Statement for the Record
Bureau of Land Management
Department of the Interior
House Natural Resources Committee
Subcommittee on Public Lands & Environmental Regulation
H.R. 1633, Small Lands Tracts Conveyance Act
October 3, 2013

Thank you for inviting the Department of the Interior to testify on H.R. 1633, the Small Lands Tracts Conveyance Act. The Department of the Interior opposes H.R. 1633 as it applies to lands under the administrative jurisdiction of the Bureau of Land Management (BLM). The BLM has the authority to dispose of public land as appropriate with full public involvement; H.R. 1633 circumvents that critical public process. The Department defers to the U.S. Department of Agriculture for lands under the jurisdiction of the U.S. Forest Service.

Background

The BLM manages more than 245 million acres of public land primarily in 12 western states. Our 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 and sustained yield, including energy production, recreation, livestock grazing, conservation use, forestry, and open space. The 1976 Federal Land Policy and Management Act (FLPMA) provides the BLM with a clear multiple-use mandate which the BLM seeks to implement through its land use planning process. Additionally, FLPMA includes policy direction that the United States should generally retain Federal lands in public ownership. This was a departure from previous land disposal policies of the United States Government and FLPMA repealed many of those former disposal laws.

BLM's Land Disposal Authorities

The FLPMA is the BLM's primary authority for disposals of Federal lands through exchanges, sales and various conveyances. Section 203 of the FLPMA allows the BLM to identify lands (though the land use planning process) as potentially available for disposal by sale if they meet one or more of the following criteria:

- Lands consisting of scattered, isolated tracts that are difficult or uneconomic to manage;
- Lands that were acquired for a specific purpose and are no longer needed for that purpose; or
- Lands that could serve important public objectives, such as community expansion and economic development, which outweigh other public objectives and values that could be served by retaining the land in Federal ownership.

Section 206 of FLPMA provides land exchange authority. To be eligible for exchange under FLPMA, BLM-managed lands must have been identified for disposal through the land use planning process. Land exchanges are a tool the BLM uses to acquire environmentally sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts.

The Recreation and Public Purposes Act (R&PP) is an extremely popular authority used by the BLM to help states, local communities, and nonprofit organizations obtain public lands at no or reduced cost for important public purposes. Examples include parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities and public works. Over the last five years, the BLM has sold nearly 9,000 acres of public land through R&PP conveyances and leased an additional 10,000 acres of public land under the R&PP Act.

Another important law for the facilitation of land disposals over the last decade is the Federal Land Transaction Facilitation Act (FLTFA). The Administration strongly supports reauthorization of the FLTFA, which expired on July 25, 2011. Under the FLTFA, the BLM could sell public lands identified for disposal prior to July 2000 through the land use planning process, and retain the proceeds from those sales in a special account in the Treasury. The BLM and the other Federal land managing agencies were then able to use those funds to cover processing costs for future land sales and to acquire, from willing sellers, lands within or adjacent to certain Federally designated areas that contain exceptional resources. The National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), and the BLM were all able to acquire lands with FLTFA funds. Over the life of the FLTFA, approximately 27,000 acres of BLM-managed public lands were sold under this authority and approximately 18,000 acres of high resource value lands were acquired. These acquisitions consolidate land ownership, frequently providing access to increased recreational opportunities for the public and reducing costs to the Federal government in areas with fragmented land patterns.

BLM's Land Use Planning Process

Many of the decisions about how best to manage the public lands entrusted to the BLM's stewardship are made through the land use planning process. The BLM's field offices document these decisions in 157 individual Resource Management Plans (RMPs) developed with full public participation at the local level. These RMPs provide the foundation for every on-the-ground action taken or authorized by the BLM and include inventories and assessments of a broad range of resource values and public land uses. Among the many decisions made through the RMP process is the identification of lands that are potentially available for disposal. Extensive public involvement is a critical component of this process.

Each RMP is unique to the local situation and the local community. The RMP identifies lands as potentially available for disposal by various means. For example, lands may be identified as available for sale or they may be identified as available for exchange (e.g. to further particular resource goals).

The process of identifying lands as potentially available for disposal typically does not include the clearance of impediments to disposal such as the presence of threatened and endangered (T&E) species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way and grazing permits. Also not included in this identification process is an appraisal of values or a specific survey of the lands. Furthermore, because land use plans typically extend over many years, lands identified as potentially available for disposal at one point in time may be found later to be unsuitable as a result of subsequent changes, such as oil and gas leasing, listing of

T&E species, and establishment of extensive rights-of-way or other encumbrances. For this reason, the BLM normally conducts site-specific NEPA analysis prior to disposal of a particular tract or tracts of public land. The Department uses the NEPA process to provide opportunities to consider environmental impacts, public engagement, and mitigation opportunities, as well as to ensure that unknown or unforeseen issues are not overlooked. Failure to use the land planning process, and the associated NEPA review, can result in a failure to provide relevant and useful information to the public and the BLM decision makers.

H.R. 1633

H.R. 1633 would provide for the sale of "eligible federal lands parcels" to adjacent landowners at their request. The bill defines "eligible federal lands parcel" broadly, as BLM-managed public lands that share a boundary with non-Federal land, are within an area with a population of more than 500 persons, do not contain "exceptional resources," do not provide habitat for an endangered or threatened species, and are "not subject to existing rights held by a non-Federal entity." Adjacent landowners could petition for up to 160 acres annually under the legislation. Within 30 days of receiving a request for sale, the BLM would have to make a determination as to whether or not the parcel met the eligibility criteria established in H.R. 1633. If a parcel were determined to be eligible, the purchaser would be required to pay the BLM the fair market value for the land as well as the costs of the conveyance. Determination of fair market value under the bill would not require an appraisal completed under the "Uniform Appraisal Standards for Federal Land Acquisitions." The proceeds of the sales would be deposited into an account in the Federal Treasury and distributed by a formula to states in which the Federal government owns more than 33 percent of the land area in the state.

The Department of the Interior opposes H.R. 1633. The BLM is committed to a process for the disposal of public land rooted in the core principle of public participation. H.R. 1633 excludes Tribes, States, and local governments, as well as user groups, and the public at large from the process of land disposal and undermines key tenants of FLPMA. Furthermore, H.R. 1633 provides a blanket exemption from the National Environmental Policy Act (NEPA) analysis and circumvents BLM's land use planning process. Failure to comport with FLPMA and NEPA, alone, can result in a failure to provide relevant and useful information to the public and BLM decision makers. Furthermore, while it excludes units of the National Landscape Conservation System (NLCS) and other environmentally sensitive lands from eligible sale lands, H.R. 1633 does not limit lands to be sold to those preliminarily identified for disposal through the public land use planning process, and broadly redefines lands eligible for transfer to include significant amounts of land along the federal/non-federal border without determination that the conveyance is in the public interest. A 30-day window to make a determination on whether or not requested lands meet the eligibility requirements excludes the public and likely makes a thorough, thoughtful process nearly impossible.

H.R. 1633 effectively establishes new criteria for lands eligible for disposal that are inconsistent with established FLPMA criteria. Many of these new criteria are confusing and unclear. For example, section 2(a)(3)(C) provides that eligible lands do not include those "subject to existing rights held by a non-Federal entity." Typically, administrative and legislative sales of lands are subject to "valid existing rights." This provision protects established rights such as power lines or roads, but does not prohibit the transfer of such lands. On the other hand, the bill does not

address other existing uses of the land that are not rights, such as livestock grazing and unproven mining claims, which would be considered during the land planning process under FLPMA and NEPA.

When determining the value of public lands, the BLM and the Department are committed to using the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." To deviate from these long-established procedures, which apply across the Federal government, would expose the process to uncertainty, inconsistency, and irregularities.

Additionally, the Department opposes the establishment of a new fund in the Treasury and the proposed distribution of land sale revenues to certain states, rather than the public as a whole. Under current law, typically 96 percent of the value of land sales are returned to the Treasury and typically 4 percent distributed to the individual states as required by individual statehood acts.

Conclusion

The BLM's land use planning process, as directed by FLPMA and NEPA, ensures that all of the users of the land have an opportunity to participate in the public land management process. Tribes, States, local governments, user groups, conservation groups, and the public at large become actively involved in these processes and final decisions made by the BLM are better and stronger because of that involvement. We oppose efforts, however well intended, which would undermine that process.