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Testimony on H.R. 1126, “*Disposal of Excess Federal Lands Act of 2011*”
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My name is J. Mark Ward and I reside in South Jordan, Utah, a suburb of Salt Lake City. I am a natural resources and public lands lawyer of nine plus years experience, and I am in my 28th year of legal practice overall. I am employed with the Utah Association of Counties (referred to as UAC) and my position is Senior Policy Analyst and Public Lands/Natural Resources Counsel. UAC is a non-profit Utah corporation whose membership is comprised of the counties of Utah. One of the purposes of UAC is to represent the interests of counties impacted by federal public land policies, including land disposal policies. UAC also works closely with county associations in other Western States, specifically the National Association of Counties Western Interstate Region, on public land issues that transcend the West and the Nation. UAC member counties are cooperating agencies with federal land management agencies such as the U.S. Bureau of Land Management (BLM) and the Forest Service in developing resource management plans and land use plans.

With this background, I am here to testify that public interest in obtaining and privatizing a reasonable amount of federal public land through sale and disposal remains very high among the counties of Utah, and very high among most counties throughout the 11 western public lands states where some of the country’s fastest growing regions are located. A program of routine and measured federal land disposal is critically needed for the reasons which I will outline below. Accordingly, UAC strongly supports passage of H.R. 1126, “*Disposal of Excess Federal Lands Act of 2011.*”

The Grossly Uneven Impact of Western Federal Lands Ownership
Without A Reasonable Federal Land Disposal Program

Over the course of our nation’s history, approximately 1.1 billion acres of public land have passed out of federal ownership under various land laws. Despite this, approximately one-third of the land area of the 50 states still belongs to the federal government and over 90 percent of all Federal land lies from the Rocky Mountains west. Average federal land ownership in the 11 Western States is 50 percent, exceeding 50 percent in 5 western states, including Utah, and 20 percent in 12 states.

Exhibit A is a map which some of you may have seen before. This map dramatically demonstrates the disparity of federal land ownership as a percentage of total land, between the western states and the eastern states. The public lands in Utah alone are about equal to the total area of the state of Florida. The entire area of Pennsylvania is smaller than the Federal public lands in either Wyoming or Oregon. I ask many of the respected members of this Subcommittee from eastern states to pause and imagine trying to finance your state’s public educational programs if the tables were turned and less than half of your state’s land area were subject to property taxation to support public schools. This gross disparity in federal land ownership

between the western and eastern states remains one of the great yet-unsolved injustices of this nation. The 11 western states truly are not on an equal footing with eastern states, and the Constitution's cherished ideal of equal protection under the law has no meaning for western public school children who depend on county property taxes off the meager scant percentages of private land in each western state to support their educational programs.

Moreover, the nature of federal land ownership has dramatically changed to adversely impact western counties. A U.S. GAO report entitled *Land Ownership, Information on the Acreage, Management and Use of Federal and Other Lands, GAO/RCED-96-40*: (U.S. General Accounting Office, Washington, D.C. 1996) indicates that the amount of land managed for conservation purposes – that is national parks, national wildlife refuges, wilderness and wilderness study areas, wild and scenic rivers, and areas of critical environmental concern – has increased 66 million acres from 1964 to 1994, making more than 272 million acres out of 622 million acres of public lands, or 44 percent, off limits to resource use. The result is dramatically adverse for rural counties in the West, whose economies depend directly on use of public lands resources. But the federal government has not stopped with merely restricting use of its own lands; federal land management agencies have expanded their rights to use 3 million acres of *nonfederal* land, including rights to cross private lands owned by private parties, nonprofit organizations, or nonfederal government entities. In addition, from 1964 to 1994 environmental organizations transferred 3.2 million acres of land to the federal government, all to be locked up and no longer subject to state and local taxation for critical services such as public education.

Am I here to advocate a wholesale divestiture of public lands in the West? No; the Utah Association of Counties asks only that you consider the very modest aim of H.R. 1126 in the context of the grossly unfair and outright discriminatory stacked deck against the Western States according to the facts I have just stated, and as starkly illustrated in *Exhibit A*.

Does the modest disposal of federal land called for by H.R. 1126 find support in current public lands law? The answer is an emphatic yes. The policy and the legal framework of federal land disposal are very much alive and well, and any claim that the days of federal land disposal are in the past, is simply incorrect. The Federal Land Policy Management Act of 1976, 43 U.S.C. §§ 1701-1784. (FLPMA) governs how the U.S. Bureau of Land Management (BLM) administers hundreds of millions of acres of public land in the United States. While FLPMA repealed most major prior laws providing for disposal of public lands, Section 203 of FLPMA, 43 U.S.C. § 1713(a) still gives the Secretary of Interior authority, with certain limited exceptions, to dispose of public lands at fair market value, generally through competitive bidding, under any or all of three disposal criteria:

- 1) The land tract is difficult or uneconomic to manage;
- 2) The purpose for which the land tract was acquired, and any other federal purpose, no longer apply; or
- 3) Disposal of the land tract serves important public objectives including but not limited to community expansion and economic development which cannot be achieved if the land remains public, and these objectives outweigh other public objectives and values.

(Exceptions to the foregoing criteria include Wilderness and Wild and Scenic River, and National System of Trails lands, and lands classified, withdrawn reserved or otherwise designated not for sale.)

The Secretary of Interior and BLM Director routinely act on this authority and analyze and identify public lands for disposal either as part of each BLM Resource Management Plan, or as part of a report done pursuant to many Congressional mandates, such as the Secretary of Interior's report of May 27, 1997 to Congress as done pursuant to the Federal Agriculture Improvement and Reform Act of 1996, as referenced on pages 2-3 of H.R. 1126. All H.R. 1126 seeks to accomplish is to act on the lands identified as suitable for disposal in that 1997 Secretarial report. Proposed tracts for sale greater than 2,500 acres must first be submitted to Congress.

A program of consistent disposal of federal lands is necessary to prevent ever-mounting pressures on rural businesses and agricultural operations resulting from increased Federal control of traditional multiple use activities on public lands. Federal control on public and even private lands in the West continues to expand, adversely affecting property, recreation, and small business involved in resource industries – putting many of them out of business.

Returning again to the subject of public education, the eastern states-western states disparity in ability to fund education cannot be emphasized enough. One of the biggest challenges facing western states and western counties is funding for public education. It is imperative that counties find solutions not only for today, but well into the future. Returning to *Exhibit A*, again, western counties are disillusioned to see that in the eastern states, state and local governments can tax all but roughly 4 percent of the land, because that is the average extent of federal land ownership – 4%. But in the West, the federal government owns more than 50 percent, and in Utah's case even higher.

Federal land ownership in the West impairs public education funding in at least four ways:

1) Enabling Acts. When Utah and many other western states were first admitted into the Union, it was agreed in the State Enabling Acts that 5 percent of the proceeds from the sale of federal land would benefit public education and other beneficiaries. At the time, it was assumed that the federal government would continue to dispose of public lands creating an endowment of hundreds of millions if not billions of dollars per state for public schools. That promise was shattered when the federal government reversed its land disposal policies in the 20th century.

2) Property Taxes. Local school districts cannot assess property taxes on federal lands. Western states are losing hundreds of millions in property taxes annually due to unreasonable levels of retained federal land ownership. The Federal Payment In Lieu of Taxes (PILT) program and Secure Rural School (SRS) programs only make up a minute percentage of this annual loss. Taking a closer look at Utah as a typical example of the 11 western states, only

31% of the land in Utah is subject to state and local taxation; yet the state and its counties have to provide basic governmental services throughout the entire state:

Total Area of State of Utah		52,587,500 acres
Area owned Federal Gov't		
BLM	22,882,950 acres	
Forest Service	8,178,600 acres	
Nat'l Parks	2,022,600 acres	
National Wildlife Refuge	110,820 acres	
Military Bases	<u>851,460 acres</u>	(34,046,430 acres)
Tribal Lands		<u>(2,286,500 acres)</u>
Remaining Lands		16,254,570 acres (31% of total area) State)

3) Natural Resources Royalty Revenues. States receive less than half of the royalty revenue from private industry's use of public lands; whereas all of these royalties would go to state and local governments if the lands were under local rather than federal control, such as the case for many oil wells in Texas and North Dakota. These energy royalties in Utah go to fund public education and other critical state and local governmental services. Even the sub 50% royalty revenues have declined in the face of an ever-increasing onslaught of so-called environmental policies which discourage continued mineral and energy development on public lands. More and more under the current Administration, the BLM has usurped the Congressional multiple use mandate of FLPMA, effectively withdrawing energy rich lands that have traditionally use for energy development, from continued development in Utah and many other western states.

4) School Trust Lands. When Utah and other western states joined the Union, the federal government transferred land to the States for a trust for public education and other beneficiaries. But the land was conveyed in scattered, stand-alone sections across each township of land, making much of this land difficult to use for the purpose for which it was conveyed. Moreover, federal policies of the late 20th Century have locked up resource uses of many surrounding federal lands, making it even harder for western states to develop their trust land sections for economic use. A federal land disposal policy coupled with a reasonable land exchange policy would free up these trust sections for reasonable development, thereby making good on the federal government's promise to the western states when these trust lands were conveyed in the first place.

It is in the context of this gross failure of the funding mechanisms promised to western states at statehood, that I ask the respected members of this Subcommittee to consider the modest federal land disposal aims of H.R. 1126. Again, if you are from an eastern state, I respectfully ask you again to try to imagine for a moment funding the public education programs in your state, under the perfect storm of an already cut-in-half tax base, an ignored and forgotten State Enabling Act promise of 5% revenue from the sales of all lands in your state, and an energy royalty program that is already arbitrarily cut in half and shrinking more each year due to the

never-ending onslaught of so-called environmental lawsuits and D.C. environmental lobby influence that effectively shuts down resource use of the surrounding federal lands and thus renders the isolated state school trust tracts unusable.

The Advantages That Accrue From a Reasonable Federal Land Disposal Program

Economic Considerations

The federal government owns so much land that experts can only provide rough estimates of the total acreage under federal control. The Congressional Research Service can only estimate that the total is roughly 650 million acres, or roughly one of every three acres nationwide, and nearly one of every two acres in the western United States.

It is little wonder the federal budget for maintenance of these lands is soaring and simply unsustainable in this area of massive budget deficits and mounting federal debt. According to a March 1, 2011 GAO report entitled “Department of the Interior: Major Management Challenges,” <http://www.gao/new.items/d11424t.pdf>, the Department of Interior faces a maintenance backlog estimated at \$13.5 billion to \$19.9 billion. Despite record budget deficits and soaring maintenance costs, the federal government has spent more than \$430 million to purchase additional land since the most recent recession, and has spent \$2.3 billion to acquire land over the past ten years. Congressional Research Service, “Land and Water Conservation Fund: Overview, Funding History and Issues,” August 13, 2010, <http://www.crs.gov/Products/RL/PDF/RL33531.pdf>, and Congressional Research Service, “Interior, Environmental and Related Agencies: FY 2011 Appropriations,” May 12, 2011, <http://www.crs.gov/Products/R/PDF/R41258.pdf>. Between 1997 and 2004, federal land ownership is estimated to have increased from 563.3 million acres to 653.3 million, an increase of 90 million acres, or a 16 percent increase in just seven years. General Service Administration: “Federal Real Property Report,” See 1997 and 2004 Reports, <http://www.gsa.gov/portal/content/1028880>.

In the face of this out-of-control expenditure of funds to hoard up precious previously private lands, it would seem that the Department of Interior and the federal government as a whole, might benefit from bills like H.R. 1126 to bring in much needed revenue and reduce the cost and burden of maintaining the already swollen and bloated inventory of federally owned lands. That is a reasonable proposition given the current era of budget crises and ever mounting federal debt.

It is amazing indeed, to contemplate the opposition to the modest aims of H.R. 1126 in the face of this voracious onslaught of irresponsible and out of control acquisition of additional federal land with mostly borrowed dollars which only swell the federal deficit that much more, and add to the already grossly swollen backlog of maintenance needs on the federal lands. Far from criticizing the modest land *disposal* goals of H.R. 1126, the public, the Congress and the honorable members of this Subcommittee, need to turn full scrutiny on the brazen, out-of-control federal land *acquisition* program documented above. Brazen is not a light word, but we do not live in easy times. The capacity of our federal government to operate on a sound fiscal state is in

grave peril. So is that of many state and local governments, many of whom depend on property taxation. Thus this voracious land *acquisition* program which only saddles the federal public lands operating budget beyond its breaking point, while taking lands off of state and local government tax rolls, is bad policy to say the least.

In this era of unprecedented budget deficits and economy crippling federal debt, one should apologize for expensive federal land *acquisition* programs, not federal land *disposal* programs. One should apologize for not employing *more* federal land *disposal* programs to stave off looming national bankruptcy.

Ecological Considerations

The federal government's inherent propensity to mismanage public lands and allow ecological degradation thereon, and inherently superior care and attention given to land management by state and local agencies and private landowners and stakeholders, are well known, almost universally accepted facts of life throughout rural Western counties. In the West, we know intrinsically that federal public land management seldom deliver what the citizens expect, either on the revenue side or on the environmental side. Many federal land managers at the state and local level are moral, hard working, honest and well meaning in their intentions. But they are woefully underfunded and often hamstrung by non-sensical environmental policies that emanate out of Washington headquarters. Thus the argument that federal land management agencies are inherently better land managers than are private owners and state and local government managers, is suspect in theory and to Western rural counties, simply unfounded in fact.

On behalf of rural counties throughout Utah and throughout the West, I will state unequivocally before this Honorable Subcommittee, that local governments and local land owners are and always will be better stewards of the land than federal land management agencies. Why? The answer is simple: Because local citizens, governments, private landowners, and private stakeholders depend on the land; they know the land much better; they are literally children of the land, many of whom are tied to it multi-generationally. Their ancestors and forbears learned out of life-or-death necessity to keep up a sustainable yield off the land; which means they learned how to preserve it and beautify it, not destroy it and degrade through reason-defying, leave-it-alone policies pushed on the West from the environmental lobby. When the story of the American West is completed, historians will chronicle the 1990's hatched so-called wilderness/environmental movement imposed on the American West by the federal government as an aberrational blip on the screen of an otherwise decades long steady stream of true environmental stewardship applied to the land by those who settled it and their descendants. The hundreds of millions of acres of infested cheat grass and other invasive weeds, and the bark beetle kill and catastrophic wildfire index on federally owned lands throughout the west, are monuments to the failure of remote federal mismanagement of the public lands hatched in the 1990's. Nature is the biggest, most indicting witness of this mishap. The public lands in the West were once vibrant when managed according to state and local government and landowner policy and direction. No more. Many of our the West's public lands today are massive evidentiary exhibits of failed practices under the guise of failed "leave-it-alone" philosophies that grew out of the 1990's era wilderness movement. That kind of destruction to

many parts of the West would not have occurred had those lands been subject to local government and private citizen input. The local authorities of the American West would not have let matters deteriorate so, plain and simple. They love the land too much.

Again, does that mean I am here to argue for wholesale conversion of the public lands to private ownership? I simply raise these points to refute the false argument that the federal land acres subject to disposal under H.R. 1126 will somehow suffer environmental harm if transferred out of federal ownership. .

Conclusion

Seriously unsustainable federal land management operating deficits are the rule any more, not the exception. Federal land managers have few incentives to cut administrative and road costs that are routinely higher than revenues. Selling some of these lands out from federal management would reduce this budgetary strain. But the pain of such great economic losses would be lessened if the federal government managed the public lands to be ecologically healthy. They do not. The West groans the strain of a pseudo wilderness ethic that puts a relentless assault on virtually all attempts at actively managing the land. The result; Ecological waste in the name of ecological conservation, one of the great staggering ironies of the late 20th and early 21st centuries that American historians will long remember and chronicle. Ranges are over-populated by deer, elk and wild horses competing for inadequate forage. Lush native grasslands have succumbed to pinion and juniper over-growth and wildfire-prone cheat grass which reduce water yield to farms and communities. Vibrant forests with diverse stands of aspen and pine, supporting timber activity that kept the understory clean of debris buildup and enhanced wildlife habitat, have succumbed to thick over-choked old-growth aspen-less stands full of dangerous fire-prone understory, that drive off many species of birds and small mammals. All in the name of what? In the name of failed, leave-it-alone policies that would not have endured under local governmental and private influence. Poignant exceptions to this sad general rule are those state and privately managed tracts of lands where proper active management is allowed, and certain limited federal tracts of land where federal land is managed according to the policies and preferences of state and local governments and nearby private landowners.

In sum, given the economic and environmental costs of operating the federal lands under federal ownership and managerial control, the time has come to consider H.R. 1126 and similar proposals for privatization of select public lands as recommended by the Secretary pursuant FLPMA mandate and periodic Congressional mandate. Privately owned, and even state owned, lands can raise revenue sufficient to maintain such lands and product a profit. And it is well known to western counties that private and state ownership can produce environmental advantages. Allowing the market to provide incentives for allocation and re-allocation of land uses to those functions that are perceived to have the highest value, should be of interest to all Americans, both from an economic and ecological standpoint. Almost two decades worth of evidence is in: The BLM is a ship in distress, economically and ecologically. Reasonable federal land disposal is a good program, that will help right that ship.

For these and other reasons, UAC respectfully urges this Subcommittee to pass out H.R. 1126 with a favorable recommendation.