

110TH CONGRESS
1ST SESSION

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To authorize Western States to make selections of public land within their borders in lieu of receiving 5 percent of the proceeds of the sale of public land lying within said States as provided by their respective enabling Acts.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2007

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize Western States to make selections of public land within their borders in lieu of receiving 5 percent of the proceeds of the sale of public land lying within said States as provided by their respective enabling Acts.

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 “Action Plan for Public
5 Lands and Education Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) The Acts enabling the people of territories
2 of the American West to form their constitutions
3 and State governments and providing for the admis-
4 sion of such States into the Union on equal footing
5 with the original States included a common provision
6 of which the following example is typical: That 5
7 percent of the proceeds of the sales of public land
8 lying within said State, which shall be sold by the
9 United States subsequent to the admission of said
10 State into the Union, after deducting all the ex-
11 penses incident to the same, shall be paid to the said
12 State, to be used as a permanent fund, the interest
13 of which only shall be expended for the support of
14 the common schools within said State.

15 (2) Western States, as a group, are falling be-
16 hind in education funding as measured by growth of
17 real per pupil expenditures from 1979 to 2006.

18 (3) Eleven of the 12 States with the lowest real
19 growth in per pupil expenditures are Western States.

20 (4) The growth rate of real per pupil expendi-
21 tures in the 13 Western States is less than half such
22 rate in the 37 other States (28 percent versus 57
23 percent).

24 (5) One effect of less funding for public edu-
25 cation in the West is higher pupil-per-teacher ratios.

1 (6) Ten of the 12 States with the largest pupil-
2 per-teacher ratios are Western States.

3 (7) On average, the 13 Western States have 3
4 more students per classroom than the 37 other
5 States.

6 (8) Over the next 10 years, the rate of enroll-
7 ment growth is projected to be much higher in West-
8 ern States than in other States.

9 (9) On average, the rate of enrollment growth
10 in Western States is projected to increase dramati-
11 cally, while the rate of enrollment growth of other
12 States is projected to decrease.

13 (10) The State and local taxes of Western
14 States as a percentage of personal income are as
15 high as or higher than other States.

16 (11) Despite the fact that Western States tax
17 at a comparable rate and allocate as much of their
18 budgets to public education as other States, Western
19 States have lower real growth in per pupil expendi-
20 tures and have higher pupil-per-teacher ratios.

21 (12) The Federal Government is the source and
22 potential solver of the problem because of the enor-
23 mous amount of untaxed land the Federal Govern-
24 ment owns in Western States.

1 (13) All States east of an imaginary vertical
2 line from Montana to New Mexico have, on average,
3 4.1 percent of their land federally owned, while the
4 Western States on average have 51.9 percent of
5 their land federally owned.

6 (14) The plain language of these enabling Acts
7 proclaims that the public land shall be sold by the
8 United States subsequent to the admission of the
9 States into the Union.

10 (15) The United States honored those Acts by
11 selling public land within the Western States until
12 the passage of the Federal Land Policy and Manage-
13 ment Act of 1976, wherein Congress declared that
14 the policy of the United States was to retain public
15 land in Federal ownership and management.

16 (16) The United States has broken its solemn
17 compact with the Western States and breached its
18 fiduciary duty to the school children who are des-
19 ignated beneficiaries of the sale of Federal land
20 under the terms of the respective enabling Acts of
21 the Western States.

22 (17) The current shortfall in funding public
23 education in the Western States requires immediate
24 Congressional action to remedy the above-described
25 discriminatory Federal land policy and prevent the

1 further disadvantaging of the school children of the
2 Western States.

3 (18) The most efficient and cost effective rem-
4 edy now available to the United States is to grant
5 to the Western States 5 percent of the remaining
6 Federal land located within each State, authorizing
7 each State to select such land from the unappropri-
8 ated public land within the boundaries of the State
9 to satisfy the grant.

10 **SEC. 3. QUANTITY GRANTS TO WESTERN STATES FOR EDU-**
11 **CATION IMPROVEMENT.**

12 (a) QUANTITY LAND GRANTS.—Instead of receiving,
13 for the support of the common schools, 5 percent of the
14 proceeds of the sales of federally owned land lying within
15 the Western States which have not been sold by the United
16 States as of July 1, 2005, grants of land are hereby made
17 to the Western States. The amount of land granted to
18 each State shall be equal to 5 percent of the number of
19 acres of federally owned land within the State as of July
20 1, 2005.

21 (b) SELECTION PROCESS.—

22 (1) IN GENERAL.—Each Western State shall
23 select from the unappropriated public lands within
24 the borders of the State in such manner as the legis-
25 lature of the State may provide, land equal in acre-

1 age to 5 percent of the federally own land in the
2 State as of July 1, 2005.

3 (2) CALCULATION OF ACREAGE AND NOTIFICA-
4 TION OF STATE.—The Secretary shall calculate the
5 exact acreage of federally owned land in each West-
6 ern State as of July 1, 2005, and designate the un-
7 appropriated public land, as defined herein, eligible
8 for selection by the State. The Secretary shall com-
9 municate to each of the Western States the respec-
10 tive acreage calculation and designation of land eligi-
11 ble for selection not later than 1 year after the date
12 of the enactment of this Act.

13 (c) APPLICATION OF CERTAIN LAW.—Selection and
14 transfer of land under this Act shall not be considered a
15 major Federal action for the purposes of section
16 102(2)(C) of the National Environmental Policy Act of
17 1969.

18 (d) MINERAL AND OIL AND GAS RIGHTS.—

19 (1) IN GENERAL.—All mineral, oil, and gas
20 rights to the land selected by the Western States
21 under this Act shall become the property of the rel-
22 evant Western State unless the Federal lessee of the
23 selected land is making royalty payments to the
24 United States from production of minerals, oil, or
25 gas, whereupon the particular leasehold interest

1 shall remain in the ownership of the United States
 2 until the leasehold interest terminates. After that
 3 termination; the mineral, oil, and gas rights shall be-
 4 come the property of the relevant Western State.

5 (2) SELECTION OF SURFACE RIGHTS.—Western
 6 States may select only the surface of eligible land if
 7 the land is located on subsurface mineral, oil, or gas
 8 deposits that are generating royalty, rental or bonus
 9 payments to United States. The entire mineral, oil,
 10 and gas estate shall become the property of the
 11 Western State upon expiration or termination of
 12 production in paying quantities from the Federal
 13 lease.

14 (e) PERMANENT SCHOOL FUND.—All land selected
 15 by each of the Western States shall be held in trust by
 16 the State agency empowered to sale or lease such lands,
 17 the proceeds of which shall be used as a permanent fund,
 18 the interest of which shall only be expended for the sup-
 19 port of public education.

20 (f) DEFINITIONS.—In this Act:

21 (1) The term “Western States” means Alaska,
 22 Arizona, California, Colorado, Hawaii, Idaho, Mon-
 23 tana, New Mexico, Nevada, Oregon, Utah, Wash-
 24 ington, and Wyoming.

1 (2) The term “Secretary” means the Secretary
2 of the Interior or the Secretary of Agriculture, as
3 appropriate.

4 (3) The term “State educational agency” means
5 the agency of the State primarily responsible for the
6 supervision of education.

7 (4) The term “federally owned land” means all
8 land held in the name of the United States or any
9 agency thereof, including land held in trust, United
10 States military reservations, Indian Reservations
11 and any other land used for Federal purposes.

12 (5) The term “unappropriated public lands”
13 means any and all land under the management and
14 control of the Bureau of Land Management or
15 United States Forest Service, excluding land that
16 is—

17 (A) held in trust as the part of an Indian
18 Reservation;

19 (B) located within a United States military
20 reservation;

21 (C) a unit of the National Park System;

22 (D) a Wildlife Refuge;

23 (E) a Wilderness Area designated by Con-
24 gress;

25 (F) a National Historic Site;

- 1 (G) a National Monument;
- 2 (H) a National Natural Landmark;
- 3 (I) an Area of Critical Environmental Con-
- 4 cern; or
- 5 (J) a Wilderness Study Area.

