

Statement of  
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Land and Minerals Management  
U.S. Department of the Interior  
House Resources Committee  
Subcommittee on Forests and Forest Health  
H.R. 2069, Utah Recreational Land Exchange Act  
September 27, 2005

Thank you for the opportunity to testify on H.R. 2069, the Utah Recreational Land Exchange Act. The bill would legislate a large-scale land exchange between the Bureau of Land Management (BLM) and the State of Utah. We strongly support the completion of major land exchanges with the State of Utah and we recognize and appreciate the work that the proponents have put into this legislation. We are concerned that, as currently drafted, H.R. 2069 provides conflicting methodologies for assessing the value of the lands to be exchanged. We could support H.R. 2069 if it were modified to address this concern, as well as a few technical concerns outlined below.

As a matter of policy, we support working with states to resolve land tenure and land transfer issues that advance worthwhile public policy objectives. In December of last year, the Secretary issued policy guidance to all of the bureaus on legislative exchanges and land valuation issues. A copy of that guidance (Secretary of the Interior Order No. 3258) is included for the record. This policy was developed to ensure that land transactions are conducted with integrity and earn public confidence.

The policy states that all real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP)). Accordingly, the policy specifically prohibits the use of alternative methods of valuation in appraisals. However, the policy recognizes there may be times where Congress will direct, or the Department will propose, the use of alternative methods of valuation other than or in addition to an appraisal. Under the policy guidance, if Congress directs the Department to use an alternative method of valuation in a specific transaction, the Department will expressly describe the alternative method of valuation applied; explain how the alternative method of valuation differs from appraisal methods applied under the Uniform Appraisal Standards or the Uniform Standards of Professional Appraisal Practice; and, if so directed by Congress, provide this material to the appropriate committees prior to or after completion of the transaction, as required by the direction.

The Department's Inspector General has commented on the Department's appraisal reform efforts. In testimony given earlier this year before the Senate Committee on Finance, he commended the Department for the significant changes it has made to the land appraisal program and process.

There are circumstances in which, for public policy reasons, the Congress or the Administration may decide that alternative methods of valuation are appropriate for achieving worthwhile public policy objectives. It is our duty to be clear and transparent about the details of proposed exchanges and to be clear that an alternative method of valuation is being used.

H.R. 2069 is not an Administration legislative proposal. It is a legislative proposal from Congress. Its stated purpose is to facilitate the exchange of certain Federal lands for non-Federal lands to further the public interest by exchanging Federal land that has limited recreational and conservation resources and acquiring State trust land with important recreational, scenic, and conservation resources for permanent public management and use. To meet these legitimate public policy objectives, the use of alternative methods of valuation is consistent with our current policies.

The bill as introduced references an October 2004 map entitled "Utah Recreational Land Exchange—Offered Lands." However, we have been informed by the sponsor of the bill that their intention is to reference the map entitled "Proposal Utah Recreation Land Exchange Offered & Selected Lands" dated February 9, 2005, which would be consistent with the Senate companion bill S. 1135. We have been provided a copy of the February 9, 2005, map. Therefore, this testimony is based on that map.

#### Background

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.5 million acres of land and 4.5 million acres of mineral estate within the State of Utah primarily for the benefit of the schools of the State of Utah. Many of these lands are scattered parcels interspersed with public lands managed by the BLM.

Managing approximately 22.87 million acres of land within the State of Utah, the BLM's mission is to sustain the health,

diversity and productivity of the public lands for the use and enjoyment of present and future generations. As the nation's largest Federal land manager, the BLM administers the public lands for a wide range of multiple uses including energy production, recreation, livestock grazing, conservation use, forestry and open space. The Federal Land Policy and Management Act (FLPMA) provides the BLM with a clear multiple-use mandate which the BLM implements through its land use planning process.

Section 206 of FLPMA provides the BLM with the authority to undertake land exchanges. Exchanges allow the BLM to acquire environmentally sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. Over the past five years, throughout the bureau, nearly 550,000 acres of public lands were disposed of through exchange, while 370,000 acres were acquired by the BLM through this process. During this same time period in Utah, the BLM has disposed of 110,178 acres while acquiring 112,842 acres through exchange. The vast majority of this was completed under the direction of Congress through the Utah West Desert Land Exchange Act (Public Law 106-301).

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H.R. 2069 directs the exchange of approximately 45,000 acres of lands managed by SITLA for approximately 34,000 acres of BLM-managed Federal lands. The two main issues for Congress to consider are whether the public interest is served by the exchange, and how the appraisals and equalization of value should be carried out. In addition, there are some technical and management issues on which we would like to work with the Subcommittee.

The BLM in Utah has taken a careful look at the parcels proposed for exchange based on the February 9, 2005, map. Let me quickly address some of our concerns both on lands to leave Federal ownership and lands entering Federal ownership. Many of the lands that the State is proposing to transfer to the BLM are lands that the BLM has a high degree of interest in acquiring because they would consolidate Federal ownership within wilderness study areas, Areas of Critical Environmental Concern, or other sensitive lands. Among these are:

- 640 acres on the eastern boundary of Arches National Park which will provide important viewshed protections;
- 1,280 acres and 420 acres along the Colorado River west and east of Moab which includes Corona Arch and other popular recreation sites within the BLM's Colorado Riverway Management Area;
- 4,300 acres on the northern boundary of the Manti-LaSal National Forest which consolidate important wildlife habitat;
- 3,300 acres of land currently leased by the BLM and Grand County from the State for recreational-related activities associated with the Slickrock Mountain Bike Trail;
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources; and,
- 3,700 acres in the vicinity of Castle Valley with a multitude of scenic, riparian, and cultural resources.

Some of the lands identified for transfer from the State to the BLM are of little interest to the BLM for acquisition because they would provide only marginal added benefit to public users. Among this type of land currently identified in the legislation are:

- 3,200 acres north of Dinosaur National Monument, but outside of the Monument viewshed with little resource value or access;
- 7,000 acres of scattered sections in the Dolores Triangle area which are remote and have only limited recreational, scenic or other resource values; and
- 1,280 acres east of Arches National Park which are outside the Park viewshed, have limited recreational interest and are remote with minimal access.

The BLM in Utah has identified some alternative SITLA lands that would be of greater benefit to public users that would meet resource and recreation goals. We are prepared to work with the Subcommittee and the sponsor if there is interest in modifying any of the parcels.

The bill also identifies a number of parcels for transfer to SITLA from the BLM. Some of these would improve manageability and encourage appropriate local development, among these are:

- 3,200 acres of scattered parcels near the town of Green River which are suitable for private agricultural development; and
- 80 acres adjacent to Canyonlands Field municipal airport operated by Grand County, Utah which are suitable for private development.

Some of the lands identified for transfer to SITLA from the BLM have very high energy potential and would likely be valued highly in any exchange. These lands include:

- 20,000 acres in the Flat Rock area east of the Hill Creek Extension of the Uintah and Ouray Indian Reservation which have high potential for oil and gas production. These lands also hold promise for oil shale and tar sand development. Additionally this area is home to a BLM-managed wild horse herd and a number of sensitive plant species, issues that will need to be resolved before transfer; and
- 9,500 acres of land southwest of the Hill Creek Extension inside of a large block of lands administered by SITLA and the Utah Division of Wildlife Resources which have existing oil and gas wells and high future mineral resource potential.

The most difficult implementation problem facing the Department is how to assess the value of lands with high mineral resource potential. Some of the lands the bill identifies for transfer from the Federal government to SITLA are already leased for oil and gas and have existing wells. Other areas have substantial potential, the extent of which has not been fully quantified and the value of which is largely unknown. Still other areas are within designated tar sand areas (DTSAs) for which we expect increased leasing interest following the passage of the Energy Policy Act of 2005. The BLM believes that, at least preliminarily, the values of the lands identified for transfer may substantially exceed the value of the lands to be received. Recent increases in prices for oil, gas and other energy minerals are likely to further affect the values for the exchanged lands.

The Department is committed to conducting appraisals of land and interest in land with the highest level of integrity. As discussed earlier, the Secretary recently issued policy guidance that sets forth the manner in which the Department will complete appraisals or consider the use of the alternative valuation methods contemplated in section 5(b)(3)(A). The legislation directs compliance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice. However, those standards expressly require that appraisals be based on an economic highest and best use. The bill's subsequent requirement – that the valuation of the property be based on a non-economic highest and best use, such as conservation or preservation – is a requirement that an alternative method of valuation be used. Therefore, we strongly recommend that the bill be modified to clarify Congressional intent. Specifically, we believe that the bill should require an appraisal for any parcels to be transferred without restrictions on their future use. An alternative method of valuation may be appropriate where a conservation easement or deed restriction may attach to a given parcel to be transferred.

Additionally, the Department notes that section 5(b)(3)(B) could be interpreted in more than one way. We believe the intent of the drafters is to place SITLA in the position of the Federal government in collecting all royalties due and distributing the State's share to the State of Utah. To prevent any future ambiguity, we recommend that the language be amended to make clear that there would be no anticipated continuing Federal royalty interest in these conveyed lands.

Other issues that could benefit from further refinement include grazing provisions, costs for cadastral survey work, clarification of water rights, an existing oil shale withdrawal and how to address valid existing rights. Additionally, it is unclear whether the legislation anticipates the Department will complete National Environmental Policy Act reviews in order to determine what may be "acceptable to the Secretary" as directed in section 4(a). This could complicate the timeframes envisioned in the bill. We suggest that the legislation should be clear on this point and, additionally, should allow for other contingencies that might arise in the complexities of completing these transactions.

Finally, we would like the opportunity to work with the sponsors and the Committee on a final map or maps for H.R. 2069. We strongly urge that the BLM provide the mapping services related to the bill before the Committee move to markup.

#### Conclusion

The Department of the Interior supports the intent of this legislation. Large-scale land exchanges can resolve management issues, improve public access, and facilitate greater resource protection, and we support such exchanges. It is the Department's role to ensure that Congress is aware of issues that will help them determine whether the exchanges are in the best interest of the American public, including ensuring the proper valuation of mineral resources. To that end, we are ready to work with the Subcommittee and the sponsor to resolve remaining issues in the bill.

THE SECRETARY OF THE INTERIOR  
Washington

ORDER NO. 3258

SIGNATURE DATE: December 30, 2004

Subject: Policy Guidance Concerning Land Valuation and Legislative Exchanges

Sec. 1 Purpose. This Order provides policy for land valuation issues, real property appraisals, and legislative land exchanges.

Sec. 2 Background. During the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. These steps include implementing reforms to improve the management of real property appraisals, establishing the Appraisal Services Directorate, and issuing the Land Transaction Principles. This Order provides the following: (a) a policy on alternative methods of valuation (AMV) that addresses the need to comport with nationally applicable appraisal standards; (b) a policy on appraisals prepared for third (i.

e., non-Federal) parties; and (c) a policy on legislative exchanges that reinforces existing Departmental guidance and further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. The legislative exchange policy also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

Sec. 3 Authority. The policy in this Order is being issued in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

Sec. 4 Policy.

a. Alternative Methods of Valuation.

(1) All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.

(2) If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this material to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

(3) Requirement for Congressional Authorization or Notification.

(a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.

(4) The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

b. Appraisals Prepared for Third (i.e., non-Federal) Parties.

(1) Appraisals prepared for third (i.e., non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.

(2) Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (i.e., Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.

(3) ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

(4) In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.

(5) The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

c. Legislative Exchanges.

(1) All officials and employees of the Department shall adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Legislative Counsel in OCL.

(2) Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.

(3) The OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (e.g., the ASD or the OST as appropriate, and the Solicitor).

(4) Appropriate documentation shall support the key provisions of all legislative exchange proposals.

(5) All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).

(6) The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.

Sec. 5 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on July 30, 2006.

/s/ Gale A. Norton  
Secretary of the Interior