Testimony Before the United States House of Representatives
Subcommittee on Public Lands and Environmental Regulation
for the September 10, 2013 Oversight Hearing
On "School Trust Lands Ownership Within Federal Conservation Areas"

Chairman Bishop, Ranking Member Grijalva and Members:

Thank you for the privilege of testifying before this subcommittee today about a legislative concept that has been referred to as "School Trust Lands Ownership Within Federal Conservation Areas."

For the record, my name is Maria Baier, and I am the CEO of the Sonoran Institute, which is a 501(C)(3) non-profit organization founded 22 years ago and headquartered in Tucson, Arizona, whose mission and vision is to inspire and enable community decisions and public policies that respect the land and people of western North America.

Facing rapid change, communities in the West value their natural and cultural resources, which support resilient environmental and economic systems. The Sonoran Institute helps communities conserve and restore those resources and manage growth and change through collaboration, civil dialogue, sound information, practical solutions and big-picture thinking. We have two offices in Arizona, and offices in Montana, Colorado and Mexicali, Mexico.

The Sonoran Institute has been interested in land management issues since its inception, and we have produced a number of publications on the subject. I have brought some of those for your review. Most recently, we were pleased to have been a central party, along with the Grand Canyon Chapter of the Sierra Club, in promoting the passage of a statewide ballot measure that reinstated public-to-public land exchanges for the State Land Department.

Prior to my tenure at the Sonoran Institute, I served as the Arizona State Land Commissioner, and as such, was responsible for directing the state agency that manages Arizona's 9.3 million acres of State Trust land. Under the New Mexico-Arizona Enabling Act and Arizona's Constitution and statutes, the Land Commissioner has a fiduciary obligation to ensure those lands produce revenue for 13 different beneficiaries, the prime beneficiary being public schools, to which approximately 87 percent of those lands belong.

In Arizona, State Trust land and resource sales have earned $4.1 billion (market value) over the Trust's 100-year history. On top of that, revenues from leases, permits, rights of way and other "temporary" instruments earn tens of millions of additional dollars each year. To give some perspective, last year, for example, which definitely was not Arizona's best economic year, an impressive $365 million flowed into the Trust.

Prior to my service as Land Commissioner, I was fortunate to have spent ten years in the Governor's Office as a senior policy advisor and to have had other rewarding jobs with public, private and non-profit entities – most of which, in one way or another, have been focused on land and natural resources.

If there is one thing I have learned throughout the course of my career, it is the importance of having land managed by agencies with the appropriate authority to do so. What I mean by this is that each agency within the federal government is governed by laws, rules, regulations and policies that define the scope of activities and practices permissible on and for lands they manage. The same is true at the state level. In an ideal world, each agency's inventory of lands would benefit from the specific authority vested in the managing agency.

However, the assignment of land to agencies has not been, and is not now, determined by a design based in logic. To the contrary. The history of land management assignments has been very much on an ad hoc, parcel-by-parcel basis, which has created a most interesting and often illogical and inefficient jurisdictional patchwork across the West.

Whether it was during my time working for the Trust for Public Land, or as the Land Commissioner, or now, at the Sonoran Institute, I have watched a great many opportunities fade and often vanish while land managers tried to find the discretion to manage land and/or resources in a way that honored them.

I cannot think of an "unfinished business" box that would be more full than the one into which these opportunities would be dropped. And that is for at least two reasons: First, in the vast majority of situations, the nature and condition of the land and its resources have been in place since the earth was formed, and this being the case, there are few instances where "the problem takes care of itself." In other words, discussions that began a century ago continue to this day.

The second culprit of decade-long logjams is simply this: creativity and compromise by government agencies is too rarely encouraged and almost never authorized under law. Anything other than strict adherence to the letter of the law is intentionally prohibited, and that law generally substantially limits discretion.. There is, of course, a good motive for this, namely to prevent self-dealing and other types of corruption, However, in the pursuit to prevent corruption, we often lose discretionary provisions that might have fostered greater creativity and compromise.

So, day after day, month after month, year after year, decade after decade, land managers meet and discuss virtually the same issues on the same lands and about the same resources. Their best resolution tool to date seems to be the Memorandum of Understanding, or something like it, but, as its name suggests, it is generally quite limited in time, scope and enforcement.

If I had a nickel for every time I was at a meeting among land managers from various agencies and heard the phrase, "I would do that if I could," I could have traveled to DC on my own jet.

But there must be airtight laws on how we manage assets of the public trust, including land and natural resources. Seeking additional discretion in laws on a piecemeal basis will not accomplish much, and seeking it on a broader basis could result in all manner of unintended consequences.

In my opinion, the best response to the jurisdictional patchwork problem faced all across the west is that which has been presented to this subcommittee today, the basis of which is to get our public and State Trust lands into the agencies in which they can be most effectively managed.

By doing so, lands that have conservation qualities can be managed for conservation. Lands that have revenue-producing potential can be managed by agencies with a mandate to produce revenue. I cannot tell you the amount of man hours that will be saved by this one proposed process.

More important, though, is that places that are considered culturally sacred can be plucked from peril once and for all. In Arizona, one prime example would be Adamsville, an archeological mecca, which should be managed as a National Park, rather than State Trust land, where it is theoretically on the auction block anytime an application is received to buy it. Likewise, places that are important habitat for threatened and endangered species, like Cienega in Arizona, could remain permanently undisturbed in the hands of the BLM, whereas now, they, too, are subject to the lease and sale mandates of the State Land Department.

Places as notable as the Grand Canyon, Walnut Canyon, and the Petrified Forest are all threatened by activities that can, and, under law, really <u>should</u> be, authorized by the State Land Department because they bring in money. The same can easily be said of the Verde, San Pedro, Santa Cruz and even Colorado Rivers.

So the question is this: If there is a safe and realistic alternative, why would we want to continue to jeopardize the integrity of any of the spectacular national monuments or conservation areas that grace our states and draw visitors from all continents?

It is unnerving to know that these assets, which should be permanently protected, enjoy but the flimsiest of safeguards, the lowly MOU. And in many cases, not even that. Only a handshake and a promise to "do the best we can."

Meanwhile, the earnest, devoted and talented staffs within our state land management agencies are, on a daily basis, stuck between a rock and a hard place.

When they receive a purchase or lease application for a site in or near a conservation-eligible place, they must choose between litigation brought by those who seek to protect

the pristine asset while forego the revenue generation mandate of the trust, and those who seek to compromise the asset and adhere to money-making mandate. I cannot overstate how prevalent this dilemma is.

But just to be clear, in nearly every case, the law and the courts instruct state land departments to do the latter. That is why each special place in which there are State Trust land inholdings or State Trust land on the perimeter, whether in or out of a federally designated area, remains in jeopardy.

In my view, this concept is worthy of pursuit. With proper legislative drafting, the risks can be limited to those that are reasonable. Of those issues that remain under debate with which I am familiar, there would appear to be ample room for constructive compromise.

I believe this amended authorization could do much to serve the greater good.