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HOUSE OF REPRESENTATIVES
REPORT
111–179

UTAH RECREATIONAL LAND EXCHANGE ACT OF 2009

JUNE 23, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 1275]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1275) to direct the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Utah Recreational Land Exchange Act of 2009".

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term "Federal land" means the land located in Grand, San Juan, and Uintah Counties, Utah, that is identified on the maps as—

(A) "BLM Subsurface only Proposed for Transfer to State Trust Lands";
(B) "BLM Surface only Proposed for Transfer to State Trust Lands"; and
(C) "BLM Lands Proposed for Transfer to State Trust Lands".

(2) GRAND COUNTY MAP.—The term "Grand County Map" means the map prepared by the Bureau of Land Management entitled "Utah Recreational Land Exchange Act Grand County", dated May 14, 2009, and relating to the exchange of Federal land and non-Federal land in Grand and San Juan Counties, Utah.

(3) MAPS.—The term "maps" means the Grand County Map and the Uintah County Map.

(4) NON-FEDERAL LAND.—The term "non-Federal land" means the land in Grand, San Juan, and Uintah Counties, Utah, that is identified on the maps as—

(A) "State Trust Land Proposed for Transfer to BLM"; and
(B) "State Trust Minerals Proposed for Transfer to BLM".

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) STATE.—The term "State" means the State of Utah, as trustee under the Utah State School and Institutional Trust Lands Management Act (Utah Code Ann. 53C–1–101 et seq.).

(7) UINTAH COUNTY MAP.—The term "Uintah County Map" means the map prepared by the Bureau of Land Management entitled "Utah Recreational Land Exchange Act Uintah County", dated May 14, 2009, and relating to the exchange of Federal land and non-Federal land in Uintah County, Utah.

SEC. 3. EXCHANGE OF LAND.

(a) IN GENERAL.—If the State offers to convey to the United States title to the non-Federal land, the Secretary shall—

(1) accept the offer; and

(2) on receipt of all right, title, and interest of the State in and to the non-Federal land, convey to the State all right, title, and interest of the United States in and to the Federal land.

(b) CONDITIONS.—The exchange authorized under subsection (a) shall be subject to—

(1) valid existing rights;

(2) except as otherwise provided by this section—

(A) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and

(B) any other applicable laws;

(3) all costs of land exchanges under this Act, including but not limited to appraisals, surveys, and related costs, shall be paid equally by the Secretary and the State; and

(4) any additional terms and conditions that the Secretary and the State mutually determine to be appropriate.

(c) TITLE APPROVAL.—Title to the Federal land and non-Federal land to be exchanged under this section shall be in a format acceptable to the Secretary and the State.

(d) APPRAISALS.—

(1) IN GENERAL.—The value of the Federal land and the non-Federal land shall be determined by appraisals conducted by 1 or more independent appraisers selected jointly by the Secretary and the State.

(2) APPLICABLE LAW.—The appraisals conducted under paragraph (1) shall be conducted in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(3) APPROVAL.—The appraisals conducted under paragraph (1) shall be submitted to the Secretary and the State for approval.

(4) ADJUSTMENT.—

(A) IN GENERAL.—If value is attributed to any parcel of Federal land because of the presence of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the value of the parcel (as otherwise established under this subsection) shall be reduced by the estimated value of the payments that would have been made to the State of Utah from bonuses, rentals, and royalties that the United States would have received if such minerals were leased pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(B) LIMITATION.—An adjustment under subparagraph (A) shall not be considered as a property right of the State.

(5) AVAILABILITY OF APPRAISALS.—

(A) IN GENERAL.—All final appraisals, appraisal reviews, and determinations of value for land to be exchanged under this section shall be available for public review at the Utah State Office of the Bureau of Land Management at least 30 days before the conveyance of the applicable parcels.

(B) PUBLICATION.—The Secretary or the State, as applicable, shall publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that the appraisals are available for public inspection.

(e) CONVEYANCE OF PARCELS IN PHASES.—

(1) IN GENERAL.—Notwithstanding that appraisals for all of the parcels of Federal land and non-Federal land may not have been approved under subsection (d)(3), parcels of the Federal land and non-Federal land may be exchanged under subsection (a) in 3 phases beginning on the date on which the appraised values of the parcels included in the applicable phase are approved under this subsection.

(2) PHASES.—The 3 phases referred to in paragraph (1) are—

(A) phase 1, consisting of the non-Federal land identified as "phase one" land on the Grand County Map;

(B) phase 2, consisting of the non-Federal land identified as "phase two" land on the Grand County Map and the Uintah County Map; and

(C) phase 3, consisting of any remaining non-Federal land that is not identified as "phase one" land or "phase two" land on the Grand County Map or the Uintah County Map.

(3) NO AGREEMENT ON EXCHANGE.—If agreement has not been reached with respect to the exchange of an individual parcel of Federal land or non-Federal land, the Secretary and the State may agree to set aside the individual parcel to allow the exchange of the other parcels of Federal land and non-Federal land to proceed.

(4) TIMING.—It is the intent of Congress that at least the first phase of the exchange of land authorized by subsection (a) be completed not later than 360 days after the date on which the State makes the Secretary an offer to convey the non-Federal land under that subsection.

(f) RESERVATION OF INTEREST IN OIL SHALE.—

(1) IN GENERAL.—With respect to Federal land that contains oil shale resources, the Secretary shall reserve an interest in the portion of the mineral estate that contains the oil shale resources.

(2) EXTENT OF INTEREST.—The interest reserved by the United States under paragraph (1) shall consist of—

(A) 50 percent of any bonus bid or other payment received by the State as consideration for securing any lease or authorization to develop oil shale resources;

(B) the amount that would have been received by the Federal Government under the applicable royalty rate if the oil shale resources had been retained in Federal ownership; and

(C) 50 percent of any other payment received by the State pursuant to any lease or authorization to develop the oil shale resources.

(3) PAYMENT.—Any amounts due under paragraph (2) shall be paid by the State to the United States not less than quarterly.

(4) NO OBLIGATION TO LEASE.—The State shall not be obligated to lease or otherwise develop oil shale resources in which the United States retains an interest under this subsection.

(5) VALUATION.—Federal land in which the Secretary reserves an interest under this subsection shall be appraised—

(A) without regard to the presence of oil shale; and

(B) in accordance with subsection (d).

(g) WITHDRAWAL OF FEDERAL LAND PRIOR TO EXCHANGE.—Subject to valid existing rights, during the period beginning on the date of enactment of this Act and ending on the earlier of the date that the Federal land is removed from the exchange or the date on which the Federal land is conveyed under this Act, the Federal land is withdrawn from—

(1) disposition (other than disposition under section 4) under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) the operation of—

(A) the mineral leasing laws;

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); and

(C) the first section of the Act of July 31, 1947 (commonly known as the "Materials Act of 1947") (30 U.S.C. 601).

(h) APPURTENANT WATER RIGHTS.—Any conveyance of a parcel of Federal land or non-Federal land under this Act shall include the conveyance of water rights appurtenant to the parcel conveyed.

(i) EQUAL VALUE EXCHANGE.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land to be exchanged under this Act—

(A) shall be equal; or

(B) shall be made equal in accordance with paragraph (2).

(2) EQUALIZATION.—

(A) SURPLUS OF FEDERAL LAND.—If the value of the Federal land exceeds the value of the non-Federal land, the value of the Federal land and non-Federal land shall be equalized, as determined to be appropriate and acceptable by the Secretary and the State, by one or more of the following:

(i) By reducing the acreage of the Federal land to be conveyed.

(ii) By adding additional State land to the non-Federal land to be conveyed.

(iii) Consistent with section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716), by cash equalization of not more

than 5 percent of the total value of the lands or interests in lands to be transferred out of Federal ownership.

(B) SURPLUS OF NON-FEDERAL LAND.—If the value of the non-Federal land exceeds the value of the Federal land, the value of the Federal land and non-Federal land shall be equalized, as determined to be appropriate and acceptable by the Secretary and the State, by one or both of the following:.

(i) By reducing the acreage of the non-Federal land to be conveyed.

(ii) Consistent with section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716), by cash equalization of not more than 5 percent of the total value of the lands or interests in lands to be transferred out of Federal ownership.

(3) NOTICE AND PUBLIC INSPECTION.—

(A) IN GENERAL.—If the Secretary and the State determine to add or remove land from the exchange, the Secretary or the State shall—

(i) publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that identifies when and where a revised exchange map will be available for public inspection; and

(ii) transmit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a copy of the revised exchange map.

(B) LIMITATION.—The Secretary and the State shall not add or remove land from the exchange until at least 30 days after the date on which the notice is published under subparagraph (A)(i) and the map is transmitted under subparagraph (A)(ii).

SEC. 4. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) ADMINISTRATION OF NON-FEDERAL LAND.—

(1) IN GENERAL.—Subject to paragraph (2) and in accordance with section 206(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(c)), the non-Federal land acquired by the United States under this Act shall become part of, and be managed as part of, the Federal administrative unit or area in which the land is located.

(2) WITHDRAWAL PARCELS.—Any non-Federal land acquired by the United States under this Act identified on the maps as "Withdrawal Parcels" is withdrawn from the operation of the mineral leasing and mineral material disposal laws.

(3) RECEIPTS.—

(A) IN GENERAL.—Any mineral receipts derived from the non-Federal land acquired under this Act shall be paid into the general fund of the Treasury.

(B) APPLICABLE LAW.—Mineral receipts from the non-Federal land acquired under this Act shall not be subject to section 35 of the Mineral Leasing Act (30 U.S.C. 191).

(b) GRAZING PERMITS.—

(1) IN GENERAL.—If land conveyed under this Act is subject to a lease, permit, or contract for the grazing of domestic livestock in effect on the date of acquisition, the Secretary and the State shall allow the grazing to continue for the remainder of the term of the lease, permit, or contract, subject to the related terms and conditions of user agreements, including permitted stocking rates, grazing fee levels, access rights, and ownership and use of range improvements.

(2) RENEWAL.—To the extent allowed by Federal or State law, on expiration of any grazing lease, permit, or contract described in paragraph (1), the holder of the lease, permit, or contract shall be entitled to a preference right to renew the lease, permit, or contract.

(3) CANCELLATION.—

(A) IN GENERAL.—Nothing in this Act prevents the Secretary or the State from canceling or modifying a grazing permit, lease, or contract if the land subject to the permit, lease, or contract is sold, conveyed, transferred, or leased for nongrazing purposes by the Secretary or the State.

(B) LIMITATION.—Except to the extent reasonably necessary to accommodate surface operations in support of mineral development, the Secretary or the State shall not cancel or modify a grazing permit, lease, or contract because the land subject to the permit, lease, or contract has been leased for mineral development.

(4) BASE PROPERTIES.—If land conveyed by the State under this Act is used by a grazing permittee or lessee to meet the base property requirements for a Federal grazing permit or lease, the land shall continue to qualify as a base property for the remaining term of the lease or permit and the term of any renewal or extension of the lease or permit.

(c) HAZARDOUS MATERIALS.—

(1) IN GENERAL.—The Secretary and, as a condition of the exchange, the State shall make available for review and inspection any record relating to hazardous materials on the land to be exchanged under this Act.

(2) COSTS.—The costs of remedial actions relating to hazardous materials on land acquired under this Act shall be paid by those entities responsible for the costs under applicable law.

(d) EASEMENT.—The conveyance of Federal land in sec. 33, T. 4 S., R. 24 E., and sec. 4, T. 5 S., R. 24 E., of the Salt Lake Meridian, shall be subject to a 1,000 foot wide scenic easement and a 200 foot wide road right-of-way previously granted to the National Park Service for the Dinosaur National Monument, as described in Land Withdrawal No. U–0141143, pursuant to the Act of September 8, 1960 (74 Stat. 857,861).

SEC. 5. TERMINATION OF AUTHORITY.

The provisions of this Act shall terminate 5 years after the date of enactment.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

PURPOSE OF THE BILL

The purpose of H.R. 1275 is to authorize the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1275 directs the Secretary of the Interior to enter into an exchange with the State of Utah (acting on behalf of the Utah School and Institutional Trust Lands Administration [SITLA]) for the exchange of public lands and state lands in Grand, San Juan, and Uintah Counties.

Land exchanges, especially in Utah, have proven to be very controversial. In 2002 the Department of the Interior and the State of Utah negotiated a land exchange in the San Rafael Swell area of Utah, which was subsequently introduced as H.R. 4968 in the 107th Congress. That legislation was extremely controversial, with a number of Bureau of Land Management (BLM) employees and public interest groups issuing charges of manipulation of data and valuations. As a result of these charges, several investigations were launched which confirmed that the Department of the Interior engaged in improper negotiation and valuation procedures on the exchange. Consequently, the proposed exchange was abandoned, disciplinary action was taken against several senior officials, and the Department of the Interior overhauled its land exchange procedures.

H.R. 1275 would be the first Utah land exchange since the infamous 2002 proposal and is based on legislation (H.R. 2069) that passed the House of Representatives in the 109th Congress but was not enacted. According to the BLM, this legislation would involve approximately 40,000 acres of federal land and minerals being exchanged for approximately 42,000 acres of state land and minerals. BLM has testified that many of the lands that the state is proposing to transfer to the BLM are lands that the BLM has a high interest in acquiring because they would consolidate federal ownership within wilderness study areas, Areas of Critical Environmental Concern (ACEC), or other sensitive lands. Much of the federal land that the state would acquire has a high potential for development.

This exchange has been widely publicized and the intent of the legislation is to place valuable conservation and recreation lands into public ownership while also benefitting public school funding in Utah. The exchange will also continue the process of consolidating state and federal ownership patterns in Utah.

COMMITTEE ACTION

H.R. 1275 was introduced on March 3, 2009 by Representative Jim Matheson (D–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests, and Public Lands.

At a National Parks, Forests and Public Lands Subcommittee hearing on March 24, 2009, a representative of the Department of the Interior testified that the BLM generally supports the bill. However, the agency recommended several changes regarding valuation and appraisal of these lands as well as other technical changes.

On June 10, 2009, the Full Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests, and Public Lands was discharged from the further consideration of H.R. 1275. Subcommittee Chairman Raúl Grijalva (D–AZ) offered an amendment in the nature of a substitute to make the technical changes requested by the BLM, to address the valuation and appraisal concerns of the BLM, and to reference new maps. The amendment in the nature of a substitute was agreed to by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Utah Recreational Land Exchange Act of 2009".

Section 2. Definitions

Section 2 provides definitions of the terms used in this Act.

Section 3. Exchange of land

Section 3 establishes the procedures to be used in making the exchange, including (except as otherwise provided for in this Act) section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716) and other applicable law. It specifies that all costs of the land exchanges under this Act shall be paid equally by the Secretary and the State.

Subsection (d) addresses appraisals. Subsection (d)(4) specifically provides that if, during the appraisal, value is attributed to any parcel of federal land because of the presence of minerals, subject to leasing under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the value of the parcel shall be reduced. This will be determined by reducing the estimated value of the payments that would have been made to the State of Utah from bonuses, rentals, and royalties if such minerals were leased, from the appraised value.

Subsection (f) includes a reservation of a federal interest in any oil shale that may be present on the federal lands being exchanged. Although there is currently no viable market for oil shale, and as

such oil shale would not likely be valued when appraising the land, the Committee understands that there is a large future potential value in this resource. To protect the federal interest the amended bill provides that if the State ever develops such oil shale, it would be obligated to split any revenue it received with the United States. The Committee's intent is that the United States receive all revenue that it would have received under applicable law if the lands had been retained in federal ownership, minus any amounts that otherwise would be payable to the State of Utah under applicable law.

Section 4. Status and management of land after exchange

Section 4 provides for the management of the non-federal lands acquired in the exchange and includes provisions regarding mineral leasing, grazing permits and disclosure and liability for hazardous materials.

The Committee is aware that a number of the non-federal parcels being acquired have significant conservation values, including the protection of community water supplies. For this reason the legislation includes language to withdraw certain parcels from operation on the mineral leasing and mineral material disposal laws to protect these resource values.

Section 5. Termination of authority

Section 5 provides that the provisions of the Act will terminate in 5 years.

Section 6. Authorization of appropriations

Section 6 authorizes the appropriation of such sums as may be necessary to carry out this Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the exchange of land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 1275 would authorize a land exchange between the federal government and the state of Utah. The bill would specify certain procedures for equalizing the values of lands and interests exchanged and other conditions on the transaction. In particular, under the bill, the federal government would reserve an interest in any oil shale resources conveyed to the state.

CBO estimates that enacting H.R. 1275 would have no significant net impact on discretionary or mandatory spending and no effect on revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Based on information provided by the Bureau of Land Management (BLM), CBO estimates that the approximately 36,000 acres of federal lands to be conveyed under H.R. 1275 currently generate net offsetting receipts (a credit against direct spending) totaling less than $50,000 annually, primarily for grazing. Although some of those lands have the potential for mineral development, CBO expects that they are unlikely to be leased over the next 10 years; therefore, we estimate that forgone net receipts under the bill over the 2010–2019 period would be minimal, as would any new receipts that might be earned on the approximately 46,000 acres that would be received from the state.

Also, under H.R. 1275, the federal government would reserve a 50 percent interest in future royalties, bonus bids, and other payments that Utah might receive if the lands to be transferred to it are ever developed for oil shale. Because BLM typically retains half of any receipts from mineral leasing on federal land under current law, CBO expects that this provision would, on average, have no significant effect on the federal budget.

The CBO staff contacts for this estimate are Deborah Reis and Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1275 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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