Testimony
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H.R. 4901, Advancing Conservation and Education Act
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Thank you for the opportunity to testify on H.R. 4901 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 beginning of a process to find common ground toward resolving these challenges. Chairman Bishop and Ranking Member DeFazio 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 1802 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[1], 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 H.R. 4901 – 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 19th and 20th centuries, today it has given us an ownership pattern of lands that makes management difficult and challenging for both

[1] 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.

H.R. 4901, Advancing Conservation and Education Act

H.R. 4901, 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 Chairman Bishop, Ranking Member DeFazio 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. There are a number of significant issues that will need to be explored, clarified, and resolved in order to reach consensus on a way forward. 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 H.R. 4901 establishing ledger accounts is an interesting one that merits further exploration.

Typically costs of land exchange transactions, including clearances, appraisals, surveys, and other requirements, are split equally between the state and Federal government. This may be a viable approach here, and we would seek to assure that each benefitting Federal agency would necessarily be responsible for costs related to their conveyances. However, the Administration is concerned that language in the legislation allowing states to assume additional costs in return for land value could result in the Federal government receiving dramatically less land value than

would otherwise be the case. While this provision may appear to be an easy solution, it may result in the "payment" for processing costs with substantial quantities of land. This would not serve the interest of the American people. The ability to undertake what would be a massive land transfer is clearly a costly undertaking; a better source of resources will need to be found.

Additionally, on lands with substantial mineral potential or with existing mineral leases, the Federal government's royalty interest should be protected. An overriding interest in the mineral estate is an option to consider.

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. Furthermore, under FLPMA the BLM is required to coordinate with tribal, state, and local governments; plans should be consistent with those governmental plans to the maximum extent consistent with Federal law. H.R. 4901 weakens both the general land retention policy of FLPMA and the open public process which BLM currently uses to make determinations on which lands would be available for disposal.

H.R. 4901 specifies and prioritizes which lands the states may relinquish and which lands they may select. The bill defines "Federal conservation areas" as Congressionally-designated wilderness, NPS units, units of the National Wildlife Refuge System, lands within BLMs National Landscape Conservation System (NLCS), including national monuments, National Conservation Areas, and Wilderness Study Areas, and conservation units within the National Forest System. States may relinquish inholdings within these units and select "unappropriated public land." 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. However, we believe that the establishment of "priority conservation units" in addition to "Federal conservation areas" is unnecessary. The individual states and Federal agencies should work cooperatively to prioritize these land tenure adjustments within each state. This prioritization may vary based on individual circumstances and limiting flexibility is unnecessary.

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 needs to be considered carefully. For example, the wholesale conversion of existing mining claims to state mining leases raises any number of issues, as does the failure to segregate proposed lands from entry under the mining law for state selection in order to avoid the proliferation of nuisance claims. Transferring lands with associated or developed oil and gas mineral estate raises issues of both valuation and protection of valid existing rights. These and many other issues deserve a careful public review.

By creating a static definition of "unappropriated lands" the bill fails to take into account future needs or changing circumstances. "Unappropriated lands" implies unused lands. Of course, nothing could be further from the truth. These BLM lands may already be in use for a wide variety of purposes, including grazing, hunting, fishing, wildlife habitat, and recreation. Transfer to the state 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 2015 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

While we certainly understand the concept that land tenure rationalization needs to be addressed in an expeditious manner, the timeframes envisioned in H.R. 4901 are unrealistically short. It is important to both the states and the Federal government that these land transfers be undertaken with full public participation and thoughtful consideration. 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. Short timeframes will necessarily have serious consequences for a wide variety of other users of the public lands. Additionally, we recommend eliminating the ten-year sunset provision. Completing the projected scope of the legislation in that short time frame is unrealistic and doesn't do justice to the goals of the legislation.

State Variations

Not surprisingly there are issues to be considered in H.R. 4901 that affect a single state. 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. Because this bill does not provide for exchanges, but rather relinquishment and selection, it would appear that this could vitiate any benefit Arizona might receive from H.R. 4901. 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. To date, the BLM has transferred in excess of 99 million acres of land under these and other laws. The BLM is working to complete the survey and transfer of the remaining 7 million acres in Alaska over the next 5-10 years. H.R. 4901 could have the effect of dramatically slowing the pace of completion of these important entitlements.

Conclusion

The Department commends the Chairman and Ranking Member 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 just the beginning of that process and there will be opportunities for future conversation and hearings.