

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

March 17, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff—Brandon Miller
Subcommittee on Federal Lands (x67736)

Mark-Up: **H.R. 4257 (Rep. Chris Stewart)**, To maximize land management efficiencies, promote land conservation, generate education funding, and for other purposes.
March 21, 2018 at 10:15 a.m.; 1324 Longworth House Office Building

H.R. 4257, Advancing Conservation and Education Act

Summary of the Bill

H.R. 4257, introduced by Representative Chris Stewart (R-UT-02), would allow western States to relinquish State land grant parcels wholly or primarily within eligible areas and select in exchange public land within the State that is equal in value. H.R. 4257 also directs the Department of the Interior to create a process for the relinquishment of the parcels and sets forth requirements regarding hazardous materials on land conveyed, water rights, grazing permits, road rights-of-ways, and other valid existing rights.

Cosponsors

Rep. John Curtis [R-UT-03], Rep. John Garamendi [D-CA-03] and Rep. Jared Polis [D-CO-02]

Background

The Advancing Conservation and Education Act is based on existing provisions in western State enabling acts allowing States to select replacement lands in lieu of State school grants that were not completed by the United States.

Congress granted most of the western States land to be held in trust by the States and used to support public education and other public purposes. Many of these State trust lands parcels are in a “checkerboard” pattern inside federal areas managed for conservation, such as national parks and monuments, national wildlife refuges, wilderness study areas, and areas of critical environmental concern. The intermingling of land ownership creates significant problems for both federal land managers and the States, since the latter are required to manage State trust lands to provide revenue for public education. Through its land use planning process, the Bureau of Land Management (BLM) identifies lands that are difficult or uneconomic to manage, such as “checkerboard” areas.

H.R. 4257 will help meet the goal of rationalizing land ownership in the west by creating an additional authority for the United States to acquire State lands in federal conservation areas, and compensating the States with replacement federal lands. The current process where interested parties bring land exchanges to Congress on a case-by-case basis is time-consuming and cumbersome, and existing administrative land exchange authorities are equally challenging.

The bipartisan proposal expands existing authority (43 U.S.C. 851-852), that allows western States to select federal lands “in lieu” of lands lost to the States when original statehood land grants were not completed. It would allow States with lands located in federal conservation areas to deed back those lands to the United States, and select replacement lands of equivalent value from the unappropriated federal public lands within that State. Many of the provisions of the proposal incorporate existing BLM administrative provisions for in-lieu selections, including land valuation, and compliance with BLM land use plans. It would not replace the land exchange process, but rather provide an alternative mechanism for State-federal land transfers.

The Western States Land Commissioners Association (WSLCA), a bipartisan organization of 21 State agencies responsible for managing more than 500 million acres of public and school trust land, has proposed a legislative solution to provide a mechanism for the United States to acquire lands owned by the western States and located inside federal conservation areas, while fairly compensating the States for those lands by granting them the right to select replacement lands of equivalent value from the public domain¹. The WSLCA proposal has had substantial input from western States and the conservation community. Previous iterations of the proposed bill have also been supported by conservations groups such as the Wilderness Society.² H.R. 4257 is based on this proposal.

H.R. 4257 would provide a useful tool for federal and State land managers to make their respective landholdings more rational, for the benefit of both sound land management and public education funding.

A companion bill, S. 2078, has been introduced in the Senate. The policy provisions set forth in H.R. 4257 have enjoyed bipartisan support in the House and Senate in the 114th and 113th sessions.

Major Provisions/Analysis of H.R. 4257

Sec. 4. Relinquishment of State Land Grant Parcels and Selection of Replacement Land.

- Expands existing authority for western States to relinquish State trust lands wholly or primarily within eligible federal areas managed for conservation.

¹ Western States Land Commissioners Association. *Resolution 2017-10 Expressing Support of the Advancing Conservation and Education Act* (accessed March 16, 2018): <http://www.glo.texas.gov/wslca/wsarchives/resolutions/2017-10.pdf>

² United States. Cong. House. Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation. *Legislative hearing on H.R. 4901, The Advancing Conservation and Education Act*. July 29, 2014. 113th Cong, 2nd sess. Washington (statement of Paul J. Spitler, Director of Wilderness Campaigns, the Wilderness Society (accessed March 16, 2018): <https://wilderness.org/sites/default/files/TWS%20Testimony%20on%20HR%204901%20FINAL.pdf>)

- Clarifies that land conveyed under this authority remains subject to valid existing rights.
- Stipulates that relinquished lands shall be managed by the land agency responsible for the conservation area that the land is being added to.
- Requires western States' authority to use this alternative authority in priority areas before applying to relinquish State land in other eligible areas. However, the Secretary of the Interior can waive this requirement if it is determined that the relinquishment of parcels located in the priority areas is impractical or infeasible.
- Further waives the priority requirement if an application for relinquishment is limited to a single eligible area, and it is further determined that substantial progress is being made by the State to relinquish priority parcels. This exemption can only occur once every five years.

Sec. 5. Process.

- Requires the Secretary of the Interior to establish a process within 540 days for western States to request relinquishment of eligible State parcels and to select public land in exchange.
- Requires the land exchanges to be concurrent.
- Requires public notice and an opportunity to comment on proposed conveyances between the western State and the United States.
- Requires the land exchanges to be done in accordance with the National Environmental Policy Act of 1969 and other applicable laws.
- Permits the Secretary to enter into agreements with any of the western States to facilitate processing of applications and conveyance of land.
- Requires the Secretary to issue a final determination on an application within 3 years after submission.
- Prohibits the Secretary from accepting an application for the selection of public land if it is determined that the selection is not reasonably compact and consolidated, if it will create significant management conflicts, if it will adversely affect public use or a recreation site, or if the selection is not in the public interest.
- Requires consultation with the head of the appropriate federal land agency before approving any conveyance of federal land.

- Requires consultation with any Indian tribe affected by the land conveyance, including any tribe which notifies the Secretary that there is traditional cultural property located within the public land proposed for conveyance to the western State.
- Stipulates the costs of conveyance shall be shared equally by the Secretary and the western State.

Sec. 6. Mineral Land.

- Permits western States to select federal land that is mineral in character.
- Excluded mineral land that only included a portion of a mineral lease or permit, land that is part of the federal mineral estate (unless the United States does not own the associated surface estate), or land that is part of federal surface estate (unless the United States does not own the associated mineral estate).
- Clarifies that nothing in this Act shall affect existing mining claims.

Sec. 7. Construction with Other Laws.

- Requires the Secretary to consider the equities of the western States and interest of the public in the application of this Act.

Sec. 8. Valuation.

- Requires the overall value of the State trust parcels and the public land conveyed to be equal, and if not equal to be equalized by a payment of funds.

Sec. 9. Miscellaneous.

- Requires the Secretary and the western State make available for review any record relating to hazardous materials on the land to be conveyed.
- Allows State or federal water rights to be included in the conveyance of land.
- Clarifies that nothing in this Act creates an implied or expressed federal reserved water right, affects a valid existing water right, or affects the use of water conveyance infrastructure.
- Stipulates that existing grazing rights must be honored for the remainder of the term of lease, permit, or contract. After this duration, the party who has jurisdiction over the land may elect to renew the lease, permit or contract.

- Clarifies that nothing in this Act prevents the Secretary or State from cancelling or modifying a grazing permit, lease or contract if the land is sold, conveyed, transferred or leased for nongrazing purposes.
- Restricts cancellation of grazing permits except to the extent reasonably necessary to accommodate surface operations in support of mineral development.
- Stipulates that existing road lease, road right-of-way, road easement, or other valid existing right must be honored for the remainder of the term of lease, permit, or contract. After this duration, the party who has jurisdiction over the land may elect to renew the lease, permit or contract.
- Clarifies that nothing in this Act alters or diminishes the treaty rights of any Indian tribe.

Sec. 10 Effect.

- Nothing in this Act repeals or limits, expressly or by implication, any authority in existence on the date of enactment of this Act for the selection or exchange of land.

Sec. 11. Termination of Authority.

- The authority of this Act will expire 20 years after enactment.

Cost

A Congressional Budget Office cost analysis has not yet been completed for this bill.

Administration Position

The Administration's position is currently unknown.

Effect on Current Law (Ramseyer)

None.