Statement of
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Senate Committee on Energy & Natural Resources
Subcommittee on Public Lands, Forests, & Mining
S. 2078, Advancing Conservation and Education Act
August 22, 2018

Thank you for the opportunity to testify on S. 2078, the Advancing Conservation and Education Act. This bill would establish a new mechanism to allow western States to relinquish State trust land within Federally designated conservation areas and select replacement land from lands administered by the Bureau of Land Management (BLM) land within the respective States.

The Department of the Interior (Department) recognizes the significant work of the bill sponsors in the Senate and House to resolve a long-standing problem facing Federal and State land managers throughout the West: the often conflicting needs of Federal agencies charged with managing lands designated for conservation purposes and of State agencies charged with meeting differing management mandates.

Secretary Zinke, through Secretarial Orders 3347, 3356, and 3366, has pledged to expand access to America's public lands, to increase hunting, fishing, and recreational opportunities nationwide, and to enhance conservation stewardship. In addition, Secretary Zinke is focused on restoring full collaboration and coordination with local communities and making the Department a better neighbor.

The Department supports the goals of S. 2078, which we believe has the potential to address some long-standing management issues in a manner that would be consistent with the Secretary's priorities to improve recreation, public access, and collaborative conservation. We would welcome the opportunity to work with the sponsors and the Subcommittee to address a number of issues outlined in this statement.

Background

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to retain management of most public lands, thereby reducing the acreage that had been available for disposal in earlier years. Under FLPMA, the BLM is directed to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

The admission of Ohio into the Union in 1803 marked the beginning of Congressional action to provide land to the individual States through their Enabling Acts. Beginning in 1848, new States

tended to receive two sections of land in each township,[1] generally sections 16 and 36. That increased to four sections with the admission of Utah, Arizona, and New Mexico, which generally received sections 2, 16, 32, and 36. When Alaska entered the Union in 1959, rather than being assigned specific sections, the provisions of the Alaska Statehood Act entitled the State to select over 103 million acres of Federal land.

Each of the thirteen States covered by S. 2078 – Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming – has State laws governing the management of these lands. On the whole they are dedicated to providing revenue to benefit education and other State purposes. While the somewhat random disbursement of sections may have seemed logical in the 19th and early 20th centuries, today it has given us an ownership pattern of lands that makes management difficult and challenging for both the States and the Federal government. These ownership patterns can also prove confusing for the many users of the public lands.

Today, many of these State sections – nearly 3 million acres with over half of those acres in Alaska – lie within conservation units established by Congress and the President. Among these are State lands within national parks, wildlife refuges, national monuments, national conservation areas, and designated wilderness areas. While these conservation designations only apply to Federal lands within those designated areas, the ability of States to fully access or develop the resources of these inholdings may be limited.

The BLM has the authority under section 206 of FLPMA to exchange public land with States or other entities if the Secretary of the Interior "determines that the public interest will be well served by making that exchange." Furthermore, FLPMA requires that all exchanges be of equally valued lands as determined by appraisals conducted according to the Federal Uniform Appraisal Standards.

S. 2078

S. 2078, the Advancing Conservation and Education Act, addresses the scattered nature of State land parcels in 13 western States by establishing a new mechanism for the States to relinquish inholdings within Federally-designated conservation units and then allowing the States to subsequently select replacement land from other BLM-administered lands within the States. The Department supports the goals of S. 2078 and would like to work with the sponsors to achieve these goals consistent with FLPMA and other resource management laws.

The Department appreciates several major improvements that the sponsors have incorporated in S. 2078 from prior versions of the legislation. For example, we note the addition of provisions regarding the protection of Indian rights and interests, road rights-of-way, and other valid existing rights and the extension of various time frames. We would welcome the opportunity to work with the sponsors and Congress to address a few additional issues outlined below.

[1] The rectangular survey system was established by the Land Ordinance of 1785. It established a system of townships made up of 36 individual sections measuring one square mile. Each section is made up of 640 acres.

Valuation & Cost
The Department strongly supports the completion of major land exchanges that consolidate ownership of scattered tracts of land, thereby easing BLM and State land management tasks. The Department is also committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice. We recommend that any appraisal process be managed by DOI's Appraisal and Valuation Services Office, which provides credible, timely, and efficient valuation services to ensure public trust in Federal real property transactions. We also recognize that it may be appropriate to consider alternative methods for low-value parcels and environmental review as envisioned by this legislation.

The Department appreciates that the costs of conveyances under the bill would be split equally between the State and Federal government and that the value of the State land grant parcels and the public land to be conveyed would be equal or made equal. However, the Department recommends that the bill be modified to provide the Secretary with discretion to equalize values of these lands by adjusting the acres involved in addition to using an equalization payment or establishing a ledger account as provided by the bill. While the BLM has successfully used ledger accounts for very large exchanges in the past, they can make transactions more challenging to complete.

Lands Available for Exchange
FLPMA directs that public lands should generally be retained in public ownership. However, section 203 of FLPMA allows the BLM to identify lands as potentially suitable for disposal by sale that meet specific criteria through its land use planning process. Such determinations are made after full public participation and are consistent with all applicable laws. Under FLPMA, disposal of the lands is discretionary and the BLM must first consider local conditions and needs.

S. 2078 specifies and prioritizes which lands the States may relinquish and which lands they may select. The bill defines "eligible areas" as State lands within Congressionally-designated wilderness; NPS units; units of the National Wildlife Refuge System; lands within the BLM's National Conservation Lands, including national conservation areas and wilderness study areas; conservation units within the National Forest System; and areas identified in BLM Resource Management Plans as having wilderness characteristics. States may relinquish inholdings within these units and select public land in other areas to receive in exchange. The Department welcomes the opportunity to consolidate holdings in these designations.

Likewise, we support flexibility on the selecting side within certain parameters. For example, the Department recommends that a priority be placed on lands already identified as potentially suitable for disposal through the land use planning process. Additionally, we believe a priority should be placed on exchanging out to the State unencumbered mineral estate where the Federal government is not the surface landowner, as well as areas in a checkerboard land ownership pattern and Federal lands interspersed with other lands, which may be isolated or difficult to manage.

While the legislation places some public lands off-limits for selection – such as lands within conservation designations and currently designated as Areas of Critical Environmental Concern

– and permits the Secretary to disapprove of State applications in certain circumstances, we would like to discuss other lands that we should consider limiting access to for selection. For example, the BLM has numerous developed recreation sites outside of conservation units, including campgrounds, trailheads, and designated off highway vehicle play areas. Taxpayer funds and user fees have been used to develop such sites, which often receive high visitation and are popular with the public. Similarly, we recommend that the sponsors consider limiting selection of areas that would adversely affect access for recreational hunting, fishing and shooting, migration corridors for big game, or designated winter habitat. In addition, we would like to work with the sponsors on clarifying amendments regarding boundaries, traditional cultural property, and artificial division of parcels, as well as language clarifying that public lands withdrawn for military purposes or under an administrative segregation would not be available for State selection and that parcels acquired by the United States would be subject to the laws and regulations governing the eligible area in which it is located.

S. 2078 also makes available lands with high mineral and energy development and transmission potential for States to potentially select. This could include lands currently leased for oil and gas development, lands under consideration for future leasing, and lands with existing mining claims, among others. The Department notes that transferring lands with associated or developed oil and gas mineral estate raises issues of both valuation and protection of valid existing rights.

The Department also notes that public lands selected by the States may already be in use for a wide variety of purposes, including grazing, hunting, fishing, wildlife habitat, and recreation. Incorporating the State selection process into the BLM's on-going land use planning process could help to avoid some of these potential conflicts.

Finally, the Department recommends that the bill be amended to include language indemnifying the Department in the event that the United States obtains land contaminated with hazardous materials.

Timeframes

The Department appreciates that the timeframes included in S. 2078 have been extended from those of earlier versions of this legislation. We would like to work with the sponsors on an amendment to the regulatory process outlined in section 5, which we believe will aid implementation.

State Variations

Finally, there are issues to be considered in S. 2078 that affect individual States differently. For example, Arizona's State constitution requires that State lands may only be disposed of through auction to the highest bidder or by exchange with other governmental entities. This bill technically does not provide for exchanges, but rather relinquishment and selection. In Alaska, the BLM is continuing to fulfill its obligations to transfer millions of acres of mandated entitlements under the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act of 1971, and the Alaska Statehood Act. If passed as currently drafted, S. 2078 could have the effect of slowing the pace of completion of these important entitlements. Finally, the Department recommends that each relinquishment and selection under the bill include a clear

purpose and rationale to help inform long-term management planning by Federal and local governments.

Conclusion

The Department supports the goals of S. 2078, which we believe has the potential to address some long-standing management issues in a manner that would be consistent with the Secretary's priorities to improve recreation, public access, and conservation stewardship. The Department looks forward to continuing to work with the sponsors and the Subcommittee as this bill moves forward through the legislative process.