

Testimony of Kevin S. Carter  
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House Committee on Resources  
Subcommittee on Forests and Forest Health

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Hearing on H.R. 2069  
Utah Recreational Land Exchange Act of 2005  
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Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to testify today. My name is Kevin S. Carter, and I am the Director of the Utah School and Institutional Trust Lands Administration, an independent state agency that manages more than 3.5 million acres of state school trust lands within Utah that are dedicated to the financial support of public education.

I encourage the Subcommittee, and Congress, to act favorably on H.R. 2069, the Utah Recreational Land Exchange Act of 2005. This legislation is the product of several years of discussions between the State, local governments, the environmental community, and local federal land managers. At a time when most issues relating to Utah's public lands are accompanied by controversy and dispute, the proposed exchange is supported by rural county governments, various environmental groups, representatives of the outdoor recreation industry in Utah, and the Utah legislature. We have worked hard to put together an exchange that will be fair and transparent financially, workable in implementation, and conducive to more effective land management by both state and federal governments. We believe that the Utah Recreational Land Exchange Act meets all of these goals.

In short, H.R. 2069 authorizes the conveyance to the United States of approximately 45,000 acres of Utah state school trust lands within and near Utah's Colorado River corridor. In return, the State of Utah will receive approximately 40,000 acres of federal lands in eastern Utah with lesser environmental sensitivity but greater potential for generating revenue for Utah's public education system – the purpose for which Congress originally granted trust lands to Utah and the other western states.

The Colorado River corridor is a uniquely scenic area in a state known for its scenic beauty. Huge redrock features such as the Corona and Morning Glory arches are found in proximity to the deep canyons carved by the Colorado River as it winds downstream from the Colorado border to Canyonlands National Park. The area supports thriving recreational activities, including whitewater rafting in the Westwater wilderness study area and downstream, mountain biking on the famous Kokopelli and Slickrock bike trails, and myriad other activities. The importance of outdoor recreation in the area to local economies and the state as a whole has led the Utah Governor's task force on outdoor recreation to designate the area as one of Utah's critical focus areas for promotion and protection of recreation opportunities.

The majority of land in the Colorado River corridor is federal land managed by the Department of the Interior's Bureau of Land Management ("BLM"). Notable exceptions are the Utah school trust lands scattered in checkerboard fashion throughout the area. As the Subcommittee is aware, state school trust lands are required by law to be managed to produce revenue for public schools. Revenue from Utah school trust lands – whether from grazing, surface leasing, mineral development or sale – is placed in the State School Fund, a permanent income-producing endowment created by Congress in the Utah Enabling Act for the support of the state's public education system.

In contrast to state lands, BLM lands are managed for multiple use, with an emphasis in this area on recreation and conservation use. Limitations on the use of surrounding federal lands, through establishment of wilderness study areas, areas of critical environmental concern, or mineral withdrawals can limit the usefulness of the inheld state trust lands for economic uses such as mineral development. Likewise, state efforts to generate revenues from its lands through sale of the lands for recreational development and homesites have been viewed by federal land managers as conflicting with management of the surrounding federal lands. Over the years, disputes over access to and use of state school trust lands within federally-owned areas have generated significant public controversy, and often led to expensive and time-consuming litigation between the State of Utah and the United States.

Land exchanges are an obvious solution to the problem of checkerboarded state land ownership patterns. Exchanges can allow each sovereign – the State and the United States – to manage consolidated lands as each party's land managers deem most advisable, without interference from the other. In the last eight years, the State of Utah and the United States

worked successfully to complete a series of large legislated land exchanges. In 1998, Congress passed the Utah Schools and Land Exchange Act, Public Law 105-335, providing for an exchange of hundreds of thousands of acres of school trust lands out of various national parks, monuments, forests and Indian reservations into areas that could produce revenue for Utah's schools. Then, in 2000, Congress enacted the Utah West Desert Land Exchange Act, Public Law 106-301, which exchanged over 100,000 acres of state trust land out of proposed federal wilderness in Utah's scenic West Desert for federal lands elsewhere in the region.

The hallmark of each of these exchanges was their "win-win" nature: school trust lands with significant environmental values were placed into federal ownership, while federal lands with lesser environmental values but greater potential for revenue generation were exchanged to the State, thus fulfilling the purpose of the school land grants – providing financial support for public education.

More recently, a proposed state-federal land exchange involving state trust lands in Utah's San Rafael Swell area failed due to questions raised about its financial fairness and environmental effects. We recognize that the controversy over the San Rafael proposal raised many questions about land exchanges generally. In working to develop the current exchange proposal, the State of Utah has worked hard to address the issues raised in the aftermath of the San Rafael proposal. In particular, we have sought to work closely with local governments and citizens, the environmental community, and local BLM offices to obtain consensus about the lands to be included in the proposed exchange. On the issue of valuation, we are committed to an independent and transparent appraisal process that will fully involve the Department of the Interior's new Appraisal Services Directorate ("ASD") in developing and reviewing appraisals for the properties involved in the exchange.

At this point, it is appropriate to address several features of the proposed exchange legislation about which members of the Subcommittee may have questions:

#### Lands Involved

The state trust lands involved in the exchange are largely located in and adjacent to the Colorado River canyon in Grand County, Utah. Notable parcels include lands in the Westwater Wilderness Study Area, a 4000 acre parcel of prime wildlife habitat in the upper Castle Valley area, a parcel containing a portion of the Slickrock bike trail and the Morning Glory natural arch, and a parcel containing the Corona Arch natural arch. State trust lands in Uintah County are also in the exchange proposal; these include lands adjacent to Dinosaur National Monument, lands in lower Nine Mile Canyon at the mouth of Desolation Canyon, and lands containing wildlife habitat in the Book Cliffs area of southern Uintah County.

The BLM lands that would be exchanged to the State of Utah include lands that may have potential for agricultural or industrial development adjacent to the Moab airport and the Town of Green River, federal inholdings within a large block of existing state lands in the Book Cliffs, and a large block of BLM lands adjacent to the Hill Creek extension of the Uintah & Ouray Indian Reservation in Uintah County. None of the BLM lands are recognized by BLM or the environmental community as having significant conservation values.

#### Valuation

The legislation contemplates that all lands included in the exchange will be subject to a full and independent appraisal using recognized appraisal standards prior to conveyance, and that the lands to be exchanged will be conveyed on an equal value basis. The independent appraisal will be subject to review by each party (including the ASD for the Department of the Interior), and any disputes over valuation will then be subject to resolution through established dispute resolution mechanisms.

The legislation contains two valuation provisions that may require some further explanation. First, section 5(b)(3) of H.R. 2069 provides that the independent appraiser is to consider comparable public and private sales without regard to whether the land was acquired for conservation or preservation purposes. This provision is in response to active market participation in the immediate vicinity of the subject lands by conservation purchasers. The Trust Lands Administration has auctioned other lands in the vicinity, and conservation buyers have been the successful bidder in a number of cases. Multiple private conservation sales also exist in the area. The Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA") arguably limit an appraiser's consideration of otherwise comparable sales when the purchase was for conservation purposes. In light of the active market for conservation properties in the area, applying the UASFLA limitation here would unfairly penalize the Utah school trust, since it would not permit the school trust to receive what it could in the open market. It would also create a disincentive for land sellers to sell to conservation entities, since such sales would not count as comparables in future transactions with the United States. While there is dispute in the appraisal community on how to consider conservation sales, we believe that this approach is consistent with existing BLM regulations, which require consideration of scenic, recreational and cultural values to the extent validated by comparable sales. See 43 C.F.R. §2201.3-2 (2004).

A second issue involving valuation relates to mineral lease revenue sharing under the federal Mineral Leasing Act. Certain of the federal lands that would be acquired by the State of Utah are prospective for oil and gas development, and most of these lands are currently under federal mineral lease. Under section 35 of the federal Mineral Leasing Act (30 U.S.C. § 191), the federal government is required to pay 50 per cent of all bonus, rental and royalty revenue from federal lands to the state in which the lands are located. Under Utah statute, these revenues are largely distributed from the state Mineral Lease Account to local counties to mitigate community impacts of energy development. These distributions are a crucial funding source for rural public land counties.

The proposed legislation would keep this revenue stream to the counties intact by providing that the Utah School and Institutional Trust Lands Administration would assume the United States' revenue sharing obligations with respect to the land. Valuation of such federal mineral lands would be adjusted proportionately to reflect the school trust's assumption of the United States' obligation to share 50% of all revenue from the lands. Put another way, those federal lands found to have mineral values would be valued taking into account the United States' existing statutory obligation to pay 50% of the revenue from the lands to the State for distribution to the counties. The proposed legislative language would be revenue-neutral to the United States, because the United States currently retains only 50% of mineral revenue from the subject lands.

There is specific precedent for adjustment of mineral land valuation to take into account the preexisting obligation of the United States to share revenue with the states under the Mineral Leasing Act. For example, section 8(c) of the Utah Schools and Lands Improvement Act of 1993, Pub. L. 103-93, provides that if the State shared revenue from selected federal properties, the value of the federal properties would be adjusted downward by the percentage of state revenue sharing. The Utah Schools and Lands Exchange Act of 1998, Pub. L. 105-335, ratified an agreement between the State of Utah and the Department of the Interior containing similar provisions. State revenue sharing payments have also been recognized and protected in land exchange legislation involving states other than Utah. See e.g. 16 U.S.C. 460ll-3(b)(3)(Montana's right to receive cash payment for coal tracts used as exchange consideration protected).

#### Post-Exchange Land Management and Wilderness

Substantial portions of the state trust lands to be exchanged to BLM are located in wilderness study areas created under Section 603 of FLPMA, or areas proposed for wilderness in pending federal legislation. Other portions are not within proposed wilderness. The legislation provides that exchanged lands that lie within existing WSAs or other formally-designated federal areas will automatically become part of those areas upon conveyance. For other state lands exchanged to BLM, management of such lands will be left to the BLM's resource management planning process, which is currently in the early stages of a plan revision process in the Grand County area. The proposed exchange is not intended as an endorsement of any particular configuration of wilderness, which is a matter that is for Congress to decide at some future time. Rather, the intent of the exchange is to allow BLM land managers to determine, on a landscape scale, how best to manage the lands without having to deal with inheld state trust lands.

#### Conclusion

H.R. 2069 represents a significant step toward simplifying land management in Utah, protecting Utah's natural heritage, supporting local economies through increased opportunities for outdoor recreation, and adequately funding public education. I respectfully urge the Subcommittee to approve it expeditiously.

Thank you for the opportunity to testify today.

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