009, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 1275.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "Utah Recreational Land Exchange Act of 2009".

Section 2 defines key terms used in the bill.

Section 3 describes the terms of the land exchange between the State of Utah, as trustee for the Utah School and Institutional Trust Lands Administration, and the Department of the Interior.

Subsection (a) provides that if the State offers to convey to the United States title to the non-Federal land identified in the referenced maps, the Secretary of the Interior (Secretary) shall accept the offer and upon receipt of the non-Federal land, convey to the State all right, title, and interest of the United States to the Federal land, as depicted on the referenced maps.

Subsection (b) provides that the land exchange is subject to any valid existing rights, and except as otherwise provided by this Act, section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1716), and any other applicable laws. The subsection further provides all costs associated with the land exchange, including appraisals, surveys, and related costs, shall be paid equally between the State of Utah and the United States. The exchange is also subject to any additional terms and conditions agreed to by the Secretary and the State.

Subsection (c) requires that title to the Federal and non-Federal land exchanged under this Act be in a form acceptable to the Secretary and the State.

Subsection (d) states that the value of the Federal and non-Federal lands to be exchanged shall be determined by appraisals con-

ducted in accordance with section 206 of FLPMA. The subsection provides for an adjustment if the value of any parcel of Federal land is attributed to minerals subject to leasing under the Mineral Leasing Act. In that case, the value shall be reduced by the estimated value of the payments that would have been made to the State of Utah from bonuses, rentals, and royalties that the United States would have received if such minerals had been leased. All final appraisals, appraisal reviews, and determinations of value are to be available for public review in the Utah State Office of the Bureau of Land Management at least 30 days before the conveyance of the applicable parcels.

Subsection (e) authorizes the conveyance of Federal and non-Federal parcels in three phases, beginning on the date on which the appraised values of the parcels included in the applicable phase are approved under this subsection, even if appraisals for all of the parcels to be conveyed may not have been approved. The three phases include the lands identified on the referenced map as "phase one" (approximately 30,281 acres), "phase two" (approximately 8,382 acres), and "phase three" (approximately 7,619 acres), respectively. The parties are authorized to set aside an individual parcel of land from one of the identified phases if agreement to exchange has not been reached, allowing the remainder of the parcels in the phase to be exchanged. Paragraph (4) of subsection (e) states that it is the intent of Congress that at least the first phase of the land exchange be completed not later than 360 days after the date on which the State offers to convey the non-Federal lands to the Secretary.

Subsection (f) directs the Secretary to reserve from Federal lands containing oil shale resources, an interest in the portion of the mineral estate that contains such resource. The interest shall consist of 50 percent of any bonus bid or other payment received by the State as consideration for securing any lease or authorization to develop oil shale resources; the amount that would have been received by the Federal government under the applicable royalty rate if the oil shale resources had been retained in Federal ownership; and 50 percent of any other payment received by the State pursuant to any lease or authorization to develop the oil shale resources. The subsection clarifies that the State is not obligated to lease or otherwise develop oil shale resources on lands in which the United States retains an interest and that the value of any lands in which the United States retains an interest shall be appraised without regard to the presence of oil shale and in accordance with subsection (d).

Subsection (g) withdraws, subject to valid existing rights, the Federal lands from disposition under the public land laws (other than as provided in section 4); location, entry, and patent under the mining laws; and from operation of the mineral leasing laws, geothermal leasing, and the minerals materials laws. The withdrawal is to begin on the date of enactment of this Act and ends on the earlier of the date that the Federal land is removed from the exchange or the date on which the Federal land is conveyed under this Act.

Subsection (h) provides that any conveyance of a parcel of Federal or non-Federal land under this Act shall include the conveyance of water rights appurtenant to the parcel conveyed.

Subsection (i)(1) requires that the value of the Federal land and non-Federal land to be exchanged under this Act shall be equal, or shall be made equal.

Paragraph (2) provides that if the value of the Federal land exceeds the value of the non-Federal land, they are to be equalized in a way determined by the Secretary and the State to be appropriate, by one or more of the following: by reducing the acreage of the Federal land to be conveyed; by adding additional State land to the non-Federal land to be conveyed; or, consistent with section 206(b) of FLPMA, by cash equalization payments of not more than 5 percent of the total value of the lands to be transferred out of Federal ownership.

Paragraph (3) requires that if lands are added to or removed from the exchange, the Secretary or the State shall publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that identifies where the revised map is available for public inspection, and also transmit a copy of the revised map to the House and Senate committees. The Secretary and the State may not add or remove land from the exchange until at least 30 days after the date on which notice is published and the maps are transmitted.

Section 4(a) provides that the non-Federal land acquired by the United States under this Act shall become part of, and managed as part of the Federal administrative area in which the land is located. Any land acquired by the United States that is identified on the referenced maps as "Withdrawal Parcels" (approximately 23,466 acres) is withdrawn from the operation of the mineral leasing and mineral material disposal laws. Any mineral receipts derived from land acquired by the United States shall be paid into the Treasury and shall not be subject to the revenue sharing provisions under section 35 of the Mineral Leasing Act (30 U.S.C. 191).

Subsection (b)(1) allows for the continuation of grazing for the remainder of the term, permit, or lease, on lands exchanged under this Act, subject to the related terms and conditions of user agreements, including permitted stocking rates, grazing fee levels, access rights, and ownership of range improvements.

Paragraph (2) states that, to the extent allowed by Federal or State law, the holder of a lease, permit, or contract, shall be entitled to a preference right to renew the grazing lease, permit, or contract.

Paragraph (3) provides that nothing in this Act prevents the Secretary or the State from cancelling or modifying a grazing permit, lease, or contract if the underlying land is sold or transferred or leased for non-grazing purposes.

Paragraph (4) clarifies that if grazing land is used to meet the base property requirements for a Federal grazing permit or lease, the land shall continue to qualify as base property for the remaining term of the lease or permit and any renewals or extensions.

Subsection (c) directs the Secretary, and the State, as a condition of the exchange, to make available for review and inspection any record relating to hazardous materials on the lands to be exchanged, with costs of remedial actions paid by those entities responsible for the costs under applicable law.

Subsection (d) affirms a scenic easement and road right-of-way previously granted to the National Park Service for Dinosaur National Monument.

Section 5 provides that the provisions of this Act shall terminate 5 years after the date of enactment of this Act.

Section 6 authorizes the appropriation of such sums as are necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

H.R. 1275—Utah Recreational Land Exchange Act of 2009

H.R. 1275 would authorize a land exchange between the federal government and the state of Utah. The bill would specify certain procedures for equalizing the values of lands and interests exchanged and other conditions on the transaction. In particular, under the bill, the federal government would reserve an interest in any oil shale resources conveyed to the state.

CBO estimates that enacting H.R. 1275 would have no significant net impact on discretionary or mandatory spending and no effect on revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Based on information provided by the Bureau of Land Management (BLM), CBO estimates that the approximately 36,000 acres of federal lands to be conveyed under H.R. 1275 currently generate net offsetting receipts (a credit against direct spending) totaling less than $50,000 annually, primarily for grazing. Although some of those lands have the potential for mineral development, CBO expects that they are unlikely to be leased over the next 10 years; therefore, we estimate that forgone net receipts under the bill over the 2010–2019 period would be minimal, as would any new receipts that might be earned on the approximately 46,000 acres that would be received from the state.

Also, under H.R. 1275, the federal government would reserve a 50 percent interest in future royalties, bonus bids, and other payments that Utah might receive if the lands to be transferred to it are ever developed for oil shale. Because BLM typically retains half of any receipts from mineral leasing on federal land under current law, CBO expects that this provision would, on average, have no significant effect on the federal budget.

The CBO staff contacts for this estimate are Deborah Reis and Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1275. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1275, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 1275 does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

Because H.R. 1275 is similar to legislation considered by the Committee in the 109th Congress, the Committee did not request Executive Agency views. The testimony provided by the Department of the Interior at hearing before the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands on March 24, 2009 follows:

TESTIMONY OF MICHAEL NEDD, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on H.R. 1275, the Utah Recreational Land Exchange Act. The bill would legislate a large-scale land exchange between the Bureau of Land Management (BLM) and the State of Utah. We support the completion of major land exchanges which further public policy goals and enhance resource protection. However, we have several concerns with H.R. 1275 and we request that the Committee defer any action on the bill until we can address our concerns with the sponsors and the Committee. We look forward to working with the sponsors and the Committee on this legislation.

BACKGROUND

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

Managing 22.8 million acres of land within the State of Utah, the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. As the nation's largest Federal land manager, the BLM administers the public lands for a wide range of multiple uses, including energy production, recreation, livestock grazing and conservation uses. The Federal Land Policy and Management Act (FLPMA) provides the BLM with a clear multiple-use mandate which the BLM implements through its land use planning process.

Section 206 of FLPMA provides the BLM with the authority to undertake land exchanges. Among other purposes, exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. Over the past ten years the BLM in Utah has completed two large-scale exchanges with the State of Utah at the direction of Congress

through the Utah West Desert Land Exchange Act of 2000 (Public Law 106–301) and the Utah Schools and Land Exchange Act of 1998 (Public Law 105–335). Over 262,000 acres of Federal land were conveyed to the State of Utah and the United States acquired over 571,000 acres from the state through these exchanges.

H.R. 1275

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

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

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

- 1,280 acres and 420 acres along the Colorado River west and east of Moab which includes Corona Arch and other popular recreation sites within the BLM's Colorado Riverway Management Area;
- 4,500 acres within the Castle Valley watershed which also has important wildlife habitat and scenic values;
- 1,280 acres of land currently leased by the BLM and Grand County from the State for recreation-related activities associated with the Sand Flats Recreation Area and the famous Slickrock Mountain Bike Trail;
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources; and,
- 8,600 acres in the Dolores Triangle containing prime habitat for elk and deer which is therefore a focus area for hunting.

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

The lands and mineral estate the bill directs be transferred to SITLA from the BLM are primarily parcels with high energy potential. These lands are located in the high-

ly productive Uintah Basin, with producing oil and natural gas wells within close proximity of these parcels. Some of the parcels which would be transferred to SITLA under this legislation would improve manageability and encourage local development in the state; for example 80 acres adjacent to Canyonlands Field municipal airport in Grand County.

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

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

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

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

would like to discuss with the Committee the inclusion of a transition period for full integration of the state leases into the preexisting BLM permits.

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

Valuation and appraisal

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

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

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

that the bill be amended to clearly require that standard appraisal practices are utilized to ensure that the taxpayer is made whole and is treated the same as if these exchanges were undertaken administratively.

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

Additional concerns

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

CONCLUSION

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

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 1275, as ordered reported.

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