Statement of
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House Natural Resources Committee
Subcommittee on Federal Lands
H.R. 4579, Utah Test and Training Range Encroachment Prevention and Temporary Closure Act
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Thank you for the opportunity to present testimony on H.R. 4579, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act, which would allow the U.S. Air Force (USAF) to periodically use and close to public access approximately 703,621 acres of public lands ("shared use area") surrounding the Utah Test and Training Range (UTTR) in Box Elder, Juab, and Tooele Counties, Utah. The Administration supports the appropriate and responsible use of public lands for military purposes. While we believe that the bill's concept of short, periodic closures would serve the public interest better than the alternative of complete withdrawal, reservation, and closure of the lands at issue, the Administration opposes several provisions in the bill that would prevent the effective management of these lands. We would like the opportunity to work with the Subcommittee and Representative Stewart to address these significant concerns.

H.R. 4579 would also direct the exchange of approximately 70,650 acres of State-owned school trust land and approximately 13,886 acres of State-owned school trust mineral estate in Box Elder, Juab, and Tooele Counties, Utah, for approximately 98,253 acres of public lands in Beaver, Box Elder, Millard, Juab, and Tooele Counties, Utah. The Administration supports the completion of major land exchanges that further the public interest, consolidate ownership of scattered tracts of land to make them more manageable, and enhance resource protection. The Administration also supports the concept of this particular exchange, which would make management of the proposed shared use area more efficient during periodic closures. We have several concerns with the land exchange provisions in this bill, however. For example, some of the public lands proposed for exchange with the State contain a number of important resources and uses, including general habitat for the Greater Sage-Grouse, a historic mining district with several sites eligible for inclusion on the National Register of Historic Places, and lands withdrawn for public water reserves. We would like to work with the Subcommittee and the sponsor to resolve these concerns.

Finally, H.R. 4579 would recognize the existence and validity of certain unsubstantiated claims of road rights-of-way in Box Elder, Juab, and Tooele Counties, Utah, and require the conveyance of easements across Federal lands for the current disturbed widths of these purported roads plus any additional acreage the respective counties determine is necessary. The resolution of these disputed claims is not necessary for the management of the periodic closures around the UTTR. For this and many other reasons, the Administration strongly opposes the resolution of these right-of-way claims in the manner laid out in this bill.

Background

Public Land Withdrawals

Public lands are managed by the Department of the Interior (DOI) through the Bureau of Land Management (BLM). Public land withdrawals are formal lands actions that set aside, withhold, or reserve public land by statute or administrative order for public purposes. Withdrawals are established for a wide variety of purposes, e.g., power site reserves, military reservations, administrative facilities, recreation sites, national parks, reclamation projects, and wilderness areas. Withdrawals are most often used to preserve sensitive environmental values and major Federal investments in facilities or other improvements, to support national security, and to provide for public health and safety. Withdrawals of public lands for military use require joint actions by DOI and the Department of Defense (DoD). DoD has a number of installations, training areas, and ranges that are located partially or wholly on temporarily or permanently withdrawn public lands. Many of these withdrawals support installations that are critical to the readiness of our country's Armed Forces. Nationwide, approximately 16 million acres of public lands are currently withdrawn for military purposes.

Utah Test & Training Range

The UTTR is a military testing and training area located in Utah's West Desert, approximately 80 miles west of Salt Lake City, Utah. The lands in this area are principally salt desert shrub lands located within the valley bottoms of the Great Basin. Prominent features surrounding the UTTR include the Bonneville Salt Flats, the Great Salt Lake, and the Pony Express and Emigrant Trails. The Fish Springs National Wildlife Refuge, located south of the UTTR and adjacent to Dugway Proving Ground, is an example of the springs and wetlands that sporadically occur in this desert landscape.

Most of the lands that comprise the UTTR – 1,690,695 acres – are public lands withdrawn between 1940 and 1959 for use by the Armed Forces. According to the USAF, the range contains the largest block of overland contiguous special use airspace (approximately 12,574 square nautical miles measured from surface or near surface) within the continental United States. It is divided into North and South ranges, with Interstate 80 dividing the two sections. The UTTR's large airspace, exceptionally long supersonic corridors, extensive shoot box, large safety footprint area, varying terrain, and remote location make it an important asset for both training and test mission capabilities.

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

Under FLPMA, 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. FLPMA provides the

BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Among other purposes, land exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. The BLM conducts land exchanges pursuant to Section 206 of FLPMA, which provides the agency with the authority to undertake such exchanges, or when given specific direction by Congress. 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 Administration notes that the process of identifying lands as potentially available for exchange does not include the clearance of impediments to disposal or exchange, 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 clearance must occur before the exchange can be completed.

The BLM manages 22.8 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 (P.L. 111-53), the Utah West Desert Land Exchange Act of 2000 (P.L. 106-301), and the Utah Schools and Land Exchange Act of 1998 (P.L. 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.

Revised Statute 2477

Revised Statute (R.S.) 2477 was enacted as part of the Mining Law of 1866 to promote the settlement and development of the West. R.S. 2477 was the primary authority under which many existing State and county highways were constructed and operated over Federal lands and did not require notification to the United States because the roads were automatically conveyed as a matter of law once certain conditions were met. In 1976, Congress repealed R.S. 2477 through the passage of FLPMA as part of a national policy shift to retain public lands in Federal ownership unless disposal "will serve the national interest." The repeal of R.S. 2477 did not affect valid rights in existence when Congress passed FLPMA.

Between 2005 and 2012, the State of Utah and 22 counties in Utah filed 31 lawsuits under the Quiet Title Act, alleging title to over 12,000 claimed R.S. 2477 rights-of-way. All of the cases are in Federal district court in Utah, and all but two are currently pending. Included in the pending lawsuits are two filed by Juab County, involving 671 claimed R.S. 2477 rights-of-way, one filed by Box Elder County involving 191 claimed rights-of-way, and one filed by Tooele County involving 692 claimed rights-of-way.

H.R. 4579, Utah Test and Training Range Encroachment Prevention and Temporary Closure Act

Utah Test & Training Range (Title I)

Title I of H.R. 4579 would authorize the USAF to periodically use and close to public access approximately 703,621 acres of public lands ("shared use area") surrounding the UTTR in Box Elder, Juab, and Tooele Counties, Utah. (Note, the text of the bill mentions 625,643 acres of BLM-managed land, but the BLM calculates that the legislative map's "Proposed Exchange Expansion Areas" actually total 703,621 acres.) Specifically, the bill directs the Secretary of the Interior and the Secretary of the Air Force to enter into a Memorandum of Agreement (MOA) that provides for continued management of the shared use area by the BLM and for limited use by the USAF.

Under the legislation, a draft MOA would be required within 90 days of enactment of the bill, followed by a 30-day public comment period. Also under the bill, the MOA would have to be finalized within 180 days of enactment. The lands in the shared use area would remain eligible for county payments under the DOI Payments in Lieu of Taxes (PILT) program, but would be subject to use by the USAF. These federal payments to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries are not generally made for military installations. With respect to civilian land uses, the BLM Resource Management Plans in existence on the date of enactment would continue to apply to the shared use area, and the BLM would be required to take over administration of existing grazing leases and permits on lands currently owned by the State of Utah that would become Federal land under the land exchange provisions of the bill.

The bill would allow any BLM-issued grazing leases or permits in effect on the date of enactment and covering the shared use area to continue at current stocking levels, subject to reasonable increases or decreases and reasonable regulations, policies, and practices. In addition, the legislation would withdraw the shared use area from all forms of appropriation under the public land, mining, mineral leasing, and geothermal leasing laws. Valid existing rights would be preserved. H.R. 4579 would also allow the Secretary of the Air Force to prevent the Secretary of the Interior from issuing any new use permits or rights-of-way in the shared use area if the Secretary of the Air Force were to find such uses to be incompatible with current or projected military requirements. The USAF would be responsible to take action if any USAF activity causes a safety hazard on the public lands.

Under Title I, the Secretary of the Air Force could close the shared use area to the public for up to 100 hours annually, subject to various time and seasonal limitations, public notification requirements, and consultation with a community resource group to be established within 60 days of enactment of the bill. The community resource group, which would be exempt from the provisions of the Federal Advisory Committee Act (FACA), would include representatives of the USAF, Indian Tribes in the vicinity of the lands at issue, local county commissioners, recreational groups, livestock grazers, and the Utah Department of Agriculture and Food. The bill would also release the United States from liability for any injury or damage suffered in the course of any authorized nondefense-related activity on the specified public lands.

Analysis

The Administration believes that the bill's concept of short, periodic closures would serve the public interest better than the alternative of complete withdrawal, reservation, and closure of the shared use area, but we oppose several provisions in the bill because they would prevent the effective management of these lands. These provisions include the grant of USAF authority to prevent the issuance of new use permits and rights-of-way in the shared use area; limitations on resource management planning; treatment of current land uses; timeframes for completing actions required under the bill; permanent withdrawal of the shared use area from appropriation under various laws; and more technical matters.

The Administration opposes the provision that would allow the USAF to preclude the approval of any new use authorizations or rights-of-way in the shared use area because we believe that current processes sufficiently protect USAF interests. This is particularly true with respect to future rights-of-way that may be needed for electricity transmission projects through this area. In the past, consultation and cooperation between the BLM and the USAF have resulted in conditions and stipulations on new uses. For example, as part of the approval process for the Kiewit Mine Project in Tooele County, the BLM placed height restrictions on tailings piles and required intermittent shutdowns of mining and blasting to accommodate USAF testing events approximately eight times per year. The Administration believes that the USAF and DOI could continue to resolve any resource use conflicts through consultation and interdepartmental cooperation.

The Administration also opposes any limits on the BLM's ability to amend or revise its Resource Management Plans (RMPs) with respect to lands in the shared use area. Since BLM RMPs form the basis for every action and approved use on the public lands, they are periodically revised as changing conditions and resource demands require. Any limits on the planning process would undermine the collaborative process by which local, state, and tribal governments, the public, user groups, and industry work with the BLM to identify appropriate multiple uses of the public lands. Furthermore, the shared use area contains major recreational sites that are enjoyed by the public and have been developed at significant expense. At a minimum, access to these sites would be discontinued when the shared use area is closed. In addition, the Administration notes that many of the timeframes outlined in the bill are not feasible, especially given the detailed coordination that would be necessary to draft and finalize the MOA.

The withdrawal under the bill would prohibit many uses that may not be incompatible with military requirements. Currently, the BLM has discretion on whether and under what conditions to authorize these activities. The BLM and USAF currently work together to ensure compatibility between these types of resource use activities and national defense requirements. The Administration believes that this cooperative arrangement should continue.

Finally, the Administration believes that there should be an opportunity for periodic review of the withdrawal and shared use arrangement established under the bill, and provisions related to termination of the withdrawal and the shared use arrangement if they were to become unnecessary. Furthermore, while the USAF would be responsible for implementing the closures, it is unclear how the 703,621-acre shared use area could be reliably closed for only hours at a time.

We look forward to working with the Subcommittee and the sponsor to address these concerns.

Land Exchange (Title II)

Title II of the bill would require the exchange of approximately 70,650 acres of State-owned land and 13,886 acres of State-owned mineral estate in Box Elder, Juab, and Tooele Counties, Utah, for 98,253 acres of public lands in Beaver, Box Elder, Millard, Juab, and Tooele Counties, Utah. The purpose of many of these exchanges would be to consolidate ownership of scattered State parcels within the shared use area discussed above, to transfer a number of public lands to the State for economic development, and – in the event that the public lands are of greater value than the State parcels – to equalize the exchange by acquiring additional environmentally sensitive State lands.

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 State must convey additional parcels of trust land in Washington County, Utah. One parcel of this State land, located near the Arizona-Utah border, contains critical habitat for the Federally-endangered Holmgren milk-vetch and is within the West-15 Preserve established by the U.S. Fish and Wildlife Service in 2006 for preservation of the plant species.

The remainder of the potential State parcels are located within the wilderness areas or National Conservation Areas in Washington County, Utah, established by the Omnibus Public Land Management Act of 2009 (P.L. 111-11). These additional parcels must be conveyed in a specific order until their appraised value matches that of the public lands proposed for exchange. If the value of the State lands proposed for exchange exceeds the value of the public lands, however, the Secretary of the Interior must make a cash equalization payment to the State, in accordance with the land exchange provisions of FLPMA.

Analysis

The Administration supports the completion of major land exchanges that consolidate ownership of scattered tracts of land, thereby easing BLM and State land management tasks and enhancing resource protection. We have several concerns with the land exchange provisions in this bill, however, and 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, which include general habitat for the Greater Sage-Grouse, a historic mining district with several sites eligible for the National Register of Historic Places, wildlife guzzlers, portions of active BLM grazing allotments, off-highway vehicle recreational trails and access points, various utility and railroad rights-of-way, withdrawals for public water reserves, and lands withdrawn for a Solar Energy Zone. The Administration 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.

Furthermore, the Administration 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. The Administration strongly supports these important review requirements because they provide for public engagement, opportunities to consider environmental and cultural impacts, and mitigation opportunities, and they help to ensure that unknown or unforeseen issues are not overlooked. As a result, the Administration would like the opportunity to work with the Subcommittee and the sponsor on language clarifying that these exchanges are subject to all parts of the FLPMA Section 206 land exchange process and other important environmental laws.

In addition, the public lands proposed for exchange exceed the State lands by more than 12,000 acres, and more than 14,000 of the State's acreage is mineral estate that will likely be nominal in value. This leads to an apparent value difference from the onset of the exchange. The addition of State land to equalize values would require the completion of additional appraisals near the end of the exchange, making it nearly impossible to meet the 1-year time frame directed under the bill. This would cause the prior appraisals to become outdated.

On the other hand, the Administration notes that if the public lands are of lower value than the State lands, any cash equalization payment made by the Secretary of the Interior to the State would be capped at 25 percent of the total value of the lands transferred out of Federal ownership, as required by the bill's reference to Section 206(b) of FLPMA. Even with this limitation, however, such a payment could significantly affect the BLM's other resource priorities. It is typical in administrative exchanges between governmental entities that all costs of the exchange, including but not limited to surveys and clearances, are split equally between the two parties. We trust that is the intention of H.R. 4579, but it is not specified and we recommend that this be made clear.

The Administration would like the opportunity to work with the Subcommittee and the sponsor on language ensuring adequate time for conducting appraisals, boundary modifications to reduce the need for a potential cash equalization payment, and amendments to provide consistency with FLPMA and other laws and to address other minor and technical concerns. Furthermore, the bill and its provisions are open-ended with no sunset date. To avoid unexchanged lands being held indefinitely without any certainty as to their status, we believe a 10-year sunset provision would be reasonable.

Additionally, the Administration opposes an appraisal taking into account the encumbrance created by mining claims for purposes of determining the value of the parcel of Federal land. It is BLM policy that in instances in which Federal land would be conveyed subject to mining claims, the appraisal would disregard the presence of the claims. Finally, the Administration is 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 within DOI by the Office of Valuation Services.

Highway Rights-of-Way (Title III)
Title III of H.R. 4579 would recognize the existence and validity of certain claims of road rights-of-way in Box Elder, Juab, and Tooele Counties, Utah. It would also require conveyance to the respective county and the State of Utah as joint tenants with undivided interests of easements across Federal lands for the current disturbed widths of the purported roads plus any additional acreage the respective county determines is necessary for maintenance, repair, signage, administration, and use.

Analysis
The Administration strongly opposes Title III for the following reasons. First, it is difficult for the BLM to evaluate the potential impacts of Title III's validation of claimed roads on the public lands based only on the official transportation maps for Box Elder, Tooele, and Juab counties referenced in the bill, which we have not yet received for review. It is unclear whether purported roads included on these maps coincide with the State and county claims included in the pending Quiet Title Act lawsuits, but other maps provided to the BLM show that they do. It is also unclear whether the official maps include additional purported roads that would be recognized under this bill. In order to fully evaluate the impacts of H.R. 4579 on the public lands, copies of these maps should be made available for analysis.

Second, regardless of whether the purported roads included on the official maps referenced in H.R. 4579 fully coincide with the State's and counties' pending R.S. 2477 claims, the Administration does not believe that R.S. 2477 rights-of-way asserted by State and county governments should be automatically recognized as valid and existing rights-of-way. In establishing the validity of an R.S. 2477 claim through the judicial process, the burden of proof is on the claimant to demonstrate that they have satisfied the applicable legal standard.

In contrast, H.R. 4579 would recognize all county assertions as valid and establish perpetual rights over public lands without applying that legal test. We are also troubled that the bill would give the counties complete discretion to decide whether additional Federal land outside of the current disturbed width is necessary for maintenance or other purposes. H.R. 4579 would not limit the widths or acreages that could be claimed as easements, and it is ambiguous as to whether the Secretary of the Interior would retain the authority to impose reasonable stipulations and conditions on these easements.

Such reasonable stipulations and conditions, which the BLM can impose under its current right-of-way authority under Title V of FLPMA, may be appropriate, for example, to ensure the continued management and protection of sensitive and critical resources within the area of these claimed highways. Courts have determined that BLM can similarly reasonably regulate R.S. 2477 rights-of-way. Therefore, while we support the identification of reasonable alternatives to Federal court adjudication of claimed R.S. 2477 rights-of-way, the Administration strongly opposes this bill's approach to these claims.

Third, Title III would likely validate many claimed rights-of-way that cross areas of environmental significance. For example, the BLM is aware of approximately 35 claimed rights-of-way located in the Deep Creeks, North Stansbury, Fish Springs, and Rockwell Wilderness Study Areas (WSAs), and eight claimed rights-of-way located in the Cedar Mountain Wilderness

Area, which was designated in 2006 (P.L. 109-163). Furthermore, recognizing the validity of claimed rights-of-way that have not yet been litigated would limit the BLM's ability to manage travel and transportation in an approximately 814,000-acre area designated as priority sage-grouse habitat.

Conclusion

Thank you for the opportunity to provide testimony on H.R. 4579, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act. The Administration is committed to supporting military missions and training needs, while protecting natural resources and other traditional uses of the public lands. I would be happy to answer your questions.