

**Statement of  
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U.S. Department of the Interior, Bureau of Land Management  
Senate Energy and Natural Resources Committee  
S. 3316, Advancing Conservation and Education Act  
September 22, 2016**

Thank you for the opportunity to testify on S. 3316, the Advancing Conservation and Education Act. This bill is a serious and thoughtful effort to resolve a long-standing problem facing Federal and state land managers throughout the West: the often conflicting needs of Federal agencies charged with managing lands designated for conservation purposes and of State agencies charged with meeting differing management mandates. Today's hearing is the continuation of a process to find common ground toward resolving these challenges. Senators Heinrich and Flake have demonstrated their commitment to finding a bipartisan and workable solution; the Department of the Interior and the Bureau of Land Management (BLM) pledge to cooperate in reaching that goal.

**Background**

The lengthy history of America's westward expansion is complex. Much has been written about the story of the General Land Office and its successor the BLM, and the disposal of hundreds of millions of acres of public land through homesteading and other means. Ultimately, the passage of the Federal Land Policy and Management Act of 1976 (FLPMA) set a new policy to retain the Federal lands and guides the BLM's multiple use and sustained yield mandate. This testimony focuses on the situation we find ourselves in today with respect to state trust lands, the challenges that it presents, and the opportunities we may find to resolve those issues.

The admission of Ohio into the Union in 1803 marked the beginning of Congressional action to provide land to the individual states through their Enabling Acts. Beginning in 1848, new states tended to receive two sections of land in each township<sup>1</sup>, generally sections 16 and 36. That increased to four sections with the admission of Utah, Arizona, and New Mexico who generally received sections 2, 16, 32, and 36. When Alaska entered the Union in 1959 rather than being assigned specific sections, the provisions of the Alaska Statehood Act entitled the state to select over 103 million acres of Federal land.

Each of the thirteen states covered by S. 3316 – Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming – has state laws governing the management of these lands. On the whole they are dedicated to providing revenue to benefit education and other state purposes. While the somewhat random disbursement of sections may have seemed logical in the 19<sup>th</sup> and 20<sup>th</sup> centuries, today it has given us an ownership pattern of lands that makes management difficult and challenging for both

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<sup>1</sup> The rectangular survey system was established by the Land Ordinance of 1785. It established a system of townships made up of 36 individual sections measuring one square mile. Each section is made up of 640 acres.

the states and the Federal government. These ownership patterns can also prove confusing for the many users of the public lands.

Today, many of these state sections – nearly 3 million acres with over half of those acres in Alaska – lie within conservation units established by Congress and the President. Among these are state lands within national parks, wildlife refuges, national monuments, National Conservation Areas, and designated wilderness areas. While these conservation designations only apply to Federal lands within those designated areas, the ability of states to fully access or develop the resources of these inholdings may be limited.

The BLM has the authority under section 206 of FLPMA to exchange public land with states or other entities if the Secretary of the Interior “determines that the public interest will be well served by making that exchange.” Furthermore, FLPMA requires that all exchanges be of equally valued lands as determined by appraisals conducted according to the Federal Uniform Appraisal Standards.

### **S. 3316, Advancing Conservation and Education Act**

S. 3316, the Advancing Conservation and Education Act, addresses the scattered nature of state land parcels in 13 western states by establishing a new mechanism for the states to relinquish state inholdings within Federally-designated conservation units and then allowing the states to subsequently select other BLM-administered lands within the states for acquisition. The Department of the Interior endorses the concept and would like to work with Senators Heinrich and Flake and other members of the Committee to reach this goal consistent with FLPMA, the National Environmental Policy Act (NEPA), and other important resource management laws.

We believe that conversation must include not only the Congress, the states, and the BLM, but also tribal and local governments, user groups, and the public at large. While there are still a number of significant issues that will need to be explored, clarified, and resolved in order to reach consensus on a way forward, the Department generally appreciates several major improvements Senators Heinrich and Flake have incorporated in S. 3316 from a prior version of the legislation. For example, we note the addition of provisions regarding the protection of Indian rights and interests. Following are some major concerns, with the understanding that the Administration is continuing its review of this significant piece of legislation.

#### ***Valuation & Cost***

Equal value land transfers must be the cornerstone of any proposal. The Administration is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice. While it may be appropriate to consider alternative methods for low-value parcels as envisioned by the legislation, we believe in general that adhering to existing FLPMA processes as much as possible is important. The provision in S. 3316 establishing ledger accounts is an interesting one that merits further exploration.

The Administration appreciates that the costs of conveyances under the bill would be split equally between the state and Federal government.

### *Lands Available for Exchange*

FLPMA establishes clear national policy that public lands should generally be retained in public ownership. However, section 203 of FLPMA allows the BLM to identify lands as potentially available for disposal that meet specific criteria through its land use planning process. Such determinations are made after full public participation and are consistent with all applicable laws. Under FLPMA, disposal of the lands is discretionary and BLM must first consider local conditions and needs.

S. 3316 specifies and prioritizes which lands the states may relinquish and which lands they may select. The bill defines “eligible areas” as Congressionally-designated wilderness; NPS units; units of the National Wildlife Refuge System; lands within the BLM’s National Landscape Conservation System, including national monuments, National Conservation Areas, and Wilderness Study Areas; conservation units within the National Forest System; and areas identified in BLM Resource Management Plans as having wilderness characteristics. States may relinquish inholdings within these units and select public land in other areas to receive in exchange. The BLM and other land managing agencies – the NPS, Fish & Wildlife Service, and Forest Service – welcome the opportunity to consolidate holdings in these special places. We appreciate that the “priority areas” for relinquishments under this version of the bill are more inclusive than an earlier version on which the BLM testified during the 113<sup>th</sup> Congress, and we would like to discuss the possibility of adding additional categories of priority areas with the Sponsor and the Committee.

Likewise, we support flexibility on the selecting side within certain parameters. Focusing on lands already identified for disposal through the BLM’s land use planning process should be a priority. Additionally, we believe a priority should be placed on exchanging out to the state unencumbered mineral estate where the Federal government is not the surface landowner, as well as areas in a checkerboard land ownership pattern and Federal lands interspersed with other lands.

While the legislation places certain public lands off-limits for selection, such as lands within conservation designations and Areas of Critical Environmental Concern, we would like to discuss other lands that we should consider limiting access to for selection. For example, the BLM has numerous developed recreation sites outside of conservation units, including campgrounds, trailheads, and designated off highway vehicle play areas. Taxpayer funds and user fees have been used to develop such sites which often receive high visitation and are popular with the public.

The legislation also makes available for potential selection by the states lands with high mineral and energy development and transmission potential. This could include lands currently leased for oil and gas development, lands under consideration for future leasing, lands within designated Solar Energy Zones, and lands with existing mining claims. The appropriateness, cost-effectiveness, and viability of transferring each of these types of lands need to be considered carefully. For example, the wholesale conversion of existing mining claims to state mining leases raises any number of issues. Transferring lands with associated or developed oil and gas mineral estate raises issues of both valuation and protection of valid existing rights. It also raises concerns about potential cost and scoring implications of this legislation, given that these lands –

and particularly those with existing leases – generate revenue to the Federal government that is typically assumed in the Budget baseline.

Furthermore, these and many other issues deserve a careful public review. It is important to note that public lands selected by the states may already be in use for a wide variety of purposes, including grazing, hunting, fishing, wildlife habitat, and recreation. Transfer to the states could have consequences for these users and uses. Incorporating the state selection process into the BLM’s on-going land use planning process could help to avoid at least some of these conflicts.

The President’s FY 2017 Budget included a proposal to reauthorize the Federal Land Transaction Facilitation Act (FLTFA) which provided the BLM with an important tool to facilitate land tenure adjustments. FLTFA expired in 2011. Reauthorization would allow the BLM to sell lands identified as suitable for disposal in recent land use plans, and then to use the proceeds from those sales to acquire environmentally sensitive lands, including state trust land inholdings. We recommend that Congress move to reauthorize FLTFA.

### ***Timeframes***

The Administration appreciates that the timeframes included in S. 3316 have been extended from those of an earlier version of this legislation. It is important to both the states and the Federal government that any land transfers under the bill be undertaken with full public participation and thoughtful consideration. However, the personnel the BLM would need to process these land transfers are the same personnel currently employed in a wide variety of other vital land management issues, including oil and gas leasing and monitoring, as well as processing renewable energy and transmission rights-of-way applications, and land use authorizations for community needs to name just a few. Therefore, the bill’s timeframes will necessarily have consequences for a wide variety of other users of the public lands.

### ***State Variations***

Not surprisingly there are issues to be considered in S. 3316 that affect individual states differently. For example, Arizona’s state constitution requires that state lands may only be disposed of through auction to the highest bidder or by exchange with other governmental entities. This bill technically does not provide for exchanges, but rather relinquishment and selection. In Alaska, the BLM is continuing to fulfill its obligations to transfer millions of acres of mandated entitlements under the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act of 1971, and the Alaska Statehood Act. If passed as currently drafted, S. 3316 could have the effect of dramatically slowing the pace of completion of these important entitlements.

### **Conclusion**

The Departments of the Interior and Agriculture commend Senators Heinrich and Flake for the conscientious effort put into this proposal to date. We recommend continuing a dialogue to develop a solution that protects the interests of all the American people and the individual states. We hope that today’s hearing is another step of that process and there will be opportunities for future conversation and hearings.