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House Natural Resources Committee
Subcommittee on Indian and Alaska Native Affairs

Hearing on

H.R. 4027
To Clarify Authority Granted Under the Act Entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for Other Purposes".

Tuesday, March 20, 2012

Introduction

On behalf of the Utah School and Institutional Trust Lands Administration, I thank the subcommittee for the opportunity to testify in support of H.R. 4027. I also wish to thank Chairwoman Cuch of the Ute Tribe of the Uintah and Ouray Reservation for her leadership in supporting H.R. 4027, and Utah Congressmen Jim Matheson and Rob Bishop for their sponsorship of this legislation. H.R. 4027 will permit resolution of a 64 year old land tenure problem, protect reservation lands with outstanding values for wildlife and other biological and scenic resources, promote tribal economic development, and help fund public schools in Utah.

About SITLA

The School and Institutional Trust Lands Administration ("SITLA") is an independent, non-partisan state agency established to manage lands granted by Congress to the State of Utah at statehood for the financial support of K-12 public education and other state institutions. SITLA manages approximately 3.3 million acres of state trust lands, and an additional million acres of mineral estate. Revenue from school trust lands – most of which comes from mineral development - is deposited in the Utah Permanent School Fund, a perpetual endowment supporting K-12 public schools. Investment income from this endowment is distributed annually to each public and charter school in Utah to support academic priorities chosen at the individual school level.

Background

In the 1930s and early 1940s, substantial conflict arose between Indian and non-Indian ranchers over the rights to graze cattle on the public domain in southern Uintah and northern Grand Counties, Utah. The Department of the Interior's Indian service (now the Bureau of Indian Affairs) proposed resolution of these disputes through the addition of a 510,000-acre area of public domain to the existing Uintah and Ouray reservation. The addition, which came to be known as the Hill Creek Extension, was formalized by Congress through the Act of March 11, 1948, 62 Stat. 72 (the "Hill Creek Act"). Because the focus of the Hill Creek Act was protection of tribal grazing uses, large areas of previously withdrawn mineral rights under the extension were retained by the Bureau of Land Management ("BLM") as part of the public domain, rather than becoming tribal minerals. A map showing mineral ownership within the extension is attached as Exhibit "1" and a general location map of the Hill Creek Extension is attached as Exhibit "2" to this statement.

At the time that the Hill Creek Extension was created, the State of Utah also owned approximately 38,000 acres of state school trust lands inside the extension, most of which were scattered sections in the familiar "checkerboard" pattern of western land ownership. Recognizing the potential need to remove state trust lands from the extension, Congress included provisions in the Hill Creek Act allowing the State to relinquish state trust lands within the extension to the United States for the benefit of the tribe, and to select replacement lands from public lands "outside the area hereby withdrawn." In 1955, Congress amended the Hill Creek Act to clarify that this right of relinquishment and selection extended to lands "mineral in character." Pub. L. 263, 69 Stat. 544 (Aug. 9, 1955)(the "1955 Act").

In 1957, the Utah legislature authorized the State Land Board (SITLA's predecessor agency) to sell the surface estate of all state trust lands located in the Hill Creek Extension to the Ute Tribe for $2.50/acre. L. Utah, ch. 144, §1-3 (1957), *codified at* Utah Code Ann. §§ 65-83, -85 (1961)(repealed). This legislation expressly required the State to reserve the mineral estate and the right of ingress and egress to develop such minerals. The sale of surface lands authorized by the state legislation was consummated in 1958, leaving Utah's school trust with approximately 38,000 acres of subsurface mineral estate within the extension.

Need for the Current Legislation

In the intervening years, SITLA and its predecessor agencies and the Ute Tribe have maintained a cordial and cooperative relationship in connection with the development of state school trust minerals within the Hill Creek Extension. Because of the area's remote geographic location, there has not been significant industry demand for the development of minerals in the southern part of the extension until recently. With recent industry interest in the area, the Ute Tribe has evaluated competing values and determined that it wishes to maintain the far southern portion of the extension – that portion of the extension located in the Book Cliffs area of Grand County, Utah – as an unspoiled area protected for religious and cultural values, as well as wildlife and wilderness. The BLM Vernal Resource Management Plan describes this area as follows:

> The Hill Creek Extension Book Cliffs "wilderness" is where relatively undisturbed natural values interrelate to Tribal lifeways and religious pursuits. In these Tribal sensitive areas, construction, operation and sights and sounds of oil and gas wells and associated support facilities would degrade the roadless and natural character of undisturbed areas.

To accommodate the Ute Tribe's desire to maintain the Grand County portion of the Hill Creek Extension in its undeveloped character, SITLA filed an application with BLM in 2006 seeking to relinquish 18,247.54 acres of state trust minerals in the Grand County portion of the extension to the United States for the benefit of the tribe, and to select replacement minerals from BLM mineral estate further north in the Hill Creek Extension. This relinquishment and request for selection was made in accordance with applicable provisions of the 1948 Hill Creek Act and its 1955 amendment.

BLM has declined to process SITLA's application on the basis that public domain (i.e. non-tribal) minerals managed by BLM within the Hill Creek Extension are not "outside the area … withdrawn" by the 1948 and 1955 acts. Both the Ute Tribe and SITLA disagree with BLM's conclusion in this regard since Congress expressly chose not to withdraw BLM-managed minerals when it created the Hill Creek extension. These mineral lands are open and unappropriated, and should be available for selection.

BLM and the Office of the Solicitor in the Department of the Interior have drawn the opposite conclusion, contending that BLM minerals within the extension are not subject to selection. H.R. 4027 would override this conclusion, and confirm that the State of Utah, upon relinquishment of mineral estate within the Grand County portion of the Hill Creek Extension, may select BLM mineral estate within the exterior boundaries of the extension in Uintah County.

It should be noted that under the Hill Creek Act and its 1955 amendment, SITLA has the unquestioned right to select BLM lands outside the Hill Creek Extension elsewhere in Utah. SITLA and the Ute Tribe are jointly pursuing H.R. 4027 because they believe that a selection of BLM minerals inside the extension is most beneficial to all parties involved. If H.R. 4027 is not enacted, SITLA will either select replacement lands from public lands outside the extension, or lease its existing mineral estate to industry.

Description of H.R. 4027

H.R. 4027 adds a new section 5 to the Hill Creek Act. This new section 5 does two things. First, it clarifies that, upon the State's relinquishment of minerals within the Hill Creek Extension, the State may use the 1948 and 1955 acts to select replacement minerals from BLM minerals in the Uintah County portion of the extension on an acre for acre basis. Second, it provides that the United States will reserve an overriding mineral interest in all lands conveyed to the State equal to the percentage of revenue that the United States would have retained under the federal Mineral Leasing Act had the lands remained in federal ownership. The State of Utah would reserve an identical interest in the state lands relinquished to the United States for the benefit of the tribe. Both reservations would terminate thirty years after enactment of H.R. 4027.

The mineral reservation provisions are drafted to ensure that both the federal treasury and the State school trust are held harmless by the relinquishment/selection process. BLM minerals that would be selected by Utah are currently not leased for oil and gas, but are thought to be prospective, particularly for natural gas. The State trust lands that would be relinquished to the United States for the benefit of the tribe are similarly prospective. Appraisals of prospective but nonproducing mineral lands are expensive and inherently unreliable due to the many unknowable variables involved in determining potential resources and their likelihood of production. The mineral reservation provisions of H.R. 4027 avoid the expense and unreliability of mineral appraisals by sharing revenue from each set of lands equally.

Under existing federal law, the United States retains 50% of bonuses, rentals and royalties from mineral production on federal lands, with the remaining half transferred to the state of production. 30 U.S.C. § 191. After the State's acquisition of BLM minerals through H.R. 4027, the United States would still retain all revenue that the United States treasury would have received from leasable minerals had the U.S. retained ownership of the lands, i.e. 50% of bonuses and rentals, and a share of royalties equal to the federal share of production royalties (6.25% in the case of oil and gas, different amounts for tar sands and oil shale). This language would ensure that the U.S. treasury and federal taxpayers are held harmless in the transaction, while saving the United States management and royalty collection costs. The U.S. treasury is thus held harmless with respect to the selection. Utah's school trust would likewise share in half of any revenue from the relinquished lands, although subsection 5(5) provides that neither party is obligated to lease lands in which the other party retains a reserved interest. Thus, if the Ute Tribe chooses not to permit leasing of lands relinquished by the State, no revenue would be generated for the State school trust.

This type of arrangement has legislative precedent. Sharing of revenue by parties exchanging land was a critical component of the large state-federal land exchange, Project BOLD, championed by Utah Governor Scott Matheson, the father of H.R. 4027's current sponsor, Rep. Jim Matheson. More recently, in connection with the Utah Recreational Land Exchange Act of 2009, Pub. L. 111-53 ("URLEA"), BLM and SITLA recognized that any formal appraisal of oil shale would be expensive and inaccurate, and jointly asked Congress to include language for oil shale identical in effect to that contained in H.R. 4027. URLEA was enacted with this language. H.R. 4027 simply extends the concept to all leaseable minerals.

SITLA has received informal feedback about H.R. 4027 raising three questions: (1) why does the legislation not provide for formal mineral appraisals? (2) why do the mutual reservations of interest terminate in thirty years? (3) why does the legislation base the reserved royalty interest of each party on the existing royalty rate structure rather than allowing the federal reserved interest to rise if federal royalty rates rise in the future? The answers to these questions are as follows:

(1) The proposal does not require formal mineral appraisals because appraisals of prospective but nonproducing mineral lands are expensive and inherently unreliable due

to the many unknowable variables involved in determining potential resources and their likelihood of production. SITLA and BLM are currently engaged in mineral appraisals in connection with the Utah Recreational Land Exchange Act of 2009, Pub. L. 111-53 ("URLEA"). The projected cost of mineral appraisals in the URLEA exchange is so high that BLM has been unable to fund its share of costs despite the passage of more than 2 ½ years since congressional enactment. Mineral appraisals have been a major sticking point in other contexts, causing the failure of legislation to exchange Utah school trust lands out of national forests and parks (Pub. L. 103-93, although that failure was subsequently rectified through the Grand Staircase-Escalante National Monument exchange, Pub. L. 105-335). The mineral reservation provisions of H.R. 4027 would avoid the expense and unreliability of mineral appraisals by sharing revenue from each set of lands equally.

(2) H.R. 4027 would add a new section 5(7) to the Hill Creek Act terminating the mutual reservation of interests thirty years after enactment. The purpose of this termination is to avoid burdening each party with a perpetual accounting obligation with respect to lands owned by the other. At the current time, SITLA and the Utah BLM are engaged in an expensive and mutually frustrating effort to sort out accounting for oil and gas leases transferred by BLM to the State in the 1960s pursuant to the Dawson Act of 1958. As with the events leading to the well-known Cobell litigation, this effort has proven that multi-generational accounting obligations are difficult at best to track. The termination of the reserved interest thirty years after enactment will have no economic present value loss to either party, but would simplify the long-term relationship of the parties – one of the reasons for H.R. 4027 in the first place.

(3) H.R. 4207 would give the United States an overriding interest in the lands to be acquired by SITLA equal to 6.25% of proceeds from oil and gas, and equal to 50% of the royalty rate from other leaseable minerals, based on royalty rates as of October 1, 2011 (the date this proposal was first incorporated into proposed legislation). These provisions, as noted above, would ensure that the United States would receive revenue equivalent to that it would receive if the lands remained in federal ownership, based on the existing federal royalty structure. As noted below, SITLA and the Ute Tribe are joining together to develop the selected lands for mutual benefit. If the United States could unilaterally raise its share of revenue from those lands at a later date – reducing or eliminating the share of the Utah school trust and the Ute Tribe – neither party would have the economic certainty necessary to proceed with the transaction. This would result in SITLA either selecting replacement lands from public lands outside the extension under existing authority, or leasing its existing mineral estate in the extension to industry.

Tribal Economic Development

One of the great success stories in Native American economic development in recent years has been the growth in active participation by tribes in the business of mineral development on tribal lands as well as lands outside of reservation areas. The Energy Policy Act of 2005 (Pub. L. 109-58) included a Title V entitled the *Indian Tribal Energy Development and Self Determination Act.* This Act authorized considerably greater autonomy for tribes in the development of tribal energy resources. The Ute Tribe of the Uintah and Ouray Reservation has embraced this opportunity in its goal of tribal self-determination and financial autonomy. Among the Ute Tribe's initiatives has been the creation of Ute Energy Corporation, a 51% tribally owned corporation that has partnered tribal resources with private capital and expertise with great success.

If H.R. 4207 is enacted, SITLA has agreed to join with the Ute Tribe in development of the selected lands for mineral extraction in a prudent and responsible manner. A joint transaction of the nature contemplated by SITLA and the Tribe would add 18,257 acres to the Ute Energy's mineral portfolio, creating jobs and supporting financial self-sufficiency for tribal members. Both Grand and Uintah Counties have supported the proposed legislation as well.

Conclusion

H.R. 4027 will allow the Ute Tribe to eliminate the possibility of surface-subsurface conflict arising from the presence of state school trust minerals underlying sensitive lands in the south portion of the Hill Creek extension. It will allow Utah's school trust to generate revenue for K-12 public education in Utah, and allow the Ute Tribe to generate additional revenue to support tribal economic independence, without cost to federal taxpayers. I respectfully urge the subcommittee's support for H.R. 4027. Thank you for the opportunity to provide this statement.

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