AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# SCHOOL TRUST LANDS OWNERSHIP WITHIN FEDERAL CONSERVATION AREAS

## OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENTAL REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

Tuesday, September 10, 2013

**Serial No. 113–40**

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PRINTING OFFICE

82–947 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
PETER A. DEFAZIO, OR, *Ranking Democratic Member*

Don Young, AK
Louie Gohmert, TX
Rob Bishop, UT
Doug Lamborn, CO
Robert J. Wittman, VA
Paul C. Broun, GA
John Fleming, LA
Tom McClintock, CA
Glenn Thompson, PA
Cynthia M. Lummis, WY
Dan Benishek, MI
Jeff Duncan, SC
Scott R. Tipton, CO
Paul A. Gosar, AZ
Raúl R. Labrador, ID
Steve Southerland, II, FL
Bill Flores, TX
Jon Runyan, NJ
Mark E. Amodei, NV
Markwayne Mullin, OK
Chris Stewart, UT
Steve Daines, MT
Kevin Cramer, ND
Doug LaMalfa, CA
Jason T. Smith, MO

Eni F. H. Faleomavaega, AS
Frank Pallone, Jr., NJ
Grace F. Napolitano, CA
Rush Holt, NJ
Raúl M. Grijalva, AZ
Madeleine Z. Bordallo, GU
Jim Costa, CA
Gregorio Kilili Camacho Sablan, CNMI
Niki Tsongas, MA
Pedro R. Pierluisi, PR
Colleen W. Hanabusa, HI
Tony Cárdenas, CA
Steven A. Horsford, NV
Jared Huffman, CA
Raul Ruiz, CA
Carol Shea-Porter, NH
Alan S. Lowenthal, CA
Joe Garcia, FL
Matt Cartwright, PA
*Vacancy*

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Legislative Counsel*
Penny Dodge, *Democratic Staff Director*
David Watkins, *Democratic Chief Counsel*

---

## SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION

ROB BISHOP, UT, *Chairman*
RAÚL M. GRIJALVA, AZ, *Ranking Democratic Member*

Don Young, AK
Louie Gohmert, TX
Doug Lamborn, CO
Paul C. Broun, GA
Tom McClintock, CA
Cynthia M. Lummis, WY
Scott R. Tipton, CO
Raúl R. Labrador, ID
Mark E. Amodei, NV
Steve Daines, MT
Kevin Cramer, ND
Doug LaMalfa, CA
Jason T. Smith, MO
Doc Hastings, WA, *ex officio*

Niki Tsongas, MA
Rush Holt, NJ
Madeleine Z. Bordallo, GU
Gregorio Kilili Camacho Sablan, CNMI
Pedro R. Pierluisi, PR
Colleen W. Hanabusa, HI
Steven A. Horsford, NV
Carol Shea-Porter, NH
Joe Garcia, FL
Matt Cartwright, PA
*Vacancy*
Peter A. DeFazio, OR, *ex officio*

---

# CONTENTS


| | Page |
|---|---|
| Hearing held on Tuesday, September 10, 2013 | 1 |
| Statement of Members: | |
| Bishop, Hon. Rob, a Representative in Congress from the State of Utah | 1 |
| Prepared statement of | 2 |
| Grijalva, Hon. Raúl M., a Representative in Congress from the State of Arizona | 2 |
| Prepared statement of | 3 |
| Statement of Witnesses: | |
| Baier, Maria, Chief Executive Officer, Sonoran Institute | 12 |
| Prepared statement of | 13 |
| Donaldson, Timothy, School Children's Trust Director, Utah State Office of Education | 4 |
| Prepared statement of | 5 |
| Opp, Kathy, President, Western State Land Commissioners Association and Deputy Director, Idaho Department of Lands | 6 |
| Prepared statement of | 7 |
| Additional Material Submitted for the Record: | |
| Abrams, Mary M., Ph.D., Director, Oregon Department of State Lands, Prepared statement of | 22 |
| Ogsbury, James D., Western Governors' Association, Letter submitted for the record | 24 |

# OVERSIGHT HEARING ON SCHOOL TRUST LANDS OWNERSHIP WITHIN FEDERAL CONSERVATION AREAS

---

**Tuesday, September 10, 2013**

**U.S. House of Representatives**

**Subcommittee on Public Lands and Environmental Regulation**

**Committee on Natural Resources**

**Washington, DC**

---

The subcommittee met, pursuant to notice, at 11:05 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Subcommittee] presiding.

Present: Representatives Bishop, McClintock, Lummis, Daines, Cramer, Grijalva, and Garcia.

Mr. BISHOP. All right, the committee will come to order, even though you are not doing anything out there, anyway. We notice the presence of a quorum who is here.

The Subcommittee on Public Lands and Environmental Regulation is meeting today to hear testimony on school trust land ownership and the relationship with Federal conservation areas.

## STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. BISHOP. With the approval of the committee, I am going to put most of my statement in its written form in there. I just want to highlight the fact that we are talking about States' trust lands that are scattered out especially in the West, where we have millions of acres, but many of them are locked up in areas in which we cannot get to them, which they cannot be used, where their value is not as significant as if they were actually blocked together into a usable pattern. Western management is extremely significant to that. It has taken us a long time to try and move those things forward.

In Utah, for example, we passed a law trying to speed this process up in 2009. That fast track still hasn't come into effect. So if our fast-track effort is taking a half-a-decade we realize that something is terribly wrong with the system and the process, and it needs to be fixed.

So, I appreciate inviting the witnesses who have come here, who I think will tell us that there is possibly a way of doing it, if once again we all are with patience, with good will, try to work in a collaborative effort to find the best solution to how we find these lands and how we use these lands.

So, I appreciate the witnesses who are with us. I understand one of our witnesses has missed a connecting flight, so may or may not actually show up at some time. But we thank you for your efforts to travel here.

With that, I wish the rest of my statement to be placed into the record, and I will turn to Representative Grijalva, first of all, for opening statements.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HONORABLE ROB BISHOP, CHAIRMAN, SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION

The Subcommittee on Public Lands and Environmental Regulation is meeting today to hear testimony on school trust land ownership and the relationship with Federal conservation areas. State trust lands, granted to the Western States at statehood, are to be managed for the benefit of public education. The scattered, checkerboard-like pattern of State trust lands places many parcels in restrictive federally designated conservation areas, complicating management and severely limiting the land's value for the beneficiaries. Nearly 1,000,000 acres of State trust lands are inaccessible because they are located within these restrictive federally designated areas.

Consolidating State trust lands in high value, mineral-rich, and accessible areas should be a priority for this committee, the entire Congress, the administration, and non-governmental stakeholders. Trust land consolidation boosts public education funding, creates jobs and economic diversity for rural communities, and allows Federal land managers to oversee cohesive landscapes. This type of win-win-win rarely exists in western land management topics.

The existing process to consolidate trust lands is broken. Despite the win-win scenarios created by consolidations, land exchanges are too costly, too timely, and overly bureaucratic. In Utah, a **congressional-directed** land exchange authorized in 2009 has yet to be completed. Congress directed this exchange in order to bypass the sluggish administrative route. If the fast-track option takes more than 4 years, it's safe to assume that all aspects of the system—both congressional and administrative—are flawed and reform is needed.

Western land management has a profound impact on families, local communities, and future generations. Congress, land managers, and stakeholders must work together to develop land management strategies that make sense for all involved. Successful land management strategies can only be achieved when land management agencies, stakeholders, and elected officials work together, like we are here today in this open meeting. No single agency, interest, or constituency should trump another. The stakes are too high to ignore other interests or to be so rigid in one's mission as to preclude long-term development opportunities. Win-win scenarios can be achieved, but they will require an openness to collaborate, think differently, and to break the bureaucratic tendencies of the past.

---

## STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Mr. Chairman, and thank you for holding the hearing. I want to also thank the witnesses for taking time out of their busy schedules to testify today.

As a former school board member, school trust lands are very important, as a source of revenue, in trying to meet the overall budgetary and curricular demands that any school district has anywhere, and particularly in the West. And I am going to hear about a proposal today that allows States to trade trust lands surrounded by Federal land for other unappropriated Federal land. States and education proponents are clear benefactors of this proposal. And, if done right, a proposal like this could find support among conservation groups and Federal land managers.

As an advantage to consolidating Federal land, it helps land managers be able to focus their resources on concentrated areas, and states will be able to find new and more effective, efficient ways to fund public education. I think the whole proposal is about getting the details right.

And, moving forward, we have to have—we have to ensure that land exchanges are transparent and open, following established Federal standards, and not taking unnecessary shortcuts. We do not want to shortcut or sideline any commitment in order to make this work. Environmental review and protected endangered species cannot be tossed out with the bathwater.

I am looking forward to hearing from our witnesses. And, like I said, if done correctly, this can be a win-win for everybody involved.

With that, let me yield back, and thank you, Mr. Chairman.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HONORABLE RAÚL M. GRIJALVA, RANKING MEMBER, SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION

Thank you, Mr. Chairman, for holding this hearing. I would also like to thank the witnesses for taking the time out of their schedules to testify today.

School trust lands are an important source of revenue for public education in many States, especially across the West. I started my political career as a school board member and understand how it important it is to make sure our schools have the resources they need to meet the growing challenges of educating our Nation's youth.

Congress granted States entering the union trust land with the sole purpose of providing revenue for public education. Since then, a lot has happened. We've established national parks and other Federal conservation areas, protecting some of the most important aspects of our national and cultural heritage.

Our public lands are visited by millions of Americans each year and outdoor recreation supports over 6 million jobs across the county. Our conservation successes are a major economic engine for the country and a source inspiration for the millions of annual visitors, but there are still challenges we have to address.

Today we will hear about a proposal to allow States to trade trust land surrounded by Federal land for other, unappropriated Federal land. States and education proponents are the clear benefactors of this proposal, but if done right, a proposal like this could also find support with conservation groups and Federal land managers. Consolidating ownership of Federal lands can be a win-win that will save taxpayer money and improve conservation efforts.

Land managers will be able to focus their resources on concentrated areas and States will be able to find new and more efficient ways to fund public education.

Getting the details right is paramount. Moving forward, we have to ensure that land exchanges are transparent and open, following established Federal standards and not taking unnecessary shortcuts. We do not want to shortcut or sideline any other commitments in order to make this work. Environmental review and protected endangered species cannot be tossed out with the bathwater.

I look forward to hearing from our witnesses and starting this important conversation.

---

Mr. BISHOP. Thank you. Under the rules, obviously, opening statements are required by the chairmen. The subcommittee and full committee, any other Member who wishes to have an opening statement can be part of the record if given to our staff by the close of business today.

I'd like to welcome you here. We will turn to our first panel, if we could. And we welcome Tim Donaldson, who is the School Children's Trust Director from the Office of Education in the State of Utah; Kathy Opp, who is the Deputy Director of Department of Lands in the State of Idaho; and Maria Baier?

Ms. BAIER. Baier.

Mr. BISHOP. Baier. Got the German right the first time. OK. Maria Baier, who is the Chief Executive Officer of the Sonoran Institute. We welcome all of you. We appreciate you traveling this distance to give the testimony that you have today. Your written

testimony is, obviously, part of the record. We will ask for you to add your oral testimony on top of that, and then be open for questions afterwards.

For those of you who have not been here before, the oral testimony is limited to 5 minutes. We are on a time line. There is a time when we want to end. So we would ask you to watch the clock ahead of you diligently. When the light is green on there, you still have plenty of time. When it is yellow, you don't have a whole lot of time. You have got 1 minute left. Hustle it up, because when it is red I want you to stop, even if you are in mid-sentence. And we will apply that same standard to us, when we ask questions, as well.

So, let me turn to the panel. We thank you for being here.

Mr. Donaldson, we are ready for your opening statement.

**STATEMENT OF TIMOTHY DONALDSON, SCHOOL CHILDREN'S TRUST DIRECTOR, UTAH STATE OFFICE OF EDUCATION**

Mr. DONALDSON. Thank you, Chairman, Ranking Member, and members of the subcommittee, my name is Tim Donaldson, and I am the School Children's Trust Section Director at the Utah State Office of Education. I thank the subcommittee for conducting this hearing on the critical issue of how to resolve the tensions between school trust lands and Federal land ownership. I am before you today to support this new idea to accommodate more effective school trust land management, and improve Federal conservation management.

Funding public education in Utah is one of our more intractable public policy problems. In Utah we have seen dramatic growth in funding for public education coming from the school land trust program. In the 2000–2001 school year, for example, 13 years ago, the school trust provided approximately $5 million for public education, which was less than 1/10 of 1 percent of the overall education budget. For the school year which just began, this 2013–2014 school year, the distribution from the school trust was over 37 million, which was over 1.2 percent of the overall public education budget. This is fast-growing money which has doubled in size approximately every 5 years.

It is also tax-free money, which makes it a gold mine for helping with the challenge of funding public schools in our State, a State which has the lowest per-pupil spending for public education in the country. With the uniquely large ratio of K through 12 students to taxpaying workers in Utah, the need is dire for us to maximize every public education funding resource that we have.

There are other Western States which provide for a significantly larger proportion of the public education budget through their school trust lands and corresponding permanent school funds. It is our belief in Utah that the school trust will be a big part of the solution as we work to more fully fund public education in the years and decades to come.

There have been decades of contention in Utah between public education advocates and Federal land management agencies, as hundreds of thousands of school trust land acres were captured in national parks, monuments, and other Federal conservation designated areas. Had this proposal, which is before you today, been

in effect then, the interest of public education would have been more fully valued, and tensions would have been diminished.

As a quick historical reminder, Thomas Jefferson was a critical early supporter of public education in America. And the school trust lands largely owe their existence to his vision. Jefferson envisioned a self-governing republic of educated, informed citizens enjoying the blessings of civilization and the arts, advancing scientific knowledge, and developing technology to enhance and enrich the way we all live our lives.

Finally, on a personal note, my wife is a first-grade teacher at a West Side school in Salt Lake County. Mrs. D, as her students call her, has 33 students in her classroom this year, including one student with autism, one student with Asperger's, and one student who is a refugee from Iraq. She does not have an aide. More school trust lands money would help provide for more teachers and more aides.

I see in here every night how challenging it is for our educators to fulfill the promise of our society and provide a high-quality public education to all of our students. We need to fully utilize every resource that we have to help fund public education. We need the tools in place to work through the inevitable land management conflicts in such a way that Jefferson's vision of lands held in trust to support public education can fully be realized.

I thank the subcommittee for your attention to this important matter, and we look forward to working with you as legislation is crafted that can gain broad, bipartisan support, and ultimately be enacted to help better fund the education of our children.

Thank you for the opportunity to testify, and I would be happy to answer any questions.

[The prepared statement of Mr. Donaldson follows:]

PREPARED STATEMENT OF TIMOTHY DONALDSON, SCHOOL CHILDREN'S TRUST DIRECTOR, UTAH STATE OFFICE OF EDUCATION

Chairman Bishop, Ranking Member Grijalva, and members of the subcommittee, my name is Tim Donaldson and I am the Director of the School Children's Trust Section at the Utah State Office of Education. I thank the subcommittee for conducting this hearing on the critical issue of how to resolve the tensions between school trust lands and Federal land ownership. I am before you today to support this new idea to accommodate more effective school trust land management and improved Federal conservation management.

In Utah we have seen dramatic growth in funding for public education coming from the School LAND Trust Program. In the 2000–2001 school year, the school trust provided approximately $5 million for public education, which was less than 1/10 of 1 percent of the overall public education. For the school year which just began, the 2013–2014 school year, the school trust distribution was over $37 million, which represented 1.2 percent of the overall public education budget. This is fast-growing money, which has doubled in size approximately every 5 years. It is also tax-free money, which makes it a gold mine for helping with the challenge of funding public schools in our State, a State which has the lowest per-pupil spending for public education in the country. With a uniquely large ratio of K–12 students to taxpaying workers in Utah, the need is dire for us to fully maximize every public education funding resource that we have.

There are other Western States which provide for a significantly larger proportion of the public education budget through their school trust lands and corresponding permanent school funds. It is our belief in Utah that the school trust will be a big part of the solution as we work to more fully fund public education in the years and decades to come. There have been decades of contention in Utah between public education advocates and Federal land management agencies, as hundreds of thousands of school trust land acres were captured in national parks, monuments, and other Federal conservation designations. Had this proposal which is before you

today been in effect then, the interests of public education would have been more fully valued and tensions would have been diminished.

Thomas Jefferson was a critical early supporter of public education in America, and the school trust lands largely owe their existence to his vision. Jefferson envisioned a self-governing republic of educated, informed citizens enjoying the blessings of civilization and the arts, advancing scientific knowledge, and developing technology to enhance and enrich the way we all live our lives.

My wife is a first grade teacher at a west-side school in Salt Lake County. Ms. Donaldson has 33 students in her classroom this school year, including one student with Autism, one student with Asperger's, and one student who is a refugee from Iraq, and she does not have an aide. More school trust lands money would help provide for more teachers and aides. I see and hear every night how challenging it is for our educators to fulfill the promise of our society and provide a high-quality public education to all of our students. We need to fully utilize every resource that we have to fund public education. We need the tools in place to work through the inevitable land management conflicts in such a way that Jefferson's vision of lands held in trust to support public education can be fully realized.

We thank the subcommittee for your attention to this important matter and we look forward to working with you as legislation is crafted that can gain broad bipartisan support and ultimately be enacted to help better fund the education of our children. Thank you for the opportunity to testify and I would be happy to answer any questions.

---

Mr. BISHOP. Thank you. We will turn now to Ms. Opp.

Welcome from the Gem State. Once again, 5 minutes for your opening statement. We are happy to have you.

**STATEMENT OF KATHY OPP, PRESIDENT, WESTERN STATE LAND COMMISSIONERS ASSOCIATION AND DEPUTY DIRECTOR, IDAHO DEPARTMENT OF LANDS**

Ms. OPP. Good morning, Chairman Bishop, Ranking Member Grijalva, and members of the subcommittee. My name is Kathy Opp, and I am the current President of the Western State Land Commissioners Association, as well as being Deputy Director for the Idaho Department of Lands. I thank this subcommittee for conducting this hearing this morning to examine a new tool, which is actually an old tool, for potentially resolving land tenure issues between State endowment trust lands and Federal land management.

The WSLCA is comprised of 23 Western States who share a common mandate for managing trust lands on behalf of our schoolchildren in each of our States. As a group, we are the second-largest land manager in the Nation, second only to the Federal Government. Currently, our combined educational trust funds amount to over $271 billion. And in 2012 we earned and distributed over $3.8 billion for public schools, primarily K through 12. Our members manage lands for multiple purposes, commercial and residential development, mineral and energy development, timber harvest, agriculture production, critical wildlife habitat, recreation, open space, and a myriad of other revenue-generating opportunities for our beneficiaries.

By nature of the statehood acts, the millions of acres that we received are interspersed with Federal land ownership in the West: 93 percent of current Federal ownership lies within 11 most western States and Alaska. Their Federal ownership comprises 52 percent of the land base. And in Idaho, for example, 62 percent of all the lands are owned by the Federal Government.

The inter-mingled lands that are owned by the Department of the Interior and the U.S. Forest Service have very different land

management mandates from the legal mandate that is placed upon State trust land managers. The States are obligated to manage endowment lands with undivided loyalty to a single purpose: to general revenue for public schools and our State institutions.

Existing administrative and legislative solutions to resolved mixed ownership is costly, complicated, and unpredictable. Federal policies and guidelines have made exchanges nearly impossible to complete in a reasonable timeframe. Many of our member States cite specific examples of such exchanges taking well over a decade. And the funding to purchase State trust lands in holdings has been eliminated due to ongoing concerns of fiscal responsibility.

So, the bottom line is that the existing options to remove State lands from within Federal conservation areas just don't seem to work effectively.

The WSLCA is proposing legislation similar to existing Federal statutes that permit in lieu selections of Federal public lands. The process, which was used at statehood, allowed the States to select Federal lands, in lieu of those that were already encumbered due to existing ownership at statehood, from designations like homesteads or an Indian reservation. Replacement lands would be chosen from unappropriated Federal public lands within the State.

We believe we have built a broad spectrum of support for our proposal, including the WGA, whose materials we submitted with testimony.

We are now turning to this committee to assist in crafting bipartisan legislation that will implement a satisfactory proposal.

In conclusion, it is important to note that the current proposal is not a proposal to dispose of the Federal public land base. Rather, it is 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 alternative selections.

Because the in lieu mechanism has worked previously by Congress, we don't believe it will be difficult to implement. Existing and proposed conservation designations on Federal lands which trap State endowment trust lands have the effect of depriving Western States of fulfilling our fiduciary duty to educate its citizenry. The proposed legislation promotes conservation, while giving the States the benefit of their statehood bargain with the United States.

I thank the committee for your attention to this issue and this matter, and we look forward to working with you to craft legislation to gain broad support and ultimately enact a better way to fund education for our children. Thank you for your time and opportunity to testify. I would be happy to answer any questions.

[The prepared statement of Ms. Opp follows:]

PREPARED STATEMENT OF KATHY OPP, PRESIDENT, WESTERN STATE LAND COMMISSIONERS ASSOCIATION AND DEPUTY DIRECTOR, IDAHO DEPARTMENT OF LANDS

Chairman Bishop, Ranking Member Grijalva, and members of the subcommittee, my name is Kathy Opp and I am the current President of the Western State Land Commissioners Association in addition to my duties as the Deputy Director of the Idaho Department of Lands. I thank the subcommittee for conducting this hearing to examine how to resolve the land tenure issues between State school and institutional trust lands and Federal land ownership. I am before you today to propose a new tool for States to more effectively manage our school trust lands and to improve the management of Federal conservation lands.

The Western States Land Commissioners Association ("WSLCA") is comprised of 23 western, and some not so western, States who share the common mandate of managing trust lands on behalf of school children in our States. These lands are managed on a bi-partisan basis, with the beneficiaries first and foremost to our mission. 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 447 million acres of public trust lands, endowed trust lands, submerged lands, and minerals. To put this in perspective, 447 million acres is roughly 2½ 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 gathered with the goal to educate and inform one another about sound policy and best practices to ever improve the management of these lands on behalf of our beneficiaries. Currently, our combined educational trusts amount to over $271 billion which generated over $3.8 billion for public schools in 2012. 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 a myriad of other uses that generate funds for public schools and other endowed institutions.

The vast majority of the 447 million acres of lands and minerals that our member States manage by the nature of our statehood acts are interspersed with Federal lands throughout the West. 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. Ninety-three percent of the Federal lands lie within the 11 most Western States and Alaska. There, Federal ownership comprises 52 percent of these States. In Idaho, approximately 62 percent of all lands within the State are owned by the Federal Government. In many cases, the scattered State sections are intertwined with lands managed by the Department of the Interior and the U.S. Forest Service where land management mandates vary drastically from the legal mandates placed upon State trust land managers. Pursuant to our statehood acts and State constitutional mandates, States are obligated to manage these lands with undivided loyalty to a single purpose—to generate revenue for public schools and state institutions.

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 within Federal ownership. For almost a century, Congress has made decisions to reclassify Federal lands with a wide range of management and policy prescriptions. While the Park Service approaches its 100th anniversary and as the country now appreciates nearly 50 years of designated Wilderness, the mandate for school trust lands has remained constant for over 200 years. Congressional actions and policy decisions over the decades have locked up 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 lands and minerals from within constrictive Federal ownership into other locations where the generation of income is appropriate and acceptable.

Existing administrative and legislative solutions are costly, complicated, unpredictable, and horribly time consuming. Administrative land exchanges with agencies within the Department of the Interior or with the U.S. Forest Service are inadequate as the sole tool to complete land transfers 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 timeframe. Moreover, the Department has failed to make the exchange process a priority and therefore funding has been woefully inadequate for years. 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 effectuate these exchanges. The Owyhee Land Exchange is an Idaho example. The Owyhee Initiative designated 517,000 acres of wilderness (map shown Attachment A) with the goal to create and maintain a functioning, unfragmented landscape. Since 2008 the BLM and the Idaho Department of Lands have identified ap-

proximately 35,000 acres on each side of the ownership equation that is in the best interest of both entities to exchange within the area. The best case scenario for estimated completion is now 2015. In the interim, Federal permittees and State trust land lessees remain in limbo, unable to effectively plan an economically viable future.

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. Last, funding to purchase State inholdings within Federal conservation areas has essentially disappeared as budgets for these purposes have been reduced dramatically over recent decades to address ongoing concerns of fiscal responsibility. The bottom line is that our existing options for removing State lands from within Federal conservation areas just do not work effectively.

For several years, WSLCA 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 these values to locations that are more appropriate for the generation of revenue for schools and state institutions. Additionally, our proposal will enhance Federal conservation and management areas by eliminating the State owned inholdings. We believe we have built a broad spectrum of support for our concept and we are now turning to this committee to assist in crafting bi-partisan legislation that will implement our proposal.

As a supplement to exchanges and purchases, WSLCA is proposing legislation similar to the 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 synonymously referred to as "indemnity" selections).

By creating new conservation designations that have limited 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. The WSLCA proposal would 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 would 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 and the Western States under which the States would be granted useable land for the support of public schools and other public institutions. Concerns also exist within many Western States about recent petitions to list threatened and endangered species, particularly the sage grouse. Where priority habitat for sage grouse exists within these conservation designations, this circumstance could likely create additional constraints to managing State lands. This bill would facilitate another means by which States could dispose of lands constrained by threatened and/or endangered species considerations.

The mechanism of relinquishment and selection has been utilized previously by Congress, and should not be difficult to implement. Under the WSLCA proposal, States owning lands within Federal conservation designations would simply deed the lands back to the United States, subject to any valid existing rights. 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 CFR part 2620 (2010). WSLCA believes that the Federal legislation should also incorporate the following concepts previously adopted by the Department of the Interior in its guidance and agreements concerning state indemnity selections:

—In the application of law, regulations and policy concerning indemnity selections, the equities of the States should be considered to the greatest degree permitted;

—Valuation of lands relinquished by the States, and State selections, should be based on "roughly equivalent value", utilizing appropriate valuation materials, but not requiring expensive formal appraisals;

—Because BLM Resource Management Plans (RMPs) rarely mention State indemnity selections, it is appropriate to presume that State selections are

plan-compliant unless significant public values will be lost or impaired by the selection; and

—Conveyance of lands to the States through the selection process should be deemed to be in the national interest under section 102(a)(1) of FLPMA.

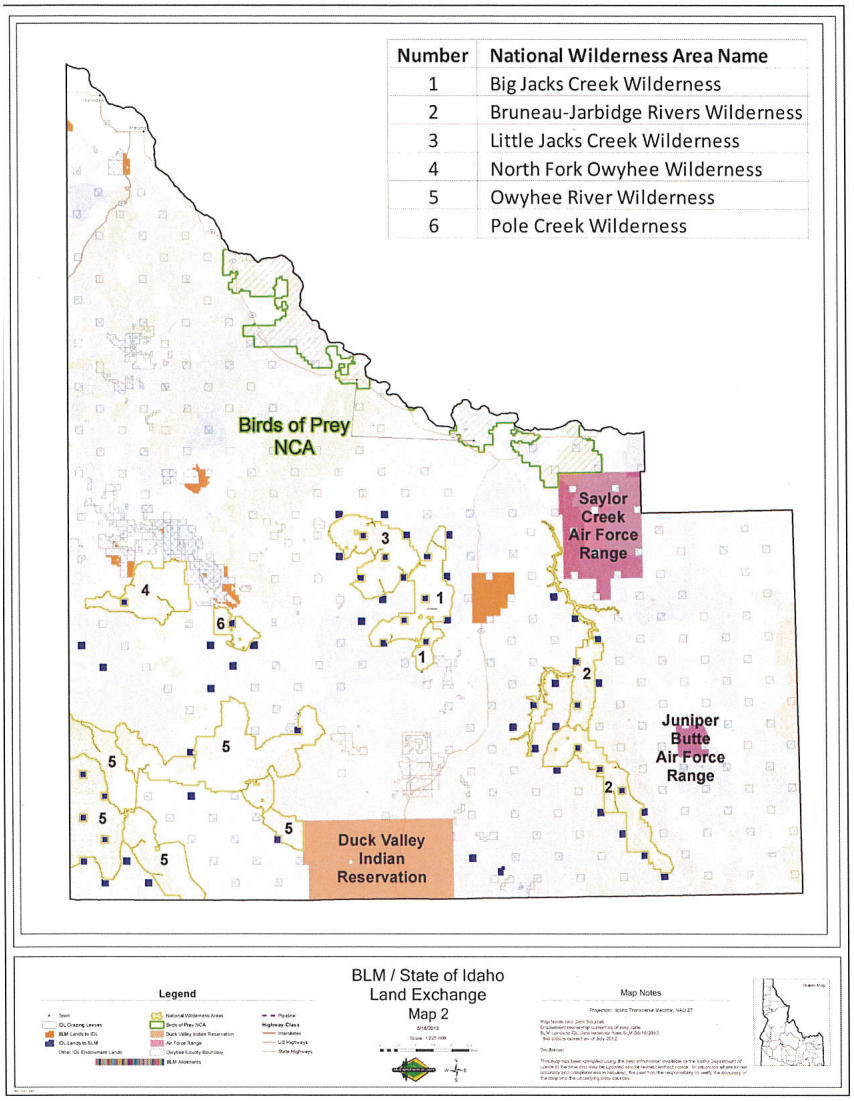
All of the above concepts were agreed by the BLM in a Memorandum of Understanding between BLM and WSLCA dated January 8, 1981, and incorporated in departmental guidance in 1981 and 1982. These concepts were recently reiterated in the Master Bureau-wide Memorandum of Understanding Between United States Department of the Interior, Bureau of Land Management and The Western States Land Commissioners Association Concerning Management of Public and State Trust Lands and Resources in the Western United States, Agreement Number BLM–WO–300–2012–02. In addition to these items, WSLCA believes that it is appropriate to impose reasonable time deadlines on the BLM's processing of State selection applications, because the recent experience of the States has been that BLM is often hampered given competing demands and limited budgets to process state selection actions in a timely manner.

At the same time, WSLCA acknowledges environmental and economic realities associated with the transfer of lands out of Federal ownership. WSLCA does not object to requirements for NEPA analysis of State selections (so long as BLM continues its customary practice of funding necessary studies). In addition, because selections would be limited to unappropriated public lands, the right to select lands would not extend to areas such as wilderness, national forests, and other conservation or special purpose designations.

In conclusion, it is important to note that the current proposal is not a proposal for the disposition of the Federal public land base, 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—public education. The proposed legislation 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 we look forward to working with you to craft legislation that can gain broad support and ultimately be enacted to better fund the education of our children. Thank you for the opportunity to testify and I would be happy to answer any questions.

Attachment A
Owyhee Land Exchange Map




---

Mr. BISHOP. Thank you, again, for your testimony.

Ms. Baier, we will turn to you from the Sonoran Institute for the same 5-minute opening statement, please.

**STATEMENT OF MARIA BAIER, CHIEF EXECUTIVE OFFICER, SONORAN INSTITUTE**

Ms. BAIER. Oh, thank you. Chairman Bishop, Ranking Member Grijalva, Congresswomen, Congressmen, thank you for the privilege of testifying before this subcommittee today.

Mr. BISHOP. I don't want to interrupt you again, either, I am sorry, but can you pull that even closer to your mouth?

Ms. BAIER. Yes. Does that work better?

Mr. BISHOP. That is much better.

Ms. BAIER. OK, thank you. For the record, my name is Maria Baier, and I am the CEO of the Sonoran Institute, which is a 501(c)3 non-profit organization that does land conservation work across Western North America. The Sonoran Institute has been interested in land management issues since its inception, and we have produced a number of publications on the subject, some of which I brought today and would leave for staff to share with you, if you wish.

Prior to my tenure at the Sonoran Institute, I served as the Arizona State Land Commissioner. While there, along with the Sonoran Institute, we worked with the Grand Canyon chapter of the Sierra Club to negotiate a land exchange proposal that went to the voters of Arizona and was passed.

In Arizona, State trust land and resource sales have earned $4.1 billion—that is market value—over the trust's 100-year history. On top of that, revenues from leases, rights of ways, and other temporary instruments earn tens of millions of additional dollars each year. And to give some perspective, last year, which was definitely not Arizona's best economic year, $365 million flowed into the trust.

If there is one thing I have learned throughout the course of my career, it is the importance of having land managed by agencies with the appropriate authority to do so. And what I mean by this is that each agency within the Federal Government is obviously governed by laws, rules, regulations, and policies that define the scope of activities and practices permissible on and for the lands they manage. the same is true at the State level.

In an ideal world, each agency's inventory of lands would benefit from the specific authority vested in the managing agency. However, the assignment of lands to agencies has not been and is not now determined by a design based in logic. To the contrary, the history of land management assignments has been very much on an ad hoc, parcel-by-parcel basis, which has created a most interesting and often illogical and inefficient jurisdictional patchwork across the West.

Whether it was during my time working for trust for public land, or as the land commissioner, or now, I have watched a lot of opportunities fade and sometimes vanish, while land managers tried to find the discretion to manage land or resources in a way that honored them.

In my opinion, the best response to the jurisdictional patchwork problem faced all across the West is that which has been presented to the subcommittee today, the basis of which is to get our public and State trust lands into the agencies in which they can be most effectively managed. By doing so, lands that have conservation

qualities can be managed for conservation; lands that have revenue-producing potential can be managed by agencies with a mandate to produce revenue. I cannot tell you the amount of man-hours that I suspect will be saved by this one proposed process.

More importantly, though, is that places that are considered culturally sacred can be removed from peril once and for all. In Arizona, one prime example would be Adamsville, an archeological Mecca, which should be managed, perhaps, as a national park, rather than State trust land, where it theoretically is on the auction block any time an application is received to purchase or lease it.

Likewise, places that are important habitat for threatened and endangered species, like cienega in Arizona, could remain permanently undisturbed in the hands of the BLM, whereas now they too are subject to the lease-and-sale mandates of the State Land Department. Places as notable even as the Grand Canyon, Walnut Canyon, and the Petrified Forest are all threatened by activities that can and, under law, really should be authorized by the State Land Department because of their revenue-producing capacity. The same can be said of lands near the Verde, San Pedro, Santa Cruz, and even Colorado Rivers.

So, the question to me is this: If there is a safe and realistic alternative, wouldn't it be better if we could remove them from jeopardy and continue to draw visitors from all continents to our beautiful Western States? It is unnerving to know that these assets, which should be permanently protected, enjoy but the flimsiest of safeguards, the lowly MOU or something akin to that. In many cases, it is not even that. In many cases, among land managers, it is really just a hand-shake and a promise to do the best we can. We have all seen that, I think, as land management agencies.

In my view, this concept is worthy of pursuit. I believe the amended authorization could do much to serve the greater good. Thank you.

[The prepared statement of Ms. Baier follows:]

PREPARED STATEMENT OF MARIA BAIER, CHIEF EXECUTIVE OFFICER, SONORAN INSTITUTE

Chairman Bishop, Ranking Member Grijalva and Members:

Thank you for the privilege of testifying before this subcommittee today about a legislative concept that has been referred to as "School Trust Lands Ownership Within Federal Conservation Areas."

For the record, my name is Maria Baier, and I am the CEO of the Sonoran Institute, which is a 501(C)(3) non-profit organization founded 22 years ago and headquartered in Tucson, Arizona, whose mission and vision is to inspire and enable community decisions and public policies that respect the land and people of western North America.

Facing rapid change, communities in the West value their natural and cultural resources, which support resilient environmental and economic systems. The Sonoran Institute helps communities conserve and restore those resources and manage growth and change through collaboration, civil dialog, sound information, practical solutions and big-picture thinking. We have two offices in Arizona, and offices in Montana, Colorado and Mexicali, Mexico.

The Sonoran Institute has been interested in land management issues since its inception, and we have produced a number of publications on the subject. I have brought some of those for your review. Most recently, we were pleased to have been a central party, along with the Grand Canyon Chapter of the Sierra Club, in promoting the passage of a statewide ballot measure that reinstated public-to-public land exchanges for the State Land Department.

Prior to my tenure at the Sonoran Institute, I served as the Arizona State Land Commissioner, and as such, was responsible for directing the State agency that manages Arizona's 9.3 million acres of State Trust land. Under the New Mexico-Arizona Enabling Act and Arizona's Constitution and statutes, the Land Commissioner has a fiduciary obligation to ensure those lands produce revenue for 13 different beneficiaries, the prime beneficiary being public schools, to which approximately 87 percent of those lands belong.

In Arizona, State Trust land and resource *sales* have earned $4.1 billion (market value) over the Trust's 100-year history. On top of that, revenues from leases, permits, rights of way and other "temporary" instruments earn tens of millions of additional dollars each year. To give some perspective, last year, for example, which definitely was not Arizona's best economic year, an impressive $365 million flowed into the Trust.

Prior to my service as Land Commissioner, I was fortunate to have spent 10 years in the Governor's Office as a senior policy advisor and to have had other rewarding jobs with public, private and non-profit entities—most of which, in one way or another, have been focused on land and natural resources.

If there is one thing I have learned throughout the course of my career, it is the importance of having land managed by agencies with the appropriate authority to do so. What I mean by this is that each agency within the Federal Government is governed by laws, rules, regulations and policies that define the scope of activities and practices permissible on and for lands they manage. The same is true at the State level. In an ideal world, each agency's inventory of lands would benefit from the specific authority vested in the managing agency.

However, the assignment of land to agencies has not been, and is not now, determined by a design based in logic. To the contrary. The history of land management assignments has been very much on an ad hoc, parcel-by-parcel basis, which has created a most interesting and often illogical and inefficient jurisdictional patchwork across the West.

Whether it was during my time working for the Trust for Public Land, or as the Land Commissioner, or now, at the Sonoran Institute, I have watched a great many opportunities fade and often vanish while land managers tried to find the discretion to manage land and/or resources in a way that honored them.

I cannot think of an "unfinished business" box that would be more full than the one into which these opportunities would be dropped. And that is for at least two reasons: First, in the vast majority of situations, the nature and condition of the land and its resources have been in place since the earth was formed, and this being the case, there are few instances where "the problem takes care of itself." In other words, discussions that began a century ago continue to this day.

The second culprit of decade-long logjams is simply this: creativity and compromise by government agencies is too rarely encouraged and almost never authorized under law. Anything other than strict adherence to the letter of the law is intentionally prohibited, and that law generally substantially limits discretion.. There is, of course, a good motive for this, namely to prevent self-dealing and other types of corruption, However, in the pursuit to prevent corruption, we often lose discretionary provisions that might have fostered greater creativity and compromise.

So, day after day, month after month, year after year, decade after decade, land managers meet and discuss virtually the same issues on the same lands and about the same resources. Their best resolution tool to date seems to be the Memorandum of Understanding, or something like it, but, as its name suggests, it is generally quite limited in time, scope and enforcement.

If I had a nickel for every time I was at a meeting among land managers from various agencies and heard the phrase, "I would do that if I could," I could have traveled to DC on my own jet.

But there must be airtight laws on how we manage assets of the public trust, including land and natural resources. Seeking additional discretion in laws on a piecemeal basis will not accomplish much, and seeking it on a broader basis could result in all manner of unintended consequences.

In my opinion, the best response to the jurisdictional patchwork problem faced all across the West is that which has been presented to this subcommittee today, the basis of which is to get our public and State Trust lands into the agencies in which they can be most effectively managed.

By doing so, lands that have conservation qualities can be managed for conservation. Lands that have revenue-producing potential can be managed by agencies with a mandate to produce revenue. I cannot tell you the amount of man hours that will be saved by this one proposed process.

More important, though, is that places that are considered culturally sacred can be plucked from peril once and for all. In Arizona, one prime example would be

Adamsville, an archeological mecca, which should be managed as a National Park, rather than State Trust land, where it is theoretically on the auction block anytime an application is received to buy it. Likewise, places that are important habitat for threatened and endangered species, like Cienega in Arizona, could remain permanently undisturbed in the hands of the BLM, whereas now, they, too, are subject to the lease and sale mandates of the State Land Department.

Places as notable as the Grand Canyon, Walnut Canyon, and the Petrified Forest are all threatened by activities that can, and, under law, really should be, authorized by the State Land Department because they bring in money. The same can easily be said of the Verde, San Pedro, Santa Cruz and even Colorado Rivers.

So the question is this: If there is a safe and realistic alternative, why would we want to continue to jeopardize the integrity of any of the spectacular national monuments or conservation areas that grace our states and draw visitors from all continents?

It is unnerving to know that these assets, which should be permanently protected, enjoy but the flimsiest of safeguards, the lowly MOU. And in many cases, not even that. Only a handshake and a promise to "do the best we can."

Meanwhile, the earnest, devoted and talented staffs within our State land management agencies are, on a daily basis, stuck between a rock and a hard place.

When they receive a purchase or lease application for a site in or near a conservation-eligible place, they must choose between litigation brought by those who seek to protect the pristine asset while forego the revenue generation mandate of the trust, and those who seek to compromise the asset and adhere to money-making mandate. I cannot overstate how prevalent this dilemma is.

But just to be clear, in nearly every case, the law and the courts instruct State land departments to do the latter. That is why each special place in which there are State Trust land inholdings or State Trust land on the perimeter, whether in or out of a federally designated area, remains in jeopardy.

In my view, this concept is worthy of pursuit. With proper legislative drafting, the risks can be limited to those that are reasonable. Of those issues that remain under debate with which I am familiar, there would appear to be ample room for constructive compromise.

I believe this amended authorization could do much to serve the greater good.

---

Mr. BISHOP. Thank you. I appreciate all of you being here and the testimony that you have given. We will now open this up to questions from members of the committee. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. And I am delighted to see the members of this panel today. I share some backgrounds with the gentlewomen on this panel. I was our State Land Director for a period of time. And I want to thank Ms. Opp for being the President of the Western State Land Commissioners. That is a fine organization.

I also served on numerous boards with Luther Propst, who is, of course, your predecessor at Sonoran. And we go way back, as well, have many, many common interests and ideas. And I am so delighted to see all of you here today to discuss this topic.

Wyoming has, of course, had a great deal of experience with the frustrations of trying to provide to the Federal Government inholdings in Grand Teton National Park, which are State lands. The ability to derive revenue from those lands, which are of just almost obscene financial value, has been minuscule. And yet, our effort to try to exchange two sections of State school trust lands with the Federal Government, or have the Federal Government buy them, has been a multi-decade process that is still not complete. And the appraisals become stale after a period of time.

And then, as the foot-dragging goes on and on, we are unable to provide to the Federal Government the inholdings for Grand Teton National Park, and, at the same time, provide, as the panel pointed out, revenue for the schoolchildren of Wyoming. So, I am very in-

trigued and pleased by the plan and the proposed land exchanges that you are presenting.

Questions. Ms. Opp, under the Western State Land Commissioner's proposal, what is the role of NEPA, as applied to both the decision of the State to divest, and the decision of the State to select lands?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, we are not denying that there is a NEPA process, and that the Federal Government would want and desire to perform that. One of the things that could be achieved through the process, the Secretary of the Interior does not have to advance any alternative that would not be in the best interest of the Federal Government. So, as a State makes a selection, if it is deemed not in the best interest of the Federal Government, it doesn't have to advance.

Also, in the NEPA process, it can sort of be a green light/red light. It is either yes, it is something that is acceptable, and that alternative should be examined, or no, it shouldn't, rather than incorporating what typically is a NEPA process, a variety of alternatives. You could potentially streamline that in the NEPA process, just associated with this particular proposal.

Mrs. LUMMIS. And with your proposal, does it apply to national parks, national forests, areas of critical environmental concern, national recreation areas? What is the scope of Federal land designations which have State inholdings that would be available for the exchange?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, certainly we would propose, as States, to get out of those wilderness designations or national parks. We would not be selecting other pieces as part of this in lieu selection that would be included in those still. So we would be going to parcels on the in lieu selection as States that are from the unappropriated BLM ownership, if that answers your question.

Mrs. LUMMIS. I also want the mirror image answer to that question. Of the lands that you, the State land commissioners, would be designating that you wanted to trade because they are trapped in Federal designations, would that include Forest Service, national forests, BLM lands?

If it is—let's say they are not managed for multiple use. Is it anything that is not managed for multiple use that would be available for you to exchange to the Federal Government if it is trapped in a non-multiple-use Federal designation?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, we would be looking at anything—we would be looking at deeding back to the Federal Government anything that is within a wilderness designation, roadless. At this point, you know, it would be national forests, as well. But, you know, perhaps we can have further discussion about that. Anything that basically is constrictive to our ability to manage.

Mrs. LUMMIS. Yes, excellent. You know, the broader, the better, Mr. Chairman, from this perspective of the States. Because, as you know, the Federal Government finds ways to limit States' activities on their own land, as long as it is trapped in a Federal designation of any kind.

Thank you, Mr. Chairman. Great hearing. I yield back.

Mr. BISHOP. Thank you. I am glad you were referring to policy in "broader, the better." I thought you were referring to the size of my suit here.

[Laughter.]

Mr. BISHOP. Mr. Grijalva, do you have questions?

Mr. GRIJALVA. Yes. Thank you, Mr. Chairman. Maybe one basic question for all the panelists. The proposal that is being talked about and that is reflected in your written testimony is based on the idea that the Federal Government has a means to address land exchanges through the existing in lieu concept. However, both Western States Land Commissioners Association and the Children's Land Alliance have criticized in lieu process when addressing original school trust and land grants.

We are asking Congress—you are asking Congress—to endorse and expand a concept you have all been critical of, to some extent, and in some cases litigated over. Given that your proposal makes the in lieu process better for stranded parcels, is this the national interest determination that is being discussed as part of a proposal? Is it the expedited or NEPA waivers that makes it better for those stranded parcels? Is it the presumption—I think it was—and one of them was planned adequacy?

This isn't just keeping—applying existing authority to new lands, it is expanding authority. And I think we have to be clear of that. And we need to really understand what that expansion means.

So, given that long-winded question, those three points, if any—if all the panelists would comment briefly, I would appreciate it very much.

Ms. OPP. Mr. Chairman, Ranking Member Grijalva, and members of the committee, I think there is a variety of ways to approach the concept. Many States, the vast majority of States, have resolved their original in lieu selections. Some States still do have some outstanding. And a recent re-constitution of an MOU with the BLM, we believe, will help resolve those situations.

The key to this process is it is just a—it is another tool, besides purchase and besides the existing exchange process.

Mr. GRIJALVA. OK.

Ms. OPP. We believe it is in the best interest of the Nation for both our land bases to be reconciled to their mission, such that the Federal Government can——

Mr. GRIJALVA. But specifically the national interest concept, would you say that expands the authority?

Ms. OPP. Mr. Chairman, members of the committee, I would say that it, in my experience, doesn't expand the authority in the national interest. It is still in the national interest now for land exchanges or purchases to happen. So I wouldn't say it's an expansion, it's simply another tool that can be used.

Mr. GRIJALVA. An appearance for the first time of that tool.

Ms. OPP. Say that again, please, sir.

Mr. GRIJALVA. The tool, national interest tool, appears now for the first time in this kind of exchange process as a defined part of any legislation.

Ms. OPP. Mr. Chairman, members of the subcommittee, it is a new tool to resolving the inholdings trapped in conservation areas. That is a true statement.

Mr. GRIJALVA. Mr. Chairman, thank you. I think those three points that I tried to make with a question, and I appreciate the response from the one witness, I think are pertinent for further discussions, I think are essential to clarify and define those for further discussion. And with that, I yield back, I have no further questions.

Mr. BISHOP. Thank you. Mrs. Lummis, do you have other questions you wanted to ask?

Mrs. LUMMIS. I do, Mr. Chairman.

Mr. BISHOP. Please.

Mrs. LUMMIS. Thank you. Again, for Ms. Opp, as I understand it under your proposal, NEPA does not apply to the divestiture. But—so the Federal Government gets its land immediately, but the States will still have to go through a process in order to select their lands. Do I understand the proposal correctly?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, the State itself would not perform NEPA. If the Federal agency, you know, needed to perform NEPA, then on the divestiture, then—from Federal lands, then they would do that.

Mrs. LUMMIS. OK.

Ms. OPP. As part of the process.

Mrs. LUMMIS. What is a reasonable amount of time for the States to be able to select other BLM land of equal value, and for that land to be valued?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, we believe that valuations could be on appraised value. But in some cases, where you have low-value lands, there are a variety of means to value that land. And so there are ways to get at that.

We would like to see something on the order of 12 to 18 months, in terms of resolution, once the deed went back to the Federal Government, that the State received its replacement lands. We believe that certainly is doable with dialog in the beginning, to make sure that the lands we are talking about are reasonable for both entities.

Mrs. LUMMIS. Ms. Baier, might I ask you the same question? I want to—I would—I am interested in your opinion about what is a reasonable amount of time for these exchanges to occur, as well as your assessment of an appropriate valuation process.

Ms. BAIER. Thank you, Congresswoman. Chairman, Congresswoman, thank you. It is interesting in Arizona, because we negotiated several years ago—when I was on the Governor's staff, actually, with Secretary Babbitt, we actually began the negotiation for a fairly sizable land exchange that included lots of different Federal lands and lots of different State trust lands. So I know in Arizona it wouldn't take very long for us to identify—I am quite sure it wouldn't take very long for us to identify those lands.

Mrs. LUMMIS. Were those transactions completed?

Ms. BAIER. No, they were not.

Mrs. LUMMIS. And were——

Ms. BAIER. Which is part of the reason we are here today, I think, you know. It really is a very cumbersome process for——

Mrs. LUMMIS. It is cumbersome. Why weren't they completed?

Ms. BAIER. You know, we identified them, and they got—I think they got held up in the appraisal process. It was the appraisal process that held it up. It was even identifying an appraiser that people felt could be objective, you know, on both sides. And then the length of time and, really, the cost of the appraisals, too, because they can be quite costly.

Mrs. LUMMIS. Yes.

Ms. BAIER. I think in terms of my real view of this—because I have not visited with each State or the organizations that may have an interest in this, but I think the outline that Kathy provided is probably reasonable. I think it is my—what I think might be a good idea is to pull some States in, and to pull some Federal agencies in, and have them discuss what a reasonable timeline would be, given the constraints on the resources.

You know, there is only limited staff that can be devoted to these on the Federal side and on the State side. So, I mean, I think the best thing is to come up with a timeline that is—can actually be reasonable for State and Federal agencies. I think Kathy's is probably reasonable. But I think it is a—you know, as I understand it, there is not a provision, a timeline that has been set in stone in any—in legislation. And I think the whole idea is to have this be a very functional authorization. And so I think it is worth doing that and finding out what a realistic timeline is.

Mrs. LUMMIS. The Sonoran Institute, even predating your taking the leadership reigns, was interested in State lands issues and these kinds of matters. Was it driven more from a—is it driven more from the conservation perspective, the K through 12 funding perspective, or both?

Ms. BAIER. Well, we are a conservation organization. So our interest is primarily the conservation component, trying to get land into hands of agencies that can manage it for conservation. But we take very seriously the mandate of the trust—obviously, you know, particularly given my history—and respect that.

But it is really—the two are really not separate. I mean the whole reason that something like this is needed is so that there isn't that tension, and so that lands that can—should be in the hands of the State Land Department and should be producing revenue—can go over there, and lands that should be undisturbed can go into management agencies that can leave it undisturbed.

Mrs. LUMMIS. Quick yes or no? Thank you, sir.

Does the Sonoran Institute support the Western State Land Commissioner proposal?

Ms. BAIER. Mr. Chairman, Congresswoman, the—we have not seen final language. So the—we support the concept——

Mrs. LUMMIS. OK.

Ms. BAIER [continuing]. That has been shared with us. Thank you.

Mrs. LUMMIS. Thank you all. Thanks, panel. Thank you, Mr. Chairman. I yield back.

Mr. BISHOP. Thank you. Mr. McClintock, do you have any questions for this—these witnesses?

Mr. MCCLINTOCK. I will be happy to yield to my colleague, Mrs. Lummis.

Mr. BISHOP. Go ahead. That is OK, thanks.

Mrs. LUMMIS. Thank you, Mr. Chairman. Ms. Opp, can you explain to people who may be concerned about the types of lands that States would be interested in acquiring in exchange for the lands they would be giving up, what those might be?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, our primary interest is always going to be what is—what will be best for our trust in management. Sometimes it is acquiring ownership next to an existing parcel, so that we are able to efficiently manage a larger block of resources. Certainly when you look at the BLM ownership in Idaho, it is largely range land. So that is going to be our primary motivation.

In other States it may be—we don't have a lot of oil and gas in Idaho; some States do, so they would be looking potentially at that. But, of course, our concept would be anything that is producing for the Federal Government would be off-limits. We are not looking to erode any Federal earnings potential.

So, we would be looking at things that would best mesh with other ownership patterns that we have, other earning asset types that we are familiar with managing, anything that is going to, you know, promote the best earnings for our trust fund.

Mrs. LUMMIS. Does any of the panel know whether the Forest Service has a disposal list, as does the BLM? The BLM has a list of properties that they can't manage and would like to divest themselves of. Does the Forest Service have a similar list, does anyone know?

Ms. OPP. Mr. Chairman, Congresswoman, members of the subcommittee, I am not aware of a disposal list at the Forest Service level. I do know that the BLM has resource management plans. This proposal would not contemplate that a property to be acquired had to be on a disposal list.

Mrs. LUMMIS. Right, right.

Ms. OPP. It is simply that it would be available if it was unappropriated or not in a national or roadless area, or those major conservation criteria.

Mrs. LUMMIS. OK. Mr. Chairman, thank you. I yield back. I realize you have been very indulgent. Thank you.

Mr. BISHOP. Now, Mr. McClintock, we appreciate you yielding back your time here. I am assuming you do, as well, right? OK.

Let me ask just one—perhaps one final question. Ms. Baier, have you discussed this in lieu selection proposal with any Federal land managers?

Ms. BAIER. Mr. Chairman, I feel very fortunate that I have two former Federal land managers on our board of directors: Suzanne Lewis, who was with the Park Service for a number of years; and then Henri Bisson, who was with the BLM, and I think had been the Acting State Director for Utah, and also the State Director for California.

And I checked in with my entire board of directors before agreeing to testify here today, and they were all very supportive, and particularly the two Federal land managers, who have seen the benefits, both on the part of the Park Service and the part of the

BLM, of exchanges in the past. And so, I have, and they wholeheartedly supported the testimony today. Thank you.

Mr. BISHOP. Do—would any of you like to give one final statement as to the concept of appraisals as being a problem? Appraisals, as we all know, are very subjective. And I have seen them being—I mean you might as well use a Ouija board and some tarot cards to come up with a proper appraisal. Do any of you have examples or suggestions of how the appraisal process is problematic? And you don't have to, but if there is anything you would like to say in conclusion, I would appreciate it.

Ms. BAIER. Mr. Chairman, what I would like to say is just that I—what I think, both from the State side and from the Federal side, is that there ought not to be a prohibition on having an appraisal process on these relinquishments. But in some cases, what we have—what at least I have learned, in my experience, in some cases the appraisal takes time and money and resources that would prevent a very wise exchange from occurring.

And so, I guess what I would say is I am not sure that they need to be prohibited where they would be—where they could be helpful. But I think in many cases, you know, to find reasonable values on both sides would work well.

And I think, given the fact that the State Land Department, the State land commissioners, our trustees—and they are held to a very high legal obligation, and the Secretary of the Interior is also held to a very high legal obligation to protect the public trust—I think that the appraisal process in some cases may be too burdensome.

And I think there is even language that came from the Supreme Court that allows some discretion in the appraisal process on these relinquishment processes. That would be my thought.

Ms. OPP. Mr. Chairman, I would just add that it is often not so much the appraisal process, in our experience, as much as the level and number of internal reviews that happen after the appraisals are completed. We have seen, in a number of cases in land exchanges in our State, in Idaho, needing to go through two cycles of appraisals because they grow stale, depending on when they are done in the process.

And as Ms. Baier pointed out, when they don't—when they no longer meet the standards of professional appraisal due to, say, being 12 months old or less, depending on market conditions, and then you are asking the beneficiaries to go through and pay for another round, which can be hundreds of thousands of dollars, you start to question the utility of it when you have professional land managers on both sides and a lot of data that could be used to value that.

So, maybe it is how you approach giving latitude, depending on the number of parcels and the values, and also the review cycles that come along with it that could help speed the process.

Mr. BISHOP. Thank you. I appreciate all those answers and the questions that have been given.

If there are no other questions, I want to thank the witnesses profusely for your effort and time to be here, and the testimony that you have given.

Members of the subcommittee may have additional questions. They will submit to you in writing if they do. We would ask for your responses to be presented in writing. The record will be open for 10 days to receive the questions or additional responses.

If there is no further business, without objection—once again, great appreciation to all of you who have attended and participated today—this subcommittee is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

## [Addional Material Submitted for the Record]

### PREPARED STATEMENT OF MARY M. ABRAMS, PH.D., DIRECTOR, OREGON DEPARTMENT OF STATE LANDS

I am Mary Abrams, Director of the Oregon Department of State Lands. I want to thank the subcommittee for the opportunity to testify today.

I'm here today representing my agency as well as the Western States Land Commissioners Association. Oregon is 1 of 23 member States in the organization. My purpose today is to provide a state-specific example of the background, need, and solution to a problem that affects all Western States.

#### OREGON DEPARTMENT OF STATE LANDS

The Department of State Lands is the administrative agency of the State Land Board, Oregon's oldest public board. It was established at statehood by the 1859 Oregon Constitution to oversee "school lands" granted by the Federal Government. Throughout its history, the Governor has chaired the board, and the two other members have been the Secretary of State and the State Treasurer.

As settlers came West in the 1850s and beyond, Oregon needed to educate emigrant children and those born in our new State. Recognizing this, the U.S. Government granted our land-rich, cash-poor State sections 16 and 36 of each township to generate money for schools.

Oregon's original land grant totaled about 3.4 million acres. Today, only a fifth of that acreage (about 770,000 acres) remains. These Trust Lands have a very specific purpose that differentiates them from other public lands managed for a variety of uses: they are solely dedicated to making money for Oregon's schoolchildren.

The Land Board manages its lands for long-term, multi-generational support of public education. Revenues from these lands are deposited in the Common School Fund, a trust fund for schools.

The estimated total market value of Oregon's school Trust Lands is between $500 and $600 million. Oregon's Trust Lands revenues are deposited into the Common School Fund. In fiscal year 2012, gross receipts totaled over $13 million.

#### FUNDING SCHOOLS

The total market value of the fund is now about $1.1 billion. All public school districts in Oregon receive two distributions a year from the fund's interest earnings. The average annual distribution since 2008 has been about $50 million. Common School Fund distributions are a small but important part of Oregon's school funding. These funds support the equivalent of 48 full-time teachers in a large district such as Portland, and 3 full-time teachers in a small coastal community. In other words, the money matters.

Oregon's goal has been to steadily increase our funding for schools through more strategic land management planning over time. This includes implementing land exchanges and sales to maximize our high-revenue producing lands while divesting of our non-producing lands.

#### MAXIMIZING REVENUE GENERATION

Revenue from Common School Fund lands over time has included both annual receipts from land management operations (timber harvest receipts and grazing leases for example) as well as funds from sales of some land assets. However, because of the patchwork nature of the original land grant to Oregon (16th and 36th sections), there have always been management challenges with our Trust Lands.

Not all the granted sections were high value, and the dispersed nature of the holdings caused inefficiencies as it is generally easier to manage contiguous blocks

of land with similar management goals than it is to manage small, non-consolidated parcels.

Because of these constraints, land sales and exchanges have been an important part of managing our real estate portfolio to maximize school revenue. We have divested of or exchanged difficult-to-manage lands and reinvested in lands with higher revenue potential. Historically, consolidation occurred on forestlands; and more recently, land acquisitions have been commercial properties.

WHY DOES THE FEDERAL GOVERNMENT MATTER

First and foremost, Federal lands are our biggest neighboring land owners. Most of Oregon's remaining Trust Lands are interspersed with Federal lands (Bureau of Land Management and U.S. Forest Service) which increasingly have fundamentally different management goals than those of State Trust Lands. Federal land management has evolved over time from the early days of open range to designation of areas for special land uses (parks, scenic areas, wilderness areas, etc.) including an increased emphasis on multiple-use management. These shifts have often left state Trust Lands isolated within larger Federal holdings with dramatically different management objectives.

The modern era of Federal land management has also increased the complexity of Federal land exchanges that historically were a tool to resolve some of the management challenges between State and Federal lands. Therefore, Congressional and administrative decisions that affect Federal land management do affect our ability to maximize revenue for schools, particularly when they reduce options for Trust Land portfolio management.

Such Federal decisions can leave state lands stranded within Federal designations, limiting effective management of these trust assets for revenue generation. It also decreases their value for selling or trading, and for almost any type of development or other use.

In Oregon we have just less than 10,000 acres that are surrounded by Federal lands with different management objectives. These lands are valued at roughly $8 million, and their isolation within and dependence on Federal land decisions greatly reduces their value.

State Trust Lands surrounded by Federal designations can be encumbered by Federal threatened and endangered species policies, access constraints, unintended consequences of Federal fire protection policies, and potentially other Federal actions that limit opportunities for generating revenues. Because of these encumbrances on our Federal neighbors, State Trust Lands trapped within Federal conservation designations are often virtually worthless to the State's school trust, depriving current and future generations of school children of valuable revenues to support public education.

THE SOLUTION

As we in the Western States see it, the best remedy to this situation is to either facilitate an exchange of these landlocked State parcels for other Federal lands, or sell our trust assets to the land-holding Federal agency. However, normal Federal land exchange and sale procedures are lengthy, complex administrative processes that require money and time—both substantial drains on States' ability to manage their Trust Lands. The scarcity of Federal funds for land acquisition adds to the uncertainty and low likelihood of success in traditional land sales and exchanges with Federal land management agencies.

So the Western States would like to propose a different approach.

IN LIEU SELECTION PROCESS AND A NEW TOOL

At statehood, some of the 16th and 36th sections were already owned and therefore unavailable. For these sections, States were given "in lieu selection" credits, allowing States to select other available Federal parcels in lieu of the original sections.

States have largely exhausted those credits since statehood but some are still outstanding. Oregon is still working with the BLM to finalize exchanges for our last 1,600 acres of credits. The process to secure "in-lieu lands" has been lengthy, but it does work.

The Western States Land Commissioners Association has developed a proposal based on this in-lieu selection model to provide a solution to Trust Land parcels that are landlocked by Federal lands. The proposal would allow State land managers to relinquish title to lands trapped within Federal conservation areas in exchange for BLM lands not already protected as a Federal conservation area, and that have not been otherwise appropriated.

The model provides a workable methodology for removing Trust Lands from Federal conservation areas. This fulfills the States' funding mandate for public education and provides Federal land managers with conservation areas that are largely clear of inholdings.

The Western States proposal is simple and elegant—and is based on an existing process. It's a win-win for both the Federal Government and States:

- It provides a mechanism for States to divest Trust Lands whose management and value are affected by their landlocked position within Federal lands.
- It allows Federal land managers to more effectively manage their lands.
- It provides a viable option for removing State Trust Lands from the political debates surrounding Congressional conservation area creations.
- It accomplishes all of this using fewer resources—both State and Federal—to process exchanges than typical Federal land exchanges or purchases.

The WSLCA proposal will help Oregon better meet its constitutional mandate for school Trust Lands by increasing management flexibility on almost 10,000 acres of such lands. Land assets worth $8 million can be "unlocked" to generate greater revenues for Oregon's school children into the future.

In summary, because of these advantages, I encourage you to consider any legislation that supports this proposal. It will help Western States, such as Oregon, but also the rest of the Nation through increased government efficiencies at the State and Federal levels.

Thank you.

---

LETTER SUBMITTED FOR THE RECORD BY JAMES D. OGSBURY

WESTERN GOVERNORS' ASSOCIATION,
DENVER, CO 80202,
JULY 17, 2013.

The Honorable ROB BISHOP, *Chairman,*
*Subcommittee on Public Lands*
*and Environmental Regulation,*
*Committee on Natural Resources,*
*U.S. House of Representatives,*
*Washington, DC 20515.*

DEAR CHAIRMAN BISHOP:

Attached please find a resolution, recently adopted by Western Governors, supporting efforts to simplify Federal-State land exchanges. On behalf of the Western Governors' Association (WGA), I respectfully request that the document be included in the record of the Friday, July 19, 2013 hearing on various public lands bills scheduled for the Subcommittee on Public Lands and Environmental Regulation.

The Governors' resolution supports reauthorization of the Federal Lands Transfer Facilitation Act (FLTFA). H.R. 2068, sponsored by Representative Lummis, would reauthorize FLTFA, and WGA commends her for introducing this important legislation.

The Governors also support other efforts to reform Federal-State land exchange processes. WGA is working with the Western States Land Commissioners' Association, for example, on its proposed legislation to solve part of the land tenure problems based on a process known as "in lieu" selections. WGA also supports Federal legislation to amend the Federal Lands Policy and Management Act to:

- Index the existing $150,000 threshold for using an expedited exchange process for inflation (the $150,000 threshold was adopted in 1986);
- Allow use of a statement of value to replace the appraisal process in Federal-State exchanges of similar rural lands; and
- Presume any agreed-upon Federal-state land exchange as in the public interest unless clearly countervailing factors are present (Federal-private exchanges are not included in this presumption).

With appreciation for your leadership and best wishes for continued success, I am Respectfully,

JAMES D. OGSBURY,
*Executive Director.*

WESTERN GOVERNORS' ASSOCIATION POLICY RESOLUTION 13–01

*Federal-State Land Exchanges and Purchases*

A. BACKGROUND

1. Congress granted lands to States as they were admitted into union to be held in trust for support of public schools. Over time, the Federal Government has created conservation areas such as national monuments, wildlife refuges and wilderness study areas on public lands that surround or affect many of these trust lands. tribal reservations and military withdrawals have also created state enclaves within Federal landholdings.
2. Federal and State land managers, land users, the environmental community and the public all agree that the "checkerboard" land ownership pattern prevailing in much of the West is a major hindrance to effective and ecologically sound management of both Federal and State lands.
3. Currently, there are three methods of resolving the checkerboard land tenure issue in the West: (1) Land exchanges under existing legislation, such as Federal Lands Policy and Management Act (FLPMA); (2) the direct Federal purchase of non-Federal lands within Federal management areas under Federal Lands Transfer Facilitation Act (FLTFA); and (3) individual acts of Congress. However, all three are lengthy, expensive, and inefficient.
4. Federal land exchanges—whether with States or private interests—are conducted under the FLPMA. FLPMA requires that land exchanges be of equal value as determined by appraisal and that the public interest is "well served by making [the land] exchange." The complex regulatory requirements associated with FLPMA exchanges create unintentional barriers to Federal-state land exchanges.
5. Generally, the estimated values of lands proposed for exchange are established through appraisals, which must be done in accordance with Federal standards and other requirements. If the Federal land value is estimated to be less than $150,000, an appraiser's statement of value (a professional assessment that is based on more limited information than is included in a full appraisal) can be used.
6. The FLTFA allows the Department of the Interior agencies and the Forest Service to use the proceeds from sales of surplus Federal lands to acquire inholdings in national parks, national wildlife refuges, national forests and other designated areas, including the National Landscape Conservation System. FLTFA was passed in 2000 with a 10-year sunset. The act was reauthorized for 1 year in 2010, but was not extended at the July 2011 expiration.
7. The Western States Land Commissioners' Association (WSLCA) has drafted proposed legislation to solve part of the land tenure problems based on a process known as "in lieu" selections. In lieu selections are established by 43 U.S.C. 851–852 and allow western land grant States to select Federal lands in lieu of land originally granted to the States that became unavailable due to preexisting conveyances or Federal special purpose designations. Under the WSLCA proposal, States would have the right to relinquish State trust lands within Federal conservation designations to the United States, and select replacements lands from unappropriated Federal public lands within the states.

B. GOVERNORS' POLICY POSITION

1. To improve management of both Federal and State lands in areas where there is checker-boarded ownership or State lands are completely captive within the boundaries of a Federal management area, Western Governors call on Congress to simplify and expedite the Federal-State land exchange and sale process.
2. The Governors request Congress amend the FLPMA to add language to:
   - Index the existing $150,000 threshold for using an expedited exchange process for inflation since the $150,000 threshold was adopted in 1986;
   - Allow use of a statement of value to replace the appraisal process in Federal-State exchanges of similar rural lands; and
   - Presume any agreed Federal-State land exchange as in public interest unless clearly countervailing factors are present (Federal-private exchanges are not included in this presumption).

3. The Governors request that Congress reauthorize the FLTFA with priority to be given to acquisition of State inholdings.

4. The Governors encourage Congress to introduce and pass legislation that incorporates the proposed Federal-State land selection improvements proposed by the WSLCA.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the executive branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.