

**Statement of
John Ruhs
Acting Deputy Director for Operations
Bureau of Land Management
U.S. Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
S. 837, Southern Utah Open OHV Areas Act
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Thank you for the opportunity to present testimony on S. 837, the Southern Utah Open OHV Areas Act, which legislates an exchange between the Bureau of Land Management (BLM) and the State of Utah's School and Institutional Trust Lands Administration (SITLA) and provides for the conveyance, at no cost, of approximately 19,000 acres of BLM-managed lands to Washington County, Utah, and the Washington County Water Conservancy District (WCWCD).

As a matter of policy, the Department of the Interior supports the completion of land exchanges that further the public interest, consolidate ownership of scattered tracts of land to make them more manageable, and enhance resource protection. We also support working with States and local governments to resolve land tenure and land transfer issues that advance worthwhile public policy objectives. The Department is mindful that legislated land exchanges and transfers often promote varied public interest considerations; part of our role is to help inform Congress and the public about the tradeoffs associated with such proposals. The Department is committed to advancing the important public access and recreation goals outlined by Secretary Zinke in Secretarial Order 3347, *Conservation Stewardship and Outdoor Recreation*. As such, we support the sponsor's goals of enhancing outdoor recreation and consolidating land ownership and recommend a number of amendments to address several issues raised below, particularly the significant reduction in public lands open to cross-country motorized recreation.

Based on an initial analysis of the bill and its accompanying legislative map, the exact lands proposed for conveyance and exchange are unclear, as well as the extent to which the proposal meets the objectives of interested stakeholders. We would welcome the opportunity, in cooperation with the sponsor, to create a legislative map for the purposes of this bill that reflects land status data and delineates the proposed exchange and conveyances more clearly.

Background

Washington County, Utah, covers nearly 2,500 square miles, and has been among the fastest growing counties in the country. The population of Washington County increased by 52 percent between 2000 and 2010. Rapid population growth directly impacts public lands and poses management challenges for a variety of resources. For over 20 years, the BLM has worked closely with Washington County, the State of Utah, area Tribes, and Federal agency partners to manage sensitive resources in a way that prevents conflicts and facilitates continued growth.

Sand Mountain Special Recreation Management Area

In 1999, the BLM established the approximately 40,000-acre Sand Mountain Special Recreation Management Area (SRMA), located just east of the city of St. George, Utah. The goal of the

SRMA is to provide long-term stability and recreation opportunities for user groups such as the off-highway vehicle (OHV) community. As a result of increasing urbanization and land use restrictions, the OHV community had lost much of their traditional open use areas.

The SRMA hosts a variety of popular recreational activities, including casual OHV riding and competitive events, horseback riding, climbing, scenic driving and viewing, visiting historical and paleontological sites (such as Fort Pearce and the Warner Valley Dinosaur Track), and undeveloped camping. Approximately 21,000 acres of the SRMA are designated as the Sand Mountain Open OHV Area, which features sand dunes and slickrock that appeal to all types of motorized recreation users, including 4x4, ATV, UTV, and motorcycle enthusiasts. The Open OHV Area provides local residents and visitors an enjoyable recreation experience in close proximity to the five largest cities in Washington County, and more than a dozen very popular commercial and competitive motorized recreation events take place annually in the area.

Since 1999, dramatic population growth in Washington County has triggered demand for new water storage facilities, highways, energy transmission rights-of-way, and other land use authorizations on public lands within and adjacent to the SRMA. As a result of various legislated conveyances, transportation grants, and Recreation and Public Purposes Act (R&PP Act) leases, the overall size of the SRMA has decreased by approximately 6,000 acres.

Utah School and Institutional Trust Lands Administration

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.4 million acres of land and 4.5 million acres of mineral estate within the State of Utah. Many of these parcels are interspersed with public lands managed by the BLM, including in the areas under consideration in this bill. Although State trust lands support select public institutions, trust lands are not public lands. State trust lands generate revenue to support designated State institutions, including public schools, hospitals, teaching colleges, and universities.

Public Land Exchanges

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to retain management of most public lands, thereby reducing the acreage that had been available for disposal in earlier years. Under FLPMA, the BLM is directed to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. FLPMA also sets forth the BLM's multiple-use mission, directing that public lands be managed for a variety of uses, such as conventional and renewable energy development, livestock grazing, conservation, mining, watershed protection, hunting, fishing, and other forms of recreation, and requires that various resources be managed on a sustained yield basis.

The BLM conducts land exchanges pursuant to Section 206 of FLPMA, or when given specific direction by Congress. Among other purposes, land exchanges consolidate ownership of scattered tracts for more efficient management, and allow the BLM to acquire environmentally sensitive areas while transferring public lands into non-Federal ownership for local needs. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful.

The Department notes that the process of identifying lands as potentially available for exchange does not include the review of potential impacts to important existing uses and resources, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this review must occur before a disposal action can be completed.

The BLM manages nearly 22.9 million acres of public lands within the State of Utah for a wide range of uses, including energy production, recreation, livestock grazing, and conservation. In the recent past, the BLM has completed three large-scale exchanges with the State of Utah at the direction of Congress through the Utah Recreational Land Exchange Act of 2009 (Public Law 111-53), the Utah West Desert Land Exchange Act of 2000 (Public Law 106-301), and the Utah Schools and Land Exchange Act of 1998 (Public Law 105-335). Through these exchanges, over 296,000 acres of Federal land were conveyed to the State of Utah, and the United States acquired over 596,000 acres from the State, based on equalization of appraised value or as otherwise directed by Congress. An additional exchange directed by the FY 2017 National Defense Authorization Act (Public Law 114-328) of approximately 98,000 acres of public lands for approximately 71,000 acres of State owned lands and approximately 14,000 of State owned mineral estate is currently in progress.

Public Purpose Conveyances

The BLM regularly leases and conveys lands to local governments and nonprofit entities for a variety of public purposes. These leases and conveyances are typically accomplished under the provisions of the Recreation and Public Purposes Act (R&PP Act) or through direction supplied by specific Acts of Congress. Such direction allows the BLM to help States, local communities, and nonprofit organizations obtain lands at nominal cost for important public purposes. The Department generally supports appropriate legislative conveyances at nominal cost if the lands are to be used for purposes consistent with the R&PP Act, if the lands are appropriate for disposal, and if the conveyances have reversionary clauses to enforce this requirement.

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Land Exchange (Section 3)

Section 3 of S. 837 would require the exchange of approximately 2,200 acres of State-owned land within the northern portion of the SRMA for approximately 1,500 acres of BLM-managed public lands within and adjacent to the southwestern portion of the SRMA. The purpose of these exchanges would be to consolidate ownership of isolated State parcels and to transfer public lands to the State for economic development.

Under the bill, the land exchanges would be completed subject to valid existing rights, and appraisals would be conducted. The Secretary of the Interior would be required to reimburse the State of Utah for 50 percent of the appraisal costs. If the value of the public lands proposed for exchange exceeds the value of the State lands, the value must be equalized through the addition or elimination of land or by the State making a cash payment to the United States. If the value of the State lands proposed for exchange exceeds the value of the public lands, the value must be equalized through the elimination of land or by the Secretary making a cash payment to the State.

The Department supports the completion of major land exchanges that consolidate ownership of scattered tracts of land, thereby easing BLM and State land management tasks. As detailed below, we have several concerns with the land exchange provisions in this bill. We would like the opportunity to work with the Subcommittee and the sponsor on amendments and other technical modifications to address these issues.

First, the public lands proposed for exchange with the State contain a number of important resources and uses, including portions of active BLM grazing allotments and very popular areas for cross-country OHV recreation access. The Department would like the opportunity to work with the Subcommittee and the sponsor on language and boundary modifications to ensure the protection of these resources and uses.

In addition, the Department notes that the public lands proposed for exchange have not yet been analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. These review requirements provide for public engagement, opportunities to consider environmental and cultural impacts, and help ensure that unknown or unforeseen issues are not overlooked.

The Department is also committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed by the Department's Office of Valuation Services. The Office of Valuation Services provides credible, timely, and efficient valuation services to ensure public trust in Federal real property transactions.

Finally, based on an initial review of the bill and the legislative map, the exact lands proposed for exchange, including total acreages, are somewhat unclear. We would welcome the opportunity to create a legislative map for the purposes of this bill that reflects land status data and more clearly identifies which lands would be exchanged.

Conveyances to Washington County & the Washington County Water Conservancy District (Section 4)

Section 4(a) of the bill directs the BLM to convey at no cost approximately 19,000 acres of public lands within the SRMA to Washington County, Utah, for use as an open OHV riding area, subject to valid existing rights. Washington County is required to pay all survey costs and other administrative costs associated with the conveyance, and to release the United States from liability for any injury or damage that may arise from uses carried out on the land prior to the conveyance. Before this land is conveyed to Washington County, sections 4(g) and 4(i) of the bill require the BLM to issue rights-of-way for water and transmission infrastructure to the Washington County Water Conservancy District (WCWCD). Under section 4(h) of the bill, the BLM is also required to convey to the State or the WCWCD approximately 215 acres of public lands for the construction, operation, maintenance, and repair of the Hurricane Cliffs Afterbay water storage facility.

As discussed above, the Department has previously supported legislated, no-cost public purpose conveyances if they meet standards under the R&PP Act and are determined to be appropriate

for transfer out of Federal ownership. The Department notes that the lands to be conveyed under section 4(a) appear to include the entirety of the SRMA's Open OHV Area, which is popular with the public and has substantial recreation use. The BLM has invested more than \$120,000 in recent years at this site to improve infrastructure (such as boundary and trail signage and restroom facilities), enhance road access, and support free public access for casual use. The Department is concerned that this section as currently drafted could result in the conveyed lands being used for purposes incompatible with cross-country OHV travel, including the construction of fire stations, municipal buildings, and other public facilities consistent with the R&PP Act. This could result in a significant reduction in the public lands available for this important recreational activity. In addition, the Department notes that this section could result in the State converting the conveyed lands area into a fee site, potentially limiting recreational access for members of the public.

Visitors to public lands enjoy countless types of outdoor adventure, and the BLM strives to provide unparalleled recreational experiences for the American people. The Department would like the opportunity to work with the sponsor and Subcommittee on language to improve the quality of outdoor recreation throughout the SRMA and to ensure that the Sand Mountain Open OHV Area in particular remains available to cross-country motorized recreation.

As with the exchange proposed in section 3 of the bill, it is unclear from the legislative map accompanying the bill exactly which lands are proposed for conveyance. We would welcome the opportunity to create a legislative map for the purposes of this bill that reflects land status data and more clearly identifies which lands would be conveyed. Finally, we understand that the Department of Justice would like to work with the Subcommittee to address a constitutional concern with some of the text in the bill.

Conclusion

Thank you for the opportunity to provide testimony on S. 837, the Southern Utah Open OHV Areas Act. The BLM is committed to supporting all types of outdoor recreation on America's public lands, and we look forward to working with the Subcommittee and Congress on this important issue. I would be happy to answer your questions.