

Testimony of Vanessa Hickman
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Presented to the House Subcommittee on Public Lands and Environmental Regulation Legislative
Hearing on H.R. 4901 (Bishop), the “Advancing Conservation and Education Act of 2014.”
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Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, for the record, my name is Vanessa Hickman, and I am the current Vice President of the Western States Land Commissioners Association, in addition to my duties as the Arizona State Land Commissioner. I thank the Subcommittee for conducting this hearing to examine how to resolve the land tenure issues between state school and institutional trust lands and federal land ownership. I am before you today to support H.R. 4901 as an effective tool to manage our school trust lands and to improve the management of federal conservation lands.

Today, twenty-three states continue to manage state trust lands as a result of the visionary acts of the congressional predecessors who valued permanent funding for these institutions. The Western States Land Commissioners Association (“WSLCA”) is comprised of these twenty-three predominantly Western states who share the common mandate of managing trust lands to generate revenue for the schoolchildren and institutions in our states. Upon becoming a territory and/or statehood, our member states were entrusted with hundreds of millions of acres of lands and minerals to be managed specifically to provide funding for public education and other state institutions. Today, our member states manage over 447 million acres of trust lands. To put it in perspective, this area is roughly two and one-half times the size of Texas. Through prudent management of these lands for mineral and energy development, timber, grazing, agricultural production, commercial and residential development, open space, critical wildlife habitat, recreation, and a myriad of other uses, our combined educational trusts amount to over \$271 billion, which generated an additional \$3.8 billion for public schools in 2012. As evidenced by the vast amount of state trust land set aside for common schools and other public institutions, the architects of the west—and, indeed, the entire nation—clearly placed a high value on the funding of public education.

The Arizona State Land Department (“ASLD”) manages approximately 9.2 million acres of State Trust lands within Arizona. These lands are held in trust and managed for the sole purpose of generating revenues for the thirteen State Trust land beneficiaries, the largest of which is Arizona’s K-12 education. In fiscal year 2014, the ASLD generated \$259,357,190 from the management and sale of Trust land for Trust beneficiaries in the State of Arizona. In a little over 100 years of statehood, our permanent fund stands at over \$4,000,000,000.

Prior to beginning my tenure as Commissioner, I served as the Deputy State Land Commissioner and Deputy General Counsel to Governor Janice K. Brewer, who is a supporter of H.R. 4901 and

prudent land management practices. Prior to my state government service, I worked in private practice in real estate litigation and land use law.

My state's path to statehood began on February 24, 1863, when the United States Congress established the Territory of Arizona and granted two sections of each township for the benefit of common schools.

On June 20, 1910, when Congress enacted the Arizona New Mexico Enabling Act, it granted two more sections in each township to be held in trust for the common schools, as well as an additional two million acres to be held for other public institutions. In total, the new state of Arizona would enter the Union with over ten million acres of State Trust land reserved for the sole purpose of generating revenue for the state's thirteen beneficiaries—the largest of which is K-12 education.

The ASLD and the system by which Trust lands are managed were established in 1915 by the State Land Code. In compliance with the Enabling Act and the State Constitution, the State Land Code gave the ASLD authority to manage all Trust lands and the natural products from those lands.

Since the ASLD's inception, its mission has been to manage the Land Trust and to maximize its revenues for the beneficiaries. All uses of the land must benefit the Trust, a fact that distinguishes it from the way public land, such as parks or national forests, may be used. While public use of Trust land is not prohibited, it is regulated to ensure protection of the land and compensation to the beneficiaries for its use.

To be clear, as envisioned by the founders and encoded in federal and state law, the sole purpose of state trust land is to generate revenues for trust beneficiaries. Unfortunately, a host of factors make generating revenue increasingly difficult. One the greatest challenges to revenue generation is management of state trust lands within federally designated areas.

Let me please draw your attention to examples in the State of Arizona, where 70 percent of the land is under federal control. The boundaries of the Grand Canyon-Parashant National Monument include over 23 thousand acres of Arizona State Trust land. This is but one of many federally designated areas that impact the revenue generating mission of Arizona's State Trust lands. In all, over one million surface and subsurface acres of Trust land are effectively removed from revenue-generating opportunities because they are included within the boundaries of federal holdings. And please, let me respectfully remind you that the revenue generating mandate requires me to put these lands into production, whether it be for grazing, agriculture, mineral production, or development.

Existing administrative and legislative solutions are costly, complicated, unpredictable, and time consuming. Administrative land exchanges with agencies within the Department of Interior or with the U.S. Forest Service are inadequate as the sole tool to complete land transfers between

states and the Federal Government. The Department of Interior has implemented policies and guidelines that have made administrative exchanges nearly impossible to complete in any reasonable time frame. Moreover, the Department of Interior has failed to make the exchange process a priority and, therefore, funding has been woefully inadequate for years. Many states can cite specific examples of administrative exchanges taking longer than a decade to complete.

For several years, WSLCA has been working with our member states, Chairman Bishop, Representative DeFazio, other Members of Congress, and outside organizations to craft H.R. 4901, a bill that we believe will be an effective tool to allow states to efficiently remove their lands from inside federal conservation areas and relocate these values to locations that are more appropriate to fulfill our Trust obligations. Additionally, our proposal will enhance federal conservation goals and management areas by eliminating the state-owned inholdings and providing for consolidated land management. We believe we have built a broad spectrum of support and we now turn to this Subcommittee to pass this bi-partisan legislation that will implement our proposal.

H.R. 4901 is a supplement to existing laws that permit exchanges and purchases. This bill is similar to the existing federal statutes (43 U.S.C. 851-852) that permit state *in lieu* selections of federal public lands. These statutes allow Western land grant states to select federal lands in lieu of lands originally granted to the states that ended up not being available due to preexisting conveyances or federal special purpose designations. By way of example, if the federal government had created an Indian reservation or issued a homestead patent before a state's title to a particular state parcel had vested, the state was entitled to select an equal amount of available federal land in lieu of the lands that were lost (in lieu selections are often synonymously referred to as "indemnity" selections).

By creating new conservation designations that have limited the states from utilizing school lands for their intended purposes, the United States has in a very real sense failed to live up to the promise of the statehood land grants. H.R. 4901 will help rectify this situation by confirming the right of the states to relinquish state trust lands within federal conservation designations to the United States and to select replacement federal lands outside such areas. This will allow the Federal Government to obtain unified ownership and management authority over areas deemed important for conservation goals. Concerns also exist within many western states about recent petitions to list threatened and endangered species. Where priority habitat for endangered species exists within these conservation designations, this circumstance would likely create additional constraints in managing state lands. This bill would facilitate another means by which states could relinquish lands constrained by threatened and/or endangered species considerations.

The mechanism of relinquishment and selection has been utilized previously by Congress and should not be difficult to implement. Under H.R. 4901, states owning lands within federal conservation designations would simply deed the lands back to the United States, subject to any existing rights. This conveyance would entitle the states to select replacement lands from the

unappropriated federal public lands within the state utilizing the existing process for such selections, as set forth in 43 C.F.R. Part 2620 (2010).

Additionally, the bill incorporates important concepts that make it a more effective tool when compared to existing laws. The acquisition and conveyance of lands will be conducted in accordance with the National Environmental Policy Act of 1969 and other applicable laws; however, the Secretary of the Interior, when preparing an environmental assessment or environmental impact statement, will be required to consider only the proposed conveyance or no action. The bill also includes a streamlined process for appraising low value parcels, allowing the Secretary of the Interior to use a summary appraisal or statement of value made by a qualified appraiser in accordance with Internal Revenue Service standards when both parties agree that a parcel's value is less than \$300 per acre. And, because selections would be limited to unappropriated public lands, the right to select lands would not extend to areas such as wilderness, national forests, and other conservation or special purpose designations.

In conclusion, I would like to direct you to the U.S. Supreme Court in *Andrus v. Utah*, in which the Court held that “the school land grant was a *solemn agreement* which in some ways may be analogized to a contract between private parties. The United States agreed to cede some of its land to the State in exchange for a commitment by the State to use the revenues derived from the land to educate the citizenry.” For almost a century, Congress has made decisions to reclassify federal lands with a wide range of management and policy prescriptions. While the Park Service approaches its 100th anniversary and the country now appreciates nearly 50 years of designated Wilderness, the mandate for school trust lands has remained constant for over two hundred years. Congressional actions and policy decisions over the decades have locked up millions of acres of school lands and minerals within National Parks, Wilderness areas, Wildlife Refuges, National Monuments and other federal designations. In order to keep the *solemn agreement* with the schoolchildren of our states, we must craft effective tools to move these trapped state trust lands and minerals from within constrictive federal ownership into other locations where the generation of income is appropriate and acceptable. H.R. 4901 is an effective tool for moving these grid-locked state trust lands into productive use.

I thank Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee for your attention to this important matter and look forward to working with you to gain broad support for the enactment of H.R. 4901 to better fund the education of our children. Thank you for the opportunity to testify and I would be happy to answer any questions.

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