Testimony of Ryan Brunner
President, National Association of State Trust Lands
South Dakota Commissioner of School and Public Lands
Presented to the House Subcommittee on National Parks, Forests and Public Lands
Legislative Hearing, H.R.244 - Advancing Conservation and Education Act
June 18, 2020

Chairwoman Haaland, Ranking Member Young, and Members of the Subcommittee, my name is Ryan Brunner and I am the South Dakota Commissioner of School and Public Lands and also the President of the National Association of State Trust Lands, formerly known as the Western States Land Commissioners Association. I thank the Subcommittee for conducting this hearing on the critical issue of how to resolve the land tenure issues between state school and institutional trust lands and federal land ownership. I am before you today to support HR 244, the Advancing Conservation and Education Act or "ACE" legislation. Our organization has worked on this proposal with a broad array of support for many years and we are hopeful this hearing will be the beginning of success this Congress.

The National Association of State Trust Lands ("NASTL") is comprised of 20 western, and some not so western, states who share the common mandate of managing trust lands on behalf of school children in our states on a bi-partisan basis. Upon statehood, our member states were entrusted with hundreds of millions of acres of lands and minerals to be managed specifically to provide funding for public education and other state institutions. Today, our member states manage over 515 million acres of lands, submerged lands, and minerals. To put this in perspective, 515 million acres is approximately three times the size of Texas. As a group, we are the second largest land manager in the nation, second only to the Federal Government. Since 1949, our Association has strived to improve the management of these lands on behalf of our beneficiaries. Currently, our combined trusts amount to over $140 billion dollars which generates over three billion dollars for public schools annually. Our members manage land for many purposes, including mineral and energy development, timber, agricultural production, commercial and residential development, open space, critical wildlife habitat, recreation, and several other uses that generate funds for public schools.

We have a saying in the west that "Good fences make good neighbors." However, the vast majority of the 515 million acres of lands and minerals that our member states currently manage by the nature of our statehood acts are interspersed or checkerboarded with federal lands throughout the West. We are challenged with how do we be good neighbors on lands that have no fences and sometimes no access or no water for livestock. When the West was settled there was no GIS technology, no Google Earth, no way to select lands that would fit into changing policy prescriptions 100 years later. Instead they were selected by legal land description leading to the checkerboard pattern we have today.

During early settlement in the Midwest from 1803 to 1858, states were granted one section per township. In the arid West, between 1859 and 1890, states were provided with two sections per township, and in the really arid West, meaning Utah, Arizona, and New Mexico, these states were granted four sections per township. Within the 11 most western states and Alaska where federal ownership is prevalent, these scattered sections are intertwined with lands managed by the Department of Interior and the U.S. Forest Service where land management mandates vary drastically from the legal mandates placed upon state land managers. Pursuant to our statehood enabling acts and state constitutional mandates, states are obligated to manage these lands with a single purpose—to generate revenue for public schools and state institutions. This creates a new challenge in how do we be a good neighbor when the federal government has mandated and the states have agreed that we manage our state trust lands to make money for education while also mandating the adjoining land to be managed for conservation, wilderness, or as a national monument.

According to the U.S. Supreme Court in *Andrus v. Utah*, "the school land grant was a 'solemn agreement' which in some ways may be analogized to a contract between private parties. The United States agreed to cede some of its land to the State in exchange for a commitment by the State to use the revenues derived from the land to educate the citizenry." However, because the settlement and privatization of federal lands largely came to an end with the passage of the Taylor Grazing Act in 1934, millions of acres of trust lands remain trapped within federal ownership. For almost a century, Congress has made decisions to reclassify federal lands with a wide range of management and policy prescriptions. With the Park Service having celebrated its 100th anniversary and as the country now appreciates 56 years of designated Wilderness, the mandate for school trust lands has remained constant. Federal actions and policy decisions over the decades have trapped millions of acres of school lands and minerals within National Parks, Wilderness areas, Wildlife Refuges, National Monuments and other federal designations. In order to keep the "solemn promise" to the school children of our states, we must craft effective tools to move these trapped state trust land and minerals from within constrictive federal ownership into appropriate locations where the generation of income is appropriate and acceptable. It is the only way we can be a good neighbor with each other.

Existing administrative and legislative solutions are costly, complicated, unpredictable, and horribly time consuming. Administrative land exchanges with agencies within the Department of Interior or with the U.S. Forest Service are no longer a feasible tool to complete exchanges between states and the Federal Government. The Department of Interior has implemented policies and guidelines that have made administrative exchanges nearly impossible to complete

in any reasonable time frame. Many of our member states can cite specific examples of administrative exchanges taking over a decade to complete. Frustrated with the administrative process, some states have turned to Congress to implement these exchanges. As the Committee is well aware, the congressional process is unpredictable, often expensive, and can still take years to complete even if there is broad support for a proposed exchange. The bottom line is that today we believe there are nearly two million acres of trust lands and minerals trapped within existing eligible conservation areas that are not benefitting our school children. We must fix this issue and our existing options for removing state lands from within federal conservation areas just do not work.

For several years, NASTL has been working with our member states, Members of Congress, and outside groups to craft a proposal that we believe will be an effective tool to allow states to efficiently remove their lands from inside federal conservation areas and relocate state ownership to locations that are more appropriate for the generation of revenue for schools and state institutions. HR 244, the Advancing Conservation and Education Act, reflects our proposal and will enhance federal conservation and management areas by eliminating the state-owned inholdings. HR 244 enjoys a broad spectrum of support from states, Governors and conservation organizations and Congress has held several hearings on this proposal. We believe it is time to enact this important legislation.

As a supplement to exchanges and purchases, HR 244 is similar to existing federal statutes (43 U.S.C. 851-852) that permit state "in lieu" selections of federal public lands. These statutes, originally codified as Revised Statutes 2275-2276, allow western land grant states to select federal lands in lieu of lands originally granted to the states that ended up not being available due to preexisting conveyances or federal special purpose designations. By way of example, if the federal government had created an Indian reservation or issued a homestead patent before a state's title to a particular state parcel had vested, the state was entitled to select an equal amount of available federal land in lieu of the lands that were lost (in lieu selections are often referred to as "indemnity" selections).

By creating new conservation designations that have prevented the states from utilizing school lands for their intended purposes, the United States has in a very real sense failed to live up to the promise of the statehood land grants. HR 244 will help rectify this situation by confirming the right of the states to relinquish state trust lands within federal conservation designations to the United States and select replacement federal lands outside such areas. This will allow the Federal Government to obtain unified ownership and management authority over areas deemed important for conservation management. It would also uphold the "bargain" struck by the United States in which these western states would be given useable land for the support of public schools and other public institutions.

The mechanism of relinquishment and selection has been utilized previously by Congress and in lieu selections are a regular activity of the Bureau of Land Management. Under HR 244, a state may relinquish all right and interest in state parcels that are trapped within an eligible federal conservation area and receive in lieu thereof, unappropriated public lands of equal value. This conveyance would entitle the states to select replacement lands from the unappropriated federal

public lands within the state utilizing the existing process for such selections set forth in 43 C.F.R. Part 2620 (2010). HR 244 guarantees that these transactions will be of equal value and will authorize the expedited valuation of low value lands. Additionally, the legislation provides for National Environmental Policy Act (NEPA) compliance as well as providing the Secretary with sufficient discretion to protect against transactions that are not in the public interest. Lastly, the legislation protects valid existing rights, including respecting existing mining claims and grazing leases.

In conclusion, it is important to note that HR 244 is not a proposal for the disposition of the federal public land base, but rather a mechanism for the United States to acquire state trust lands with high conservation values, while timely and equitably compensating the states for the same through the selection of replacement lands. The U.S. Supreme Court has clearly held that the original purpose of the in lieu selection process was to give the states the benefit of the bargain struck at statehood – if lands were not available to the states for educational purposes, the states could select replacement lands. Existing and proposed conservation designations on federal lands have the effect of depriving the western states of the ability to use granted trust lands for their original purpose – funding public education. HR 244 promotes conservation while giving the states the benefit of their statehood bargain with the United States.

We thank the Subcommittee for your attention to this important matter and request swift action on HR 244 so that our member states and the federal government can work together to be good neighbors and promote conservation while funding education. Thank you for the opportunity to testify and I would be happy to answer any questions.

Ryan Brunner
