Statement of
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Acting Director
Bureau of Land Management
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands & Forests
S. 390, Utah Recreational Land Exchange Act
May 3, 2007

Thank you for the opportunity to testify on S. 390, 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. We look forward to working with the sponsors and the Committee on S. 390 and could support the bill with some additional modifications. As a matter of policy, we support working with states to resolve land tenure and land transfer issues that advance worthwhile public policy objectives.

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 parcels are scattered and interspersed with public lands managed by the BLM.

Managing 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).

The legislation before us references maps, but not specifically dated maps. The most recent maps completed by the BLM last year at the request of the House Resources Committee are dated September 22, 2006, and our discussion of the bill is based on those maps.

S. 390

S. 390 directs the exchange of approximately 42,000 acres of lands managed by SITLA for approximately 40,000 acres of BLM-managed Federal lands. 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;
- 4,500 acres within the Castle Valley watershed which also has important wildlife habitat and scenic values;
- 2,560 acres of land currently leased by the BLM and Grand County from the State for recreation-related activities associated with the Sand Flats Recreation Area and the famous Slickrock Mountain Bike Trail; and,
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources.

We support the provisions of the bill that establish a phasing process for the transfer of lands from SITLA to the BLM. This will allow BLM to prioritize the use of Federal resources in the appraisal and review process on the lands with the highest resource value for acquisition.

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, including:

- 2,800 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.

In addition, some of the lands identified for transfer to SITLA from the BLM have high energy potential.

Valuation Issues

In December of 2004, former Secretary Norton issued policy guidance to all of the bureaus on legislative exchanges and land valuation issues. On December 31, 2006, Secretary Dirk Kempthorne extended the policy guidance until August 31, 2007. A copy of that guidance (Secretary of the Interior Order No. 3258A2) 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 by the Department of alternative methods of valuation in appraisals. However, the policy recognizes there may be

times when Congress will direct, or the Department will propose, the use of alternative methods of valuation other than, or in addition to a standard 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 before the Senate Committee on Finance in June of 2005, he commended the Department for the significant changes it has made to the land appraisal program and process.

As stated, there are circumstances in which 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.

S. 390 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, Congress may determine that alternative methods of valuation are consistent with the intent of the legislation.

S. 390 directs that all appraisals shall be in accordance with the requirements of FLPMA and with the BLM's regulations governing appraisals. However, we should point out that the FLPMA subsection referenced in the bill (subsection 206(d)) does not relate to appraisal standards. Subsection 206(f) of FLPMA relates to appraisal standards. The bill further directs the use of two alternative methods of valuation for two different purposes. I will describe the Department's view of each of these and the relative benefits or risks of using these methods.

Under Sec. 5(b)(4), the Federal government reserves a share of potential future revenues from any mineral resource subject to lease under the Mineral Leasing Act. Mineral resources leasable under the Mineral Leasing Act include oil and gas and oil shale. However, the economic viability of energy production from oil shale is currently unproven but is under intensive study. This reserved interest arrangement is common in the private sector and protects sellers from disposing entirely of some unknown future mineral wealth.

Sec. 5(b)(4) requires that, for Federal lands that are not under mineral lease at the time of appraisal, such lands shall be valued without regard to the presence of any minerals that are subject to leasing under the Mineral Leasing Act of 1920. This provision would not affect the appraisals for lands that contain no mineral values. Additionally, it would not affect the appraisals for those lands that are already under Federal mineral lease. Rather this provision

would modify standard appraisal practice by directing that the appraisal be completed without regard to the presence and any value contribution of minerals that are eligible for lease under the Mineral Leasing Act but are not currently leased. For such lands, the value increment attributable to the minerals will not be determined and will not contribute to the transaction value of the lands in the exchange. In exchange for this reduction in value, the State or its successors in interest to the property (by virtue of covenant language in Section 5(b)(4)(B)) would have to agree to pay the United States 50% of whatever bonus or rentals are paid to the State for any mineral development in the future; and an amount equal to the Federal royalties that would have otherwise been collected by any future mineral development conducted pursuant to the Mineral Leasing Act, minus amounts that would have otherwise been due to the State under Section 35 of that Act.

This is a complicated methodology that departs from a standard appraisal and valuation practice. We note that currently under standard appraisals oil shale, the mineral that, in addition to oil and gas, is likely to be found in the unleased lands that would be conveyed to the State, does not factor into the value because there are no comparable property transactions known to be driven by the economics of oil shale development, or there is no reasonably foreseeable oil shale development on the property. The result of using a standard appraisal process might therefore be that properties with significant oil shale resources will probably have no additional value attributed to them by virtue of the presence of this resource. This could lead to the criticism that the United States is "giving away" potentially millions of dollars in oil shale. The material purpose of the provisions contained in section 5(b)(4) is to address that risk by ensuring that the United States receives the value for any future oil shale or other leasable mineral development it would have received if the Federal government had retained the lands and leased them.

We would like to work with the Committee to further refine this section. In particular, we would like the bill to clarify that under Section 5(b)(4), the royalty rate for which the State would compensate the Federal government in the event that currently unleased minerals are eventually developed is the standard Federal onshore rate established at the time the resource is developed. Also, it may be more appropriate to narrow the scope of this provision expressly to oil shale and allow for an appraisal that would capture the value of any other leasable minerals according to general appraisal standards. In addition, as currently drafted, the provision conditions the use of the alternative method of valuation on an agreement the State would make after conveyance of the lands. The lands, however, cannot be conveyed until they are valued.

The second alternative method of valuation is found in Sec. 5(b)(6)(B). This provision would apply only to parcels under Federal mineral lease at the time of the appraisal. Clause (ii) in that subparagraph would direct the BLM to reduce the value of an applicable appraisal by an amount equal to what would be the State's share under Section 35 of the Mineral Leasing Act. A standard appraisal would consider all potential uses of the property, including but not limited to, mineral resource production and the resulting income stream. . The Department understands that this provision is included to recognize that the Mineral Leasing Act currently provides that 50% of all the money received by the United States in accordance with Section 35 of the Mineral Leasing Act shall be paid to the State within the boundaries of which the leased lands or deposits are or were located.

This provision provides that the transaction value of Federal leased properties will be the market value less the percentage of the Federal revenue sharing obligation under Section 35 of the Mineral Leasing Act. We should note that the bill assumes that an appraisal would conclude that the highest and best use of this property would be mineral resource production and that may not be the case.

The overall result of the proposed valuation methods will be a greater number of Federal acres exchanged for a lesser number of state acres. This may be the desired outcome given the bill's stated public policy objectives.

Other Concerns

The Department opposes section 5(d) of the bill requiring a "resource report" on the lands to be transferred out of Federal ownership. Under S. 390 the Secretary has no discretion regarding the lands to be transferred out of Federal ownership; therefore the intent and usefulness of this section is unclear. Resource reports on the parcels will be time-consuming and costly, will delay the purposes of the bill, and will not ultimately affect the directed exchange. We urge the Committee to delete this provision.

Additionally, the Department has serious concerns with section 6(a)(2)(B) which places permanent withdrawals from the mineral leasing and mineral materials laws on certain state parcels once they are transferred to the Federal government. We would support the short term withdrawals envisioned in 6(a)(2)(A) because they are consistent with the present public planning process. Generally the Department prefers to identify lands for permanent withdrawal from mineral entry or leasing through the public land use planning process because it gives all interested parties an opportunity to be heard. A short-term withdrawal of these lands from mineral leasing would preserve the option of more permanent withdrawal for any final record of decision. This is standard BLM practice.

We would like the opportunity to continue to fine tune and clarify some provisions, including section 4(a), to insure that the implementation of the exchange is correctly and appropriately completed. Finally, we would like to work with the sponsors and the Committee on new maps for the legislation. It is our understanding that a number of technical corrections need to be made to the maps.

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. To that end, we are ready to work with the Committee and the sponsor to resolve remaining issues in the bill. I would be happy to answer any questions.

THE SECRETARY OF THE INTERIOR

Washington

ORDER NO. 3258, Amendment No. 2 ***(Amended material italicized)***

SIGNATURE DATE: December 31, 2006

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 ***August 31, 2007***.

/s/ DIRK KEMPTHORNE

Secretary of the Interior

SO#3258A2 12/31/06

Replaces SO#3258A1 7/28/06
Replaces SO#3258 12/30/04