

# Committee on Resources

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## Testimony

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Oversight Hearings on BLM Land Exchanges  
House Resources Committee  
Subcommittee on National Parks and Public Lands

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My name is John A. Harja, and I represent the Utah School and Institutional Trust Lands Administration (the "Trust Lands Administration"), an independent state agency that manages more than 3.7 million acres of land within Utah dedicated to the financial support of public education. I serve as Vice-Chair of the Board of Trustees that guides and supervises the Trust Lands Administration's activities.

Thank you, Mr. Chairman, and members of the Committee, for the opportunity to testify today concerning Bureau of Land Management ("BLM") land exchanges. It is no secret that BLM land exchanges in Utah in the last several years have been both controversial and difficult for all participants. From the standpoint of the Trust Lands Administration, the BLM has recently made substantial progress in some areas, and there is reason for optimism that future exchanges, whether administrative or legislative, need not be so difficult. Our testimony today is meant to:

- -Encourage the BLM to continue some positive activities with respect to administrative exchanges;
  - -Suggest a few changes in the BLM's statutory and regulatory procedures for administrative exchanges; and
- -Inform the Committee of some situations where Congressional involvement may clearly be in the public interest.

Many members of the Committee are familiar with the situation of Utah's school trust lands. Of the 3.7 million acres managed by the Trust Lands Administration, over a million acres are located inside national parks and forests, proposed wilderness, critical habitat for endangered species, and of course the new Grand Staircase - Escalante National Monument. Although the lands were granted to Utah with the express purpose of generating revenue for Utah's schools and other public institutions, federal land management restrictions have in many cases made economic use of the state's trust lands next to impossible.

The natural solution to the problem of state trust inholdings within federal reservations is to exchange the state lands for more developable, less sensitive federal lands elsewhere in Utah. Unfortunately, this solution has been difficult to implement except in a few limited circumstances, with the result that state inholdings continue to exist within most federal reservations in Utah. This is not a desirable situation for anyone. Federal managers have to contend with potential development of state enclaves within otherwise undisturbed federal lands, while the State faces substantial controversy when its legal duty to maximize revenue for the schools conflicts with the purposes for which the particular park or other reserve was created.

- Recent History of BLM-State Administrative Exchanges in Utah.

As the Committee is aware, the BLM has an existing process for administrative exchanges under the Federal Lands Policy & Management Act ("FLPMA") and the Federal Lands Exchange Facilitation Act ("FLEFA"). The Trust Lands Administration believes that this process can work in some circumstances, although, as we will discuss later, its utility in large scale exchanges is doubtful. Our experience with administrative exchanges has been difficult in recent years, but we have also seen great improvement within the last year with respect to the BLM's commitment of good personnel and adequate resources dedicated to making these exchanges work. We commend the BLM for these commitments, and are optimistic that this positive trend will continue.

The best example of the BLM administrative exchange process in Utah in recent years has been that involving the Desert Tortoise Habitat Conservation Plan area near St. George. When the U.S. Fish and Wildlife Service designated thousands of acres within and just outside the city limits of St. George - one of Utah's fastest growing cities - as critical habitat for the threatened tortoise in 1991, it effectively shut down development of almost ten thousand acres of prime residential and commercial land owned by the State, in addition to thousands of acres of private lands.

In 1994, the BLM and the Trust Lands Administration signed a Memorandum of Understanding creating an assembled land exchange process to facilitate exchange of state desert tortoise lands and other state lands desired by BLM for BLM lands elsewhere in the State. Although the MOU was ostensibly meant to speed BLM-State exchanges along, and although the tortoise exchange was ostensibly a BLM priority, no exchanges were completed for several years after the MOU was signed.

What were the problems that delayed desert tortoise exchanges for so long?

- o -Appraisals conducted by the BLM's State Office penalized landowners for the misfortune of owning valuable habitat. BLM's state level in-house appraisers told landowners that the Fish and Wildlife Service, another Department of Interior ("DOI") agency, would never let them develop their land because of the critical habitat designation. Therefore, the land was deemed virtually worthless by BLM. Not surprisingly, landowners offered 10¢ on the dollar for their lands were not willing participants in the exchange program, and no exchanges were completed until after Congress resolved this issue in 1996.
- o -Certain state level BLM appraisal staff appear to have engaged in a campaign of intimidation of appraisers who differed on how to appraise tortoise lands. Acting as a private individual, at least one BLM appraiser filed complaints - ultimately dismissed as meritless - with state appraisal licensing authorities claiming violations of state appraisal standards, and seeking disciplinary action against a private appraiser. The private appraiser's work was then rejected by BLM because of the disciplinary filing. These actions were hardly conducive to efforts to reach mutually acceptable valuations.
- o -There has been no clarity as to how legitimate differences between the parties over valuation can be resolved. Even the best appraisers often differ wildly in their opinion of the value of particular tracts. Where this occurs, fair, arms-length negotiation is the only solution that will reach a mutually acceptable result. Yet many parties have felt that the BLM has at times used its regulations and appraisal guidelines as justification for refusing to negotiate, resulting in a "take it or leave it" situation. Again, landowners, whether private or state, who feel that there is no room for bargaining over legitimate differences in valuation are unlikely to be willing participants in the exchange process.
- o -BLM District offices elsewhere in Utah have been unable for staffing and budgetary reasons to perform work necessary to amend Resource Management Plans, perform NEPA analysis, and conduct cultural resources reviews for land targeted by the State for acquisition. At least one 12,000 acre tract sought by the State has been placed "off limits" for exchange indefinitely, not because of public interest or environmental reasons, but rather because of lack of BLM resources. The larger the exchange, the more profound this problem becomes; past experience

would suggest that any administrative exchange of 100,000 acres or more would take decades to complete if it could be done at all.

Happily, the BLM has made substantial progress during the last year in correcting some of these problems. Their efforts have resulted in the completion of an exchange of several hundred acres of state tortoise habitat for BLM lands near Park City, Utah; an innovative three way exchange of an additional 614 acres of state tortoise habitat that involved the Trust Lands Administration, the BLM and a private party; and the anticipated completion in the next few months of a multi-tract exchange that will protect habitat for the endangered dwarf bearclaw poppy. BLM employees have worked hard to complete these projects, and the Trust Lands Administration appreciates their efforts. We are optimistic that ongoing administrative exchanges with BLM will continue on this successful path over the next year.

What has made the difference between recent successes and past failures?

- -The BLM has made a strong commitment to bring in experienced out-of-state BLM personnel to expedite in-process exchanges. This has soothed some of the disputes that arose early in the process over appraisal methodology, and has increased the State's confidence in the process. Although we recognize that some private parties have criticized the involvement of Washington-level BLM appraisers in local exchanges, the Trust Lands Administration has welcomed the specific attention and problem-solving focus that the BLM has exhibited in this regard.
- -The BLM has been willing to engage in a more open dialogue concerning reasonable differences in valuation.
- -The BLM State Office has committed more staff to moving BLM-State exchanges forward, and has worked to identify problem areas in advance, so that resources can either be devoted to solving the problem in a timely manner or diverted to more productive uses.
- -In the case of the desert tortoise, Congress resolved the major valuation issue: the impact of Endangered Species Act ("ESA") on land values. As noted above, DOI had previously taken the view that the ESA drastically limited landowners' development options, making previously valuable development land virtually worthless. Not surprisingly, landowners felt that they should not be penalized for protecting endangered species. In Public Law 104-333, Congress directed the Secretary of Interior to value lands in Washington County, Utah without regard to the presence of endangered species or the designation of critical habitat. This legislation was the crucial factor in achieving landowner willingness to exchange; no private tortoise exchanges were completed in the years before the legislation, while a number have been completed in the 16 months since P.L. 104-333 was enacted.

Again, the Trust Lands Administration is pleased at the progress of recent months, and will look forward to the continuation of that progress as the exchange process continues.

- Suggestions for Improving the Exchange Process.

There are certain steps that could expedite state-BLM exchanges throughout the west. The Committee should consider the following concepts:

- Expand the concept implemented in P.L. 104-333 that federal environmental limitations (in that case threatened and endangered species) not be used to devalue the property to be acquired, where the purpose of the federal acquisition is to protect that specific environmental value.

- Where state law or agreement provides protections for cultural and historic resources analogous to those provided by the National Historic Preservation Act ("NHPA"), do not require NHPA surveys prior to transfer of lands to states by BLM.
- Increase the current \$150,000 threshold for expedited exchanges without formal appraisals.

In addition to these points, the Trust Lands Administration would encourage meaningful federal-state dialogue concerning valuation issues, notwithstanding the current legal dispute in Utah concerning the valuation of natural lands. As the Committee is aware, there has been controversy in recent months concerning whether past BLM exchange appraisals have adequately recognized the great increase in land values in rapidly urbanizing areas such as Las Vegas. The Trust Lands Administration would point out that there has been an equally stunning rise in land prices in rural areas of the West recognized as having natural values such as gorgeous scenery, proximity to wilderness, ancient Anasazi ruins, and recreational opportunities. Simply put, there are tens of thousands of people today who want to own a part of those natural values, and who have the money to pay handsomely to do so. Too often, when state natural lands are being acquired by BLM, the focus of federal appraisers on prices paid in the past for traditional uses neglects this fact of the New West.

Just as the BLM is rightly concerned about not receiving full value for its urban lands, state land management agencies (with their fiduciary duty to achieve full value for their beneficiary institutions) cannot disregard prices paid in the market for lands having outstanding natural characteristics. When the federal government seeks to acquire these lands for public purposes, there must be a mechanism for addressing this issue.

- The Need for Congressional Involvement in Some Circumstances.

As BLM Director Shea has discussed in recent newspaper commentaries, the BLM's land exchange program serves the important federal goal of consolidating federal ownership of lands with specific values: wildlife and endangered species habitat, land that offers important recreational opportunities for the public, and ecologically sensitive lands such as riparian areas. This is a worthy goal. The checkerboard pattern of state and federal land ownership now existing throughout much of the west is unworkable in light of the differing management mandates of the various landowners, and often leads to unnecessary conflicts between the federal government and the states. The suggestions for legislative and regulatory changes described above would go far to further the BLM's objectives and reduce state-federal disputes.

At the same time, there are inherent limitations to the BLM's administrative exchange process. Where such limitations exist, Congressional involvement may serve the public interest by facilitating desirable exchanges and eliminating unnecessary obstacles. A small but telling example is the language in P.L. 104-333, discussed above, requiring that exchange valuations in Washington County not penalize landowners by devaluing land on account of its status as critical endangered species habitat. Before this statute was enacted, desert tortoise habitat acquisition was at a virtual standstill; afterwards, the program has moved forward with increasing success.

A second example of a situation where administrative exchanges fail and Congressional involvement may be useful occurs in the case of multi-tract exchanges involving large areas. There are well over a thousand tracts of state trust lands scattered within proposed BLM wilderness in Utah, while the Grand Staircase-Escalante National Monument contains 337 school trust parcels encompassing over 175,000 acres. The existing administrative process would typically require appraisals of each such parcel, together with appraisals, RMP amendments, NEPA review, and cultural resources surveys of all BLM tracts to be acquired. When lower value rural lands are the subject of the exchange, transactional costs can swallow any exchange benefits. More importantly, BLM often cannot devote the resources to complete the necessary work while performing its other responsibilities as well.

In the early 1980s, former Utah Governor Scott Matheson recognized the untenable nature of the

checkerboard pattern of state land ownership in Utah, and launched an effort - Project BOLD - to consolidate the thousands of scattered state sections into several dozen large consolidated state land blocks. Significantly, both the BLM and the State then recognized that this effort was too large to be completed administratively, for the same reasons we have discussed today, and turned to Congress for implementing legislation.

Although Project BOLD ultimately was not finalized, its lessons are still useful. There are inherent limitations in the use of appraisals in exchanges involving hundreds of tracts, both in terms of accuracy and transaction costs. Current statutory limitations on the BLM with respect to land use planning, NEPA compliance, and cultural resources surveys, when combined with limited agency resources, can make large administrative exchanges impractical. Conversely, consensus between the parties to the exchange and affected third parties on specific lands to be exchanged, with Congressional implementation of that consensus, can achieve exchanges having great environmental and public benefits where the administrative process cannot.

Congress has followed this path in recent years with the 1996 Arkansas-Oklahoma land exchange. Similarly, although in a slightly different format, the state land exchange provisions contained in recent California desert protection legislation are also of note. Although legislation of these types will not always be necessary with large exchanges, it is clearly merited where resource limitations, special environmental or valuation concerns, or other factors jeopardize the success of the administrative exchange process.

### Conclusion

In conclusion, the Trust Lands Administration believes that recent efforts by the BLM to expedite administrative exchanges in Utah are bearing fruit. We encourage BLM to continue these efforts, and to consider additional steps to expedite state-federal exchanges. At the same time, the Trust Lands Administration urges the Committee and your colleagues in Congress as a whole to consider legislation implementing or expediting high priority state-federal exchanges.

Thank you for the opportunity to testify before the Committee.

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