

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

March 14, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff, Spencer Kimball
Federal Lands Subcommittee Staff, (x6-7736)

Markup: H.R. 4579 (Rep. Chris Stewart), To withdraw certain Bureau of Land Management land in the State of Utah from all forms of public appropriation, to provide for the shared management of the withdrawn land by the Secretary of the Interior and the Secretary of the Air Force to facilitate enhanced weapons testing and pilot training, enhance public safety, and provide for continued public access to the withdrawn land, to provide for the exchange of certain Federal land and State land, and for other purposes.
March 15 and 16, 2016; 1324 Longworth HOB.

H.R. 4579 (Rep. Chris Stewart), “Utah Test and Training Range Encroachment Prevention and Temporary Closure Act”

Bill Summary

H.R. 4579, introduced by Congressman Chris Stewart (R-UT-02) and cosponsored by the entire Utah House delegation, withdraws certain Bureau of Land Management (BLM) land in the State of Utah from all forms of public appropriation; provides for the shared management of the withdrawn land by the Secretary of the Interior and the Secretary of the Air Force to facilitate enhanced weapons testing and pilot training, enhance public safety, and provide for continued public access to the withdrawn land; provides for the exchange of certain Federal land and State land; and requires the Department of the Interior (DOI) to convey to three Utah counties certain easements for motorized travel rights-of-way (ROW) across federal land.

Cosponsors

Rep. Rob Bishop (R-UT-01), Rep. Jason Chaffetz (R-UT-03), and Rep. Mia Love (R-UT-04).

Background

The Utah Test and Training Range (UTTR), located in the western Utah desert, is the largest Department of Defense (DOD) overland airspace test and training range and is used by the United States Air Force (USAF), United States Army, and United States Marine Corps. The UTTR is home to ground and operational training and the testing of explosive ordinance, weapons and other military equipment.

In its 2015 *Report to Congress on Sustainable Ranges*, which is submitted annually, DOD listed several factors that may limit the long-term sustainability of the UTTR, including the inability to accommodate more advanced aircraft and weapons.¹ UTTR airspace is used to test fifth generation weapons, including the F-22 Raptor, F-35 Joint Strike Fighter, and Long Range Strike Bomber, and train aircrews to operate them. The flight speeds of these aircraft and other fifth generation weapons require a significant amount of airspace. The current size of the UTTR airspace is, however, not large enough to accommodate training and testing maneuvers for these aircraft and other hypersonic weapons:

“The primary range [Air Combat Command] and USAF use for large, overland weapons is the UTTR. Unfortunately, the ability to fully validate modern weapons within the UTTR confines has become difficult due the increased employment distances of these new systems.”²

DOD shares this concern, recently stating: “5th Generation aircraft with large weapon footprints require more air and land space to meet their training requirements. The existing [UTTR] airspace limits realistic training.”³

Buffer Zones

H.R. 4579 would designate 625,643 acres of federally-owned BLM land as eight separate ‘buffer zones’ around the UTTR and allow USAF to temporarily close those zones for brief periods to accommodate overflights associated with the testing and training of fifth generation and other weapons. The bill does not expand the UTTR or withdraw additional federal land for military use and does not dispose of federal land within the buffer zones. DOI and USAF would be required to enter into a memorandum of agreement stipulating when temporary closures would take place and the parameters and restrictions associated with those closures.

The bill specifies that temporary closures only occur during off-peak visitation times, including holidays and weekends, and would be limited to a few hours a year. The bill also requires USAF to notify the public 30 days prior to temporary closures and post written warnings regarding closures. Temporary closures are limited to public visitation only; when the areas are not temporarily closed by USAF, BLM will continue to manage the land based on existing uses, including recreation, grazing, and other multiple-uses.

The buffer areas will also serve as a buffer against encroachment on the range. The bill prohibits ordinance from being dropped in the buffer zones, does not designate new wilderness, and grants no additional authority to DOD to close Interstate-80.

¹ 2015 *Report to Congress on Sustainable Ranges*. Secretary of Defense, Under Secretary of Defense (Personnel and Readiness). February 12, 2015. P. 351.

² Letter from Herbert J. Carlisle, General USAF, Commander to Senator Orrin Hatch (R-UT). January 15, 2016.

³ 2015 *Report to Congress on Sustainable Ranges*. Secretary of Defense, Under Secretary of Defense (Personnel and Readiness). February 12, 2015. P. 351.

Limitations

The bill does not impact, alter, or change any of the following:

- continuation of livestock grazing permits and leases;
- access for off-highway vehicle use in the Knolls Recreation Area, aside from temporary closures;
- existing agreements between state and federal agencies that specify bighorn sheep management, including hunting opportunities in the Newfoundland Mountains;
- existing emergency access or response efforts by local, state, or federal agencies;
- access to National Historic Trails or other Federal or State historic landmarks;
- existing airspace regulations, traffic patterns, and airspace management in western Utah;
- existing water rights or uses in the West Desert;
- the “Hansen Moratorium” which prevents certain development in lands surrounding the UTTR, including the storage of high-level nuclear waste;
- any right or treaty with the Goshute Indian tribe.

UTTR Community Resource Group

The bill establishes a “Community Resource Group” charged with providing input to DOI and USAF on issues related to public access and the overall management of the BLM land. This group will be comprised of USAF; BLM; County Commissioners from Box Elder, Tooele, and Juab Counties; representatives from Utah recreational, hunting, and ranching groups; a representative from local Indian tribes; and others.

Land Exchange

Title II of H.R. 4579 would provide DOI and the State of Utah an opportunity to exchange certain State land within the buffer areas around UTTR for federal parcels in other areas of the State. The bill would authorize, if agreed to by DOI and the State, the conveyance of all School and Institutional Trust Lands Administration (SITLA) lands within the buffer areas (84,609 acres) to the BLM in exchange for the conveyance of 97,073 acres of federal land in other areas of the state to the State of Utah to be designated as SITLA lands.

In addition, SITLA would convey to BLM approximately 2,353 acres of land and approximately 3,560 acres of mineral interests located wholly or partially within the Cedar Mountain Wilderness Area. Consolidating land within the buffer zones into contiguous federally-owned blocks is intended to alleviate checkerboard state/federal ownership patterns within the buffer zones and improve BLM management.

Revenue generated from resource development on SITLA lands represents a significant part of funding for Utah’s public education system. Since the SITLA parcels located within the proposed buffer areas are not currently generating substantial revenues, acquiring new SITLA parcels in other areas of the State would likely increase revenue for Utah’s public and charter school system. Parcels acquired by SITLA under this exchange include BLM land with potential mineral, industrial, renewable energy development.

The exchange is intended to be equal value. However, if appraisals indicate that the lands to be exchanged are not of equal value, adjustments must be made to the total size of acreage exchanged in order to match the value of the exchanged land. In addition, SITLA must present any exchange proposal to the Utah legislature for approval prior to initiating the exchange, in accordance with Utah law.

Highway Rights-of-Way

Title III of H.R. 4579 requires DOI to convey to Box Elder, Juab, and Toole Counties, with the State of Utah as a joint tenant with undivided interest, certain easements for motorized travel rights-of-way (ROW) across federal land. The bill also states that Congress recognizes the existence and validity of each ROW across federal land for all county roads within these counties. Many local officials and stakeholders feel that these highway ROWs, which cross federal land, should not be subject to closure or other management decisions by the federal government and are owned outright by the county per Revised Statute 2477, which states that "the right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted."

Support for the Legislation

The bill is supported by: Utah Governor Herbert, the Secretary of the USAF, USAF Air Combat Command, USAF/Navy F-35 Joint Program Office, Orbital ATK, Rockwell Collins, Lockheed Martin, and Millard County, Utah.

Major Provisions of the Bill

TITLE I--UTAH TEST AND TRAINING RANGE

SEC. 101. MANAGEMENT OF BLM LAND.

- Requires DOI and USAF to draft and sign a memorandum of agreement (MOA) that requires DOI to continue to manage the BLM land in accordance with FLMPA and requires USAF to preserve the UTTR against current and future encroachments; test advanced weapon systems, including current weapons systems, 5th generation weapon systems, and future weapon systems; test and evaluate hypersonic weapons; and increase public safety for civilians accessing the BLM land.
- Provides an opportunity for the public and the UTTR Community Resource Group established under the bill to comment on the draft MOA.
- Stipulates that any land use plan in existence on the date of enactment of this bill that applies to the BLM land shall continue to apply to the BLM land.
- The MOA maintains a number of current uses in accordance with FLPMA and actions by USAF including corrective actions and communications to ensure safety for public use.
- Requires DOI to continue to issue and administer new grazing leases and permits on the BLM land and continue to administer livestock grazing leases and permits on certain non-Federal land.

- Sustains any grazing lease or permit at the number of permitted animal unit months (AUM) authorized under current applicable land use plans if range conditions permit and subject to changes of active use of AUM and reasonable DOI regulations.
- Does not preclude the continuation of the memorandum of understanding between DOI and USAF with respect to emergency access and response.
- Withdraws, subject to valid existing rights, BLM land from all forms of appropriation under the public land laws, including the mining laws, mineral leasing laws, and geothermal leasing laws.
- Prohibits DOI from issuing new use permits or rights-of-way on the BLM land for any purposes that USAF determines to be incompatible with military requirements, with consideration given to the rangeland improvements.

SEC. 102. TEMPORARY CLOSURES.

- Allows USAF to carry out temporary closures if it determines that military operations, public safety, or national security require the temporary closure to public use of any road, trail, or other portion of the BLM land.
- These closures are limited to minimum areas and periods determined by USAF and shall not occur on a State or Federal holiday, unless notice is provided; shall not occur on a Friday, Saturday, or Sunday, unless notice is provided; shall be for not longer than a 3-hour period per day; shall only be for longer than a 3-hour period per day for mission essential reasons and as infrequently as practicable and in no case for more than 10 days per year; and shall in no case be for longer than a 6-hour period per day.
- USAF must keep appropriate warning notices posted before and during any temporary closure and provide notice concerning the temporary closure at least 30 days before the closure goes into effect, with seasonal and other requirements. The total cumulative hours of temporary closures authorized shall not exceed 100 hours annually.
- The northernmost area identified as 'Newfoundland's' shall not be subject to any temporary closure between August 21 and February 28, in accordance with the lawful hunting seasons of the State of Utah.
- A temporary closure of a portion of the BLM land shall not affect the conduct of emergency response activities on the BLM land during the temporary closure.
- DOI and USAF may enter into cooperative agreements with law enforcement officials to promote public safety and operation security on or near the BLM land during noticed test and training periods.
- Livestock grazing shall be allowed to remain on the BLM land during a temporary closure of the BLM land.

SEC. 103. COMMUNITY RESOURCE GROUP.

- Establishes the 'Utah Test and Training Range Community Resource Group' to provide input to the Secretary and DOI and USAF on matters involving public access and overall management of the BLM land. DOI and USAF shall take under consideration recommendations from the Community Group.
- Members of this group must include operational and land management personnel of USAF; one Indian representative; not more than two county commissioners from each of

Box Elder, Tooele, and Juab Counties, Utah; two representatives of off-road and highway use, hunting, and other recreational groups; two representatives of livestock grazers on any public land located within the BLM land; one representative of the Utah Department of Agriculture and Food; and not more than three representatives of State or Federal offices or agencies.

- Sets parameters for the election of a Chairperson and Vice-chairperson, terms of members, frequency of meetings, replacement of members, and termination and renewal of the Community Group.
- Exempts meetings of the Community Group from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 104. LIABILITY.

- The United States shall not be liable for any injury or damage to any individual or property suffered in the course of any mining, mineral, or geothermal activity, or any other authorized nondefense-related activity conducted on the BLM land.

SEC. 105. EFFECTS OF TITLE.

- Nothing in this title expands the boundaries of the weapon impact area of the Utah Test and Training Range or the designation of new units of special use airspace or the expansion of existing units of special use airspace.
- Nothing in this title limits or alters any existing right or right of access to the Knolls Special Recreation Management Area, the BLM Community Pits Central Grayback and South Grayback, and any other county or community pit located within close proximity to the BLM land.
- Nothing in this title limits or alters any existing right or right of access to a component of the National Trails System or other Federal or State historic landmarks within the BLM land, including the California National Historic Trail, the Pony Express National Historic Trail, or the GAPA Launch Site and Blockhouse.
- Nothing in this title authorizes any additional authority or right to the Secretary or the Secretary of the Air Force to temporarily close Interstate 80.
- Nothing in this title affects the limitation established under section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 852).
- Nothing in this title affects the memorandum of understanding relating to the reestablishment of bighorn sheep in the Newfoundland Mountains.
- Nothing in this title limits or alters the existing Military Operating Areas of Airspace Use Agreement between the Federal Aviation Administration and USAF.
- Nothing in this title establishes any reservation in favor of the United States with respect to any water or water right on the BLM land or authorizes any appropriation of water on the BLM land, except in accordance with applicable State law. Nothing in this title affects any water right reserved by the United States or the authority of DOI or USAF to exercise any water right.
- Nothing in this title impacts rights, duties, and obligations of the United States, the State of Utah, the counties in which the BLM land is situated, and the residents and

stakeholders in those counties under section 208 of the Act of July 10, 1952 (commonly known as the ‘McCarran Amendment’) (43 U.S.C. 666).

- Nothing in this title alters any right reserved by treaty or Federal law for a federally recognized Indian tribe for tribal use. USAF shall consult with local federally recognized Indian tribes before taking any action that will affect any tribal right or cultural resource protected by treaty or Federal law.
- The BLM land and the non-Federal land shall remain eligible as entitlement land under section 6901 of title 31, United States Code. Nothing in this title diminishes, enhances, or otherwise affects any other right or entitlement of the counties in which the BLM land is situated to payments in lieu of taxes based on the BLM land.
- BLM and the Utah Division of Wildlife Resources shall continue the management of wildlife guzzlers on the BLM land. Nothing in this title prevents BLM and the Utah Division of Wildlife Resources from entering into agreements for new wildlife guzzlers. DOI shall continue to manage existing wildlife guzzlers or wildlife improvements on the non-Federal land conveyed to the Secretary.
- DOI shall continue to manage grazing rangeland improvements on the BLM land and on the non-Federal land conveyed DOI. BLM shall maintain rangeland grazing improvements in existence as of the date of enactment of this Act on acquired land of the School and Institutional Trust Lands Administration.

TITLE II--LAND EXCHANGE

SEC. 203. EXCHANGE OF FEDERAL LAND AND NON-FEDERAL LAND.

- If the State offers to convey to the United States title to the non-Federal land, the Secretary shall accept the offer to the non-Federal land, convey to the State all right, title, and interest of the United States in and to the Federal land. The exchange shall be subject to valid existing rights.
- The value of the Federal land and the non-Federal land to be exchanged under this section shall be determined by appraisals conducted by independent appraisers retained by the State, with the consent of DOI. These appraisals shall be conducted in accordance with nationally recognized appraisal standards and shall take into account mineral and technical reports and shall be submitted to DOI and the State for approval
- An appraisal of any parcel of Federal land that is encumbered by a mining or millsite claim located under sections 2318 through 2352 of the Revised Statutes (commonly known as the ‘Mining Law of 1872’) (30 U.S.C. 21 et seq.) shall take into account the encumbrance created by the claim for purposes of determining the value of the parcel of the Federal land.
- Nothing in this title requires the United States to conduct a mineral examination for any mining claim on the Federal land.
- If, by the date that is 90 days after the date of submission of an appraisal for review and approval under this subsection, DOI or the State do not agree to accept the findings of the appraisals with respect to one or more parcels of Federal land or non-Federal land, the dispute shall be resolved in accordance with section 206(d)(2) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)(2)).

- DOI shall reimburse the State in an amount equal to 50 percent of the costs incurred by the State in retaining independent appraisers.
- The land exchange authorized under this title shall be completed by the later of the date that is 1 year after the date of final approval by DOI and the State of the appraisals and the date that is 1 year after the date of completion of the dispute resolution process.
- At least 30 days before the date of conveyance, all final appraisals and appraisal reviews shall be available for public review.
- The value of the Federal land and non-Federal land to be exchanged under this section shall be equal or shall be made equal through conveyance of additional lands identified in the bill. Any non-Federal land required to be conveyed to the United States shall be conveyed until the value of the Federal land and non-Federal land is equalized, in a specific order.
- If the value of the non-Federal land exceeds the value of the Federal land, the value of the Federal land and the non-Federal land shall be equalized by DOI making a cash equalization payment to the State.
- Subject to valid existing rights, the Federal land to be conveyed to the State is withdrawn from mineral location, entry, and patent under the mining laws.

SEC. 204. STATUS AND MANAGEMENT OF NON-FEDERAL LAND AFTER EXCHANGE.

- Upon conveyance to the United States under this title, the non-Federal land located within the UTTR shall be managed in accordance with the MOA established by DOI and USAF.
- On conveyance to the United States under this title, the non-Federal land located within the Cedar Mountains Wilderness shall be added to and administered as part of the Cedar Mountains Wilderness.

SEC. 205. HAZARDOUS MATERIALS.

- The costs of remedial actions relating to hazardous materials on land acquired under this title shall be paid by those entities responsible for the costs under applicable law.
- The Department of Defense shall bear all costs of evaluation, management, and remediation caused by the previous testing of military weapons systems and the training of military forces on non-Federal land to be conveyed to the United States under this title.

TITLE III--HIGHWAY RIGHTS-OF-WAY

SEC. 301. RECOGNITION AND TRANSFER OF CERTAIN HIGHWAY RIGHTS-OF-WAY.

- Defines “highway right-of-way,” “map,” and “Secretary.”
- DOI shall convey to Box Elder County, Juab County, and Tooele County, Utah, easements for motorized travel rights of way across Federal land for all highways shown and described in the official transportation map and centerline description of the county.

- The State of Utah shall be recognized as joint tenants with the Counties in all three conveyances.
- All easements shall include the current disturbed width of each subject highway as shown and described in the official transportation maps and centerline descriptions and any additional acreage on either side of the disturbed width that the respective county transportation department determines is necessary for the efficient maintenance, repair, signage, administration, and use of the Federal land subject to the easement.
- The conveyance of easements shall be effective without a survey of the exact acreage and local description of the Federal land subject to the easements.
- The maps and centerline descriptions shall be on file in the appropriate DOI office.

Administration Position

Unknown. During testimony at a February 2016 legislative hearing, USAF and BLM expressed general support for short periodic closures of the buffer zones, which “would serve the public interest better than the alternative of a complete withdrawal, reservation, and closure of the lands at issue.”⁴ BLM, however, expressed concerns with some other specific aspects of the bill.⁵

Effect on Current Law

H.R. 4579 does not affect current law.

Cost

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

Anticipated Amendments

During markup, Chairman Bishop will offer an amendment that changes the maps referenced maps under Section 301(a)(2) and amends language that references those maps. The amendment also changes the sunset and renewal clauses for the community resource group created under Section 103 from ten to seven years.

⁴ Statement of James Sample, Director, Range Planning, Office of the Deputy Assistant Secretary of the Air Force (Installations) before the House Natural Resources Committee, Subcommittee on Federal Lands on H.R. 4579, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act. February 25, 2016.

⁵ Statement of Karen E. Mouritsen, Deputy Assistant Director, Energy, Minerals, and Realty Management, Department of the Interior, Bureau of Land Management before the House Natural Resources Committee, Subcommittee on Federal Lands on H.R. 4579, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act. February 25, 2016.