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SENATE

{ REPORT
114-349 }

UTAH TEST AND TRAINING RANGE ENCROACHMENT PREVENTION AND TEMPORARY CLOSURE ACT

SEPTEMBER 13, 2016.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 2383]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2383) to withdraw certain Bureau of Land Management land in the State of Utah from all forms of public appropriation, to provide for the shared management of the withdrawn land by the Secretary of the Interior and the Secretary of the Air Force to facilitate enhanced weapons testing and pilot training, enhance public safety, and provide for continued public access to the withdrawn land, to provide for the exchange of certain Federal land and State land, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends 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; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Utah Test and Training Range Encroachment Prevention and Temporary Closure Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AUTHORIZATION FOR TEMPORARY CLOSURE OF CERTAIN PUBLIC LAND ADJACENT TO THE UTAH TEST AND TRAINING RANGE

Sec. 101. Definitions.

Sec. 102. Memorandum of agreement.

Sec. 103. Temporary closures.

Sec. 104. Liability.

Sec. 105. Community Resource Advisory Group.

Sec. 106. Savings clauses.

TITLE II—BUREAU OF LAND MANAGEMENT LAND EXCHANGE WITH STATE OF UTAH

Sec. 201. Definitions.

59-010

Sec. 202. Exchange of Federal land and non-Federal land.
 Sec. 203. Status and management of non-Federal land acquired by the United States.
 Sec. 204. Hazardous materials.

TITLE I—AUTHORIZATION FOR TEMPORARY CLOSURE OF CERTAIN PUBLIC LAND ADJACENT TO THE UTAH TEST AND TRAINING RANGE

SEC. 101. DEFINITIONS.

In this Act:

- (1) BLM LAND.—The term “BLM land” means certain public land administered by the Bureau of Land Management land in the State comprising approximately 703,621 acres, as generally depicted on the map entitled “Utah Test and Training Range Enhancement/West Desert Land Exchange” and dated May 7, 2016.
- (2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (3) STATE.—The term “State” means the State of Utah.
- (4) UTAH TEST AND TRAINING RANGE.—The term “Utah Test and Training Range” means the portions of the military land and airspace operating area of the Utah Test and Training Area that are located in the State, including the Dugway Proving Ground.

SEC. 102. MEMORANDUM OF AGREEMENT.

(a) MEMORANDUM OF AGREEMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Air Force shall enter into a memorandum of agreement to authorize the Secretary of the Air Force, in consultation with the Secretary, to impose limited closures of the BLM land for military operations and national security and public safety purposes, as provided in this title.

(2) DRAFT.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Secretary of the Air Force shall complete a draft of the memorandum of agreement required under paragraph (1).

(B) PUBLIC COMMENT PERIOD.—During the 30-day period beginning on the date on which the draft memorandum of agreement is completed under subparagraph (A), there shall be an opportunity for public comment on the draft memorandum of agreement, including an opportunity for the Utah Test and Training Range Community Resource Advisory Group established under section 105(a) to provide comments on the draft memorandum of agreement.

(3) MANAGEMENT BY SECRETARY.—The memorandum of agreement entered into under paragraph (1) shall provide that the Secretary shall continue to manage the BLM land in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable land use plans, while allowing for the temporary closure of the BLM land in accordance with this title.

(4) PERMITS AND RIGHTS-OF-WAY.—

(A) IN GENERAL.—The Secretary shall consult with the Secretary of the Air Force regarding Utah Test and Training Range mission requirements before issuing new use permits or rights-of-way on the BLM land.

(B) FRAMEWORK.—The Secretary and the Secretary of the Air Force shall establish within the memorandum of agreement entered into under paragraph (1) a framework agreed to by the Secretary and the Secretary of the Air Force for resolving any disagreement on the issuance of permits or rights-of-way on the BLM land.

(5) TERMINATION.—

(A) IN GENERAL.—The memorandum of agreement entered into under paragraph (1) shall be for a term to be determined by the Secretary and the Secretary of the Air Force, not to exceed 25 years.

(B) EARLY TERMINATION.—The memorandum of agreement may be terminated before the date determined under subparagraph (A) if the Secretary of the Air Force determines that the temporary closure of the BLM land is no longer necessary to fulfill Utah Test and Training Range mission requirements.

(b) MAP.—The Secretary may correct any minor errors in the map described in section 101(1).

(c) LAND SAFETY.—If corrective action is necessary on the BLM land due to an action of the Air Force, the Secretary of the Air Force shall—

- (1) render the BLM land safe for public use; and
- (2) appropriately communicate the safety of the land to the Secretary on the date on which the BLM land is rendered safe for public use under paragraph (1).

(d) CONSULTATION.—The Secretary shall consult with any federally recognized Indian tribe in the vicinity of the BLM land before entering into any agreement under this title.

(e) GRAZING.—

(1) EFFECT.—Nothing in this title impacts the management of grazing on the BLM land.

(2) CONTINUATION OF GRAZING MANAGEMENT.—The Secretary shall continue grazing management on the BLM land pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable resource management plans.

(f) MEMORANDUM OF UNDERSTANDING ON EMERGENCY ACCESS AND RESPONSE.—Nothing in this section precludes the continuation of the memorandum of understanding between the Department of the Interior and the Department of the Air Force with respect to emergency access and response, as in existence on the date of enactment of this Act.

(g) WITHDRAWAL.—Subject to valid existing rights, the BLM land is withdrawn from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws, and the geothermal leasing laws.

SEC. 103. TEMPORARY CLOSURES.

(a) IN GENERAL.—If the Secretary of the Air Force determines that military operations (including operations relating to the fulfillment of the mission of the Utah Test and Training Range), public safety, or national security require the temporary closure to public use of any road, trail, or other portion of the BLM land, the Secretary of the Air Force may take such action as the Secretary of the Air Force, in consultation with the Secretary, determines necessary to carry out the temporary closure.

(b) LIMITATIONS.—Any temporary closure under subsection (a)—

(1) shall be limited to the minimum areas and periods during which the Secretary of the Air Force determines are required to carry out a closure under this section;

(2) shall not occur on a State or Federal holiday, unless notice is provided in accordance with subsection (c)(1)(B);

(3) shall not occur on a Friday, Saturday, or Sunday, unless notice is provided in accordance with subsection (c)(1)(B); and

(4)(A) if practicable, shall be for not longer than a 3-hour period per day;

(B) shall only be for longer than a 3-hour period per day—

(i) for mission essential reasons; and

(ii) as infrequently as practicable and in no case for more than 10 days per year; and

(C) shall in no case be for longer than a 6-hour period per day.

(c) NOTICE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Air Force shall—

(A) keep appropriate warning notices posted before and during any temporary closure; and

(B) provide notice to the Secretary, public, and relevant stakeholders concerning the temporary closure—

(i) at least 30 days before the date on which the temporary closure goes into effect;

(ii) in the case of a closure during the period beginning on March 1 and ending on May 31, at least 60 days before the date on which the closure goes into effect; or

(iii) in the case of a closure described in paragraph (3) or (4) of subsection (b), at least 90 days before the date on which the closure goes into effect.

(2) SPECIAL NOTIFICATION PROCEDURES.—In each case for which a mission-unique security requirement does not allow for the notifications described in paragraph (1)(B), the Secretary of the Air Force shall work with the Secretary to achieve a mutually agreeable timeline for notification.

(d) MAXIMUM ANNUAL CLOSURES.—The total cumulative hours of temporary closures authorized under this section with respect to the BLM land shall not exceed 100 hours annually.

(e) PROHIBITION ON CERTAIN TEMPORARY CLOSURES.—The northernmost area identified as “Newfoundland’s” on the map described in section 101(1) shall not be subject to any temporary closure between August 21 and February 28, in accordance with the lawful hunting seasons of the State of Utah.

(f) **EMERGENCY GROUND RESPONSE.**—A temporary closure of a portion of the BLM land shall not affect the conduct of emergency response activities on the BLM land during the temporary closure.

(g) **LIVESTOCK.**—Livestock authorized by a Federal grazing permit shall be allowed to remain on the BLM land during a temporary closure of the BLM land under this section.

(h) **LAW ENFORCEMENT AND SECURITY.**—The Secretary and the Secretary of the Air Force may enter into cooperative agreements with State and local law enforcement officials with respect to lawful procedures and protocols to be used in promoting public safety and operation security on or near the BLM land during noticed test and training periods.

SEC. 104. LIABILITY.

The United States (including all departments, agencies, officers, and employees of the United States) shall be held harmless and shall not be liable for any injury or damage to any individual or property suffered in the course of any mining, mineral, or geothermal activity, or any other authorized nondefense-related activity, conducted on the BLM land.

SEC. 105. COMMUNITY RESOURCE ADVISORY GROUP.

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this Act, there shall be established the Utah Test and Training Range Community Resource Advisory Group (referred to in this section as the “Community Group”) to provide regular and continuing input to the Secretary and the Secretary of the Air Force on matters involving public access to, use of, and overall management of the BLM land.

(b) MEMBERSHIP.—

(1) **IN GENERAL.**—The Secretary shall appoint members to the Community Group, including—

(A) 1 representative of Indian tribes in the vicinity of the BLM land, to be nominated by a majority vote conducted among the Indian tribes in the vicinity of the BLM land;

(B) not more than 1 county commissioner from each of Box Elder, Tooele, and Juab Counties, Utah;

(C) 2 representatives of off-road and highway use, hunting, or other recreational users of the BLM land;

(D) 2 representatives of livestock permittees on public land located within the BLM land;

(E) 1 representative of the Utah Department of Agriculture and Food; and

(F) not more than 3 representatives of State or Federal offices or agencies, or private groups or individuals, if the Secretary determines that such representatives would further the goals and objectives of the Community Group.

(2) **CHAIRPERSON.**—The members described in paragraph (1) shall elect from among the members of the Community Group—

(A) 1 member to serve as Chairperson of the Community Group; and

(B) 1 member to serve as Vice-Chairperson of the Community Group.

(3) **AIR FORCE PERSONNEL.**—The Secretary of the Air Force shall appoint appropriate operational and land management personnel of the Air Force to serve as a liaison to the Community Group.

(c) CONDITIONS AND TERMS OF APPOINTMENT.—

(1) **IN GENERAL.**—Each member of the Community Group shall serve voluntarily and without compensation.

(2) TERM OF APPOINTMENT.—

(A) **IN GENERAL.**—Each member of the Community Group shall be appointed for a term of 4 years.

(B) **ORIGINAL MEMBERS.**—Notwithstanding subparagraph (A), the Secretary shall select $\frac{1}{2}$ of the original members of the Community Group to serve for a term of 4 years and the $\frac{1}{2}$ to serve for a term of 2 years to ensure the replacement of members shall be staggered from year to year.

(C) **REAPPOINTMENT AND REPLACEMENT.**—The Secretary may reappoint or replace a member of the Community Group appointed under subsection (b)(1), if—

(i) the term of the member has expired;

(ii) the member has retired; or

(iii) the position held by the member described in subparagraph (A) through (F) of paragraph (1) has changed to the extent that the ability of the member to represent the group or entity that the member represents has been significantly affected.

(d) MEETINGS.—

(1) IN GENERAL.—The community group shall meet not less than once per year, and at such other frequencies as determined by 5 or more of the members of the Community Group.

(2) RESPONSIBILITIES OF COMMUNITY GROUP.—The Community Group shall be responsible for determining appropriate schedules for, details of, and actions for meetings of the Community Group.

(3) NOTICE.—The Chairperson shall provide notice to each member of the Community Group not less than 10 business days before the date of a scheduled meeting.

(4) EXEMPT FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings of the Community Group.

(e) RECOMMENDATIONS OF COMMUNITY GROUP.—The Secretary and Secretary of the Air Force, consistent with existing laws (including regulations), shall take under consideration recommendations from the Community Group.

(f) TERMINATION OF AUTHORITY.—The Community Group shall terminate on the date that is 10 years after the date of enactment of this Act.

SEC. 106. SAVINGS CLAUSES.

(a) EFFECT ON WEAPON IMPACT AREA.—Nothing in this title expands the boundaries of the weapon impact area of the Utah Test and Training Range.

(b) EFFECT ON SPECIAL USE AIRSPACE AND TRAINING ROUTES.—Nothing in this title precludes—

- (1) the designation of new units of special use airspace; or
- (2) the expansion of existing units of special use airspace.

(c) EFFECT ON EXISTING MILITARY SPECIAL USE AIRSPACE AGREEMENT.—Nothing in this title limits or alters the Military Operating Areas of Airspace Use Agreement between the Federal Aviation Administration and the Air Force in effect on the date of enactment of this Act.

(d) EFFECT ON EXISTING RIGHTS AND AGREEMENTS.—

(1) KNOLLS SPECIAL RECREATION MANAGEMENT AREA; BLM COMMUNITY PITS.—Except as otherwise provided in section 103, nothing in this title limits or alters any existing right or right of access to—

- (A) the Knolls Special Recreation Management Area; or
- (B)(i) the Bureau of Land Management Community Pits, Central Grayback and South Grayback; and
- (ii) any other county or community pit located within close proximity to the BLM land.

(e) INTERSTATE 80.—Nothing in this title authorizes any additional authority or right to the Secretary or the Secretary of the Air Force to temporarily close Interstate 80.

(f) EFFECT ON LIMITATION ON AMENDMENTS TO CERTAIN INDIVIDUAL RESOURCE MANAGEMENT PLANS.—Nothing in this title affects the limitation established under section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 852).

(g) EFFECT ON PREVIOUS MEMORANDUM OF UNDERSTANDING.—Nothing in this title affects the memorandum of understanding entered into by the Air Force, the Bureau of Land Management, the Utah Department of Natural Resources, and the Utah Division of Wildlife Resources relating to the reestablishment of bighorn sheep in the Newfoundland Mountains and signed by the parties to the memorandum of understanding during the period beginning on January 24, 2000, and ending on February 4, 2000.

(h) EFFECT ON FEDERALLY RECOGNIZED INDIAN TRIBES.—Nothing in this title alters any right reserved by treaty or Federal law for a Federally recognized Indian tribe for tribal use.

(i) PAYMENTS IN LIEU OF TAXES.—Nothing in this title diminishes, enhances, or otherwise affects any other right or entitlement of the counties in which the BLM land is situated to payments in lieu of taxes based on the BLM land, under section 6901 of title 31, United States Code.

(j) WILDLIFE IMPROVEMENTS.—The Secretary and the Utah Division of Wildlife Resources shall continue the management of wildlife improvements, including guzzlers, in existence as of the date of enactment of this Act on the BLM land.

TITLE II—BUREAU OF LAND MANAGEMENT LAND EXCHANGE WITH STATE OF UTAH

SEC. 201. DEFINITIONS.

In this title:

(1) **EXCHANGE MAP.**—The term “Exchange Map” means the map prepared by the Bureau of Land Management entitled “Utah Test and Training Range Enhancement/West Desert Land Exchange” and dated May 7, 2016.

(2) **FEDERAL LAND.**—The term “Federal land” means the Bureau of Land Management land located in Box Elder, Millard, Juab, Tooele, and Beaver Counties, Utah, that is identified on the Exchange Map as “BLM Lands Proposed for Transfer to State Trust Lands”.

(3) **NON-FEDERAL LAND.**—The term “non-Federal land” means the land owned by the State in Box Elder, Tooele, and Juab Counties, Utah, that is identified on the Exchange Map as—

(A) “State Trust Land Proposed for Transfer to BLM”; and

(B) “State Trust Minerals Proposed for Transfer to BLM”.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(5) **STATE.**—The term “State” means the State of Utah, acting through the School and Institutional Trust Lands Administration.

SEC. 202. EXCHANGE OF FEDERAL LAND AND NON-FEDERAL 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 in and to the non-Federal land, convey to the State (or a designee) all right, title, and interest of the United States in and to the Federal land.

(b) **APPLICABLE LAW.**—

(1) **IN GENERAL.**—The land exchange shall be subject to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) and other applicable law.

(2) **EFFECT OF STUDY.**—The Secretary shall carry out the land exchange under this title notwithstanding section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 852).

(3) **LAND USE PLANNING.**—The Secretary shall not be required to undertake any additional land use planning under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) before the conveyance of the Federal land under this title.

(c) **VALID EXISTING RIGHTS.**—The exchange authorized under subsection (a) shall be subject to valid existing rights.

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

(e) **APPRAISALS.**—

(1) **IN GENERAL.**—The value of the Federal land and the non-Federal land to be exchanged under this title shall be determined by appraisals conducted by 1 or more independent and qualified appraisers.

(2) **STATE APPRAISER.**—The Secretary and the State may agree to use an independent and qualified appraiser retained by the State, with the consent of the Secretary.

(3) **APPLICABLE LAW.**—The appraisals under paragraph (1) shall be conducted in accordance with nationally recognized appraisal standards, including, as appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(4) **MINERALS.**—

(A) **MINERAL REPORTS.**—The appraisals under paragraph (1) may take into account mineral and technical reports provided by the Secretary and the State in the evaluation of minerals in the Federal land and non-Federal land.

(B) **MINING CLAIMS.**—Federal land that is encumbered by a mining or millsite claim located under sections 2318 through 2352 of the Revised Statutes (commonly known as the “Mining Law of 1872”) (30 U.S.C. 21 et seq.) shall be appraised in accordance with standard appraisal practices, including, as appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.

(C) **VALIDITY EXAMINATION.**—Nothing in this title requires the Secretary to conduct a mineral examination for any mining claim on the Federal land.

(5) **APPROVAL.**—An appraisal conducted under paragraph (1) shall be submitted to the Secretary and the State for approval.

(6) **DURATION.**—An appraisal conducted under paragraph (1) shall remain valid for 3 years after the date on which the appraisal is approved by the Secretary and the State.

(7) **COST OF APPRAISAL.**—

- (A) IN GENERAL.—The cost of an appraisal conducted under paragraph (1) shall be paid equally by the Secretary and the State.
- (B) REIMBURSEMENT BY SECRETARY.—If the State retains an appraiser in accordance with paragraph (2), the Secretary shall reimburse the State in an amount equal to 50 percent of the costs incurred by the State.
- (f) CONVEYANCE OF TITLE.—It is the intent of Congress that the land exchange authorized under this title shall be completed not later than 1 year after the date of final approval by the Secretary and the State of the appraisals conducted under subsection (e).
- (g) PUBLIC INSPECTION AND NOTICE.—
- (1) PUBLIC INSPECTION.—At least 30 days before the date of conveyance of the Federal land and non-Federal land, all final appraisals and appraisal reviews for the Federal land and non-Federal land to be exchanged under this title shall be available for public review at the office of the State Director of the Bureau of Land Management in the State.
- (2) NOTICE.—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 conducted under subsection (e) are available for public inspection.
- (h) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with any federally recognized Indian tribe in the vicinity of the Federal land and non-Federal land to be exchanged under this title before the completion of the land exchange.
- (i) EQUAL VALUE EXCHANGE.—
- (1) IN GENERAL.—The value of the Federal land and non-Federal land to be exchanged under this title—
- (A) shall be equal; or
- (B) shall be made equal in accordance with paragraph (2).
- (2) EQUALIZATION.—
- (A) SURPLUS OF FEDERAL LAND.—
- (i) IN GENERAL.—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 by the State conveying to the Secretary, as necessary to equalize the value of the Federal land and non-Federal land—
- (I) State trust land parcel 1, as described in the assessment entitled “Bureau of Land Management Environmental Assessment UT-100-06-EA”, numbered UTU-82090, and dated March 2008; or
- (II) State trust land located within any of the wilderness areas or national conservation areas in Washington County, Utah, established under subtitle O of title I of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1075).
- (ii) ORDER OF CONVEYANCES.—Any non-Federal land required to be conveyed to the Secretary under clause (i) shall be conveyed until the value of the Federal land and non-Federal land is equalized.
- (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 the non-Federal land shall be equalized—
- (i) by the Secretary making a cash equalization payment to the State, in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or
- (ii) by removing non-Federal land from the exchange.
- (j) GRAZING PERMITS.—
- (1) IN GENERAL.—If the Federal land or non-Federal land exchanged under this title 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 title prevents the Secretary or the State from canceling or modifying a grazing permit, lease, or contract if the Federal land or non-Federal land subject to the permit, lease, or contract is sold, conveyed, transferred, or leased for non-grazing 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 non-Federal land conveyed by the State under this title 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—

(A) the remaining term of the lease or permit; and

(B) the term of any renewal or extension of the lease or permit.

(k) **WITHDRAWAL OF FEDERAL LAND FROM MINERAL ENTRY PRIOR TO EXCHANGE.**—Subject to valid existing rights, the Federal land to be conveyed to the State under this title is withdrawn from mineral location, entry, and patent under the mining laws pending conveyance of the Federal land to the State.

SEC. 203. STATUS AND MANAGEMENT OF NON-FEDERAL LAND ACQUIRED BY THE UNITED STATES.

(a) **IN GENERAL.**—On conveyance to the United States under this title, the non-Federal land shall be managed by the Secretary in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable land use plans.

(b) **NON-FEDERAL LAND WITHIN CEDAR MOUNTAINS WILDERNESS.**—On conveyance to the Secretary under this title, the non-Federal land located within the Cedar Mountains Wilderness shall, in accordance with section 206(c) of the Federal Land Policy Act of 1976 (43 U.S.C. 1716(c)), be added to, and administered as part of, the Cedar Mountains Wilderness.

(c) **NON-FEDERAL LAND WITHIN WILDERNESS AREAS OR NATIONAL CONSERVATION AREAS.**—On conveyance to the Secretary under this title, non-Federal land located in a national wilderness area or national conservation area shall be managed in accordance with the applicable provisions of subtitle O of title I of the Omnibus Public Land Management Act of 2009 (Public Law 111–11).

SEC. 204. HAZARDOUS MATERIALS.

(a) **COSTS.**—Except as provided in subsection (b), the costs of remedial actions relating to hazardous materials on land acquired under this title shall be paid by those entities responsible for the costs under applicable law.

(b) **REMEDICATION OF PRIOR TESTING AND TRAINING ACTIVITY.**—The Secretary of the Air Force shall bear all costs of evaluation, management, and remediation caused by the previous testing of military weapons systems and the training of military forces on non-Federal land to be conveyed to the United States under this title.

PURPOSE

The purpose of S. 2383, as ordered reported, is to direct the Secretary of the Interior and the Secretary of the Air Force to enter into a memorandum of agreement to authorize the Air Force to impose limited closures of certain public land adjacent to the Utah Test and Training Range for military operations, including enhanced weapons testing and pilot training, national security and public safety purposes, and to authorize a land exchange between the Bureau of Land Management and the State of Utah.

BACKGROUND AND NEED

The Utah Test and Training Range (UTTR), located in the western Utah desert, is the largest Department of Defense (DOD) overland airspace test and training range. It is used by the U.S. Air Force (USAF), U.S. Army, and U.S. Marine Corps. The UTTR is home to ground and operational training and the testing of explosive ordnance, weapons, and other military equipment.

In a 2015 report to Congress, the DOD listed several factors that may ultimately limit the long-term sustainability of UTTR, including the inability to accommodate more advanced aircraft and weapons, specifically the F–22 Raptor, F–35 Joint Strike Fighter, and Long Range Strike Bomber, as well as the crews to train them. The flight speeds of these aircraft and weapons require a significant

amount of space for testing purposes. While the current size of UTTR is significant, the range is not large enough to accommodate training and testing maneuvers for these aircraft and hypersonic weapons.

As ordered reported, S. 2383 would direct the Secretary of the Interior and the Secretary of the Air Force to enter into a memorandum of agreement to allow the Air Force, in consultation with the Secretary of the Interior, to impose limited closure of certain lands administered by the Bureau of Land Management adjacent to the UTTR for military operations, national security, and public safety purposes.

According to testimony provided to the Committee by the Air Force, as guided munitions become more accurate and reliable, the safety footprints become larger due to greater deployment distances. For safety reasons, the Air Force needs to be able to close, for limited duration, public access to adjacent public lands during weapon testing sessions.

S. 2383 will enable the Air Force to continue testing weapons of significant military importance while ensuring that adjacent public lands remain open and accessible to the public, except during limited weapons testing periods.

S. 2383 also provides for an equal value land exchange between the State of Utah and the Bureau of Land Management under which the State will convey State school trust lands located in the vicinity of the UTTR for other public lands that can be developed by the State, thereby avoiding potential conflicts with the purposes and mission of the UTTR.

LEGISLATIVE HISTORY

S. 2383 was introduced by Senators Hatch and Lee on December 10, 2015. The Senate Energy and Natural Resources Committee's Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 2383 on April 21, 2016.

In the House of Representatives, Representatives Stewart, Bishop of Utah, Chaffetz, and Love introduced a similar bill, H.R. 4579, on February 12, 2016. The House Natural Resources Subcommittee on Federal Lands held a hearing on H.R. 4579 on February 25, 2016. The House Natural Resources Committee ordered H.R. 4579 to be reported, as amended, on March 16, 2016.

The Committee on Energy and Natural Resources met in open business session on July 13, 2016, and ordered S. 2383 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2016, by a majority voice vote of a quorum present, recommends that the Senate pass S. 2383, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2383, the Committee adopted an amendment in the nature of the substitute to S. 2383 that provides for the authorization of temporary closure of certain public land in

adjacent to the UTTR and the exchange of BLM land and non-Federal land with the State of Utah.

The amendment is described in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of contents

Section 1 contains the short title and table of contents.

TITLE I—AUTHORIZATION FOR TEMPORARY CLOSURE OF CERTAIN PUBLIC LAND ADJACENT TO THE UTAH TEST AND TRAINING RANGE

Section 101. Definitions

Section 1 contains the definitions for title I.

Section 102. Memorandum of agreement

Section 102(a) requires the Secretary and the Secretary of the Air Force to enter into a memorandum of agreement (MOA) to authorize the Secretary of the Air Force, in consultation with the Secretary, to impose limited closures of the BLM land for military operations and national security and public safety purposes within one year after the date of enactment. The draft MOA shall be completed not later than 180 days after enactment, after which there shall be a 30-day period for public comment on the draft MOA, including the opportunity for the UTTR Community Resource Advisory Group to provide comment. The Secretary shall continue to manage BLM land in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable use plans, while allowing for temporary closure of BLM land. The Secretary is directed to consult with the Secretary of the Air Force regarding UTTR Range mission requirements before issuing new use permits or rights-of-way on the BLM land. The Secretary and the Secretary of the Air Force shall establish within the MOA a framework for resolving any disagreements on the issuance of permits or rights-of-way on the BLM land. The term for the MOA shall be agreed upon by the Secretary and the Secretary of the Air Force but is not to exceed 25 years. The MOA may be terminated early should the Secretary of the Air Force determine that the temporary closure of the BLM land is no longer necessary to fulfill UTTR mission requirements.

Subsection (b) provides the Secretary the authority to correct any minor errors in the referenced map.

Subsection (c) states that if corrective action is necessary on the BLM land due to an action of the Air Force, the Secretary of the Air Force shall render the BLM land safe for public use; and appropriately communicate the safety of the land to the Secretary on the date on which the BLM land is rendered safe.

Section (d) requires the Secretary to consult with any federally recognized Indian tribe in the vicinity of the BLM land before entering into any agreement.

Subsection (e) states that nothing in the title impacts the management of grazing on the BLM land. The Secretary is directed to continue grazing management on BLM land pursuant to applicable law and resource management plans.

Subsection (f) states that nothing in this section precludes the continuation of the existing memorandum of understanding between the Department of the Interior and Department of the Air Force with respect to emergency access and response.

Subsection (g) withdraws the BLM land, subject to valid existing rights, from all forms of appropriation under the public land laws.

Section 103. Temporary closures

Section 103(a) authorizes the Secretary of the Air Force, in consultation with the Secretary, to require temporary closures on BLM land if the Secretary of the Air Force determines that military operations, public safety, or national security require the temporary closure to public use of any road, trail, or other portion of the BLM land.

Subsection (b) places limitations on the temporary closures. Any temporary closures shall be limited to the minimum areas and time periods during which the Secretary of the Air Force determines are required to carry out a closure; shall not occur on a State or Federal holiday, unless notice is provided; shall not occur on a Friday, Saturday, or Sunday, unless notice is provided; and shall be for not longer than a three-hour period per day, if practicable. If closures are required beyond a three-hour period in a day, such closures should only be for mission essential reasons; should incur as infrequently as practicable and in no case for more than 10 days per year; and shall in no case be for longer than a six-hour period per day.

Subsection (c) requires the Secretary of the Air Force to post appropriate warning notices before and during and temporary closures and to provide notice to the Secretary, public, and relevant stakeholders concerning the temporary closure at least 30 days in advance. In each case for which a mission-unique security requirement does not allow for advance notifications, the Secretary of the Air Force shall work with the Secretary to achieve a mutually agreeable timeline for notification.

Subsection (d) limits the total cumulative hours of temporary closures authorized with respect to the BLM land to 100 hours annually.

Subsection (e) prohibits any temporary closures between August 21 and February 28 on the northernmost area of the referenced map, in accordance with the lawful hunting seasons of the State of Utah.

Subsection (f) states that a temporary closure of a portion of the BLM land shall not affect the conduct of emergency response activities on the BLM land during the temporary closure.

Subsection (g) allows livestock authorized by a Federal grazing permit to remain on the BLM land during a temporary closure of the BLM land.

Subsection (h) authorizes the Secretary and the Secretary of the Air Force to enter into cooperative agreements with State and local law enforcement officials with respect to lawful procedures and protocols to be used in promoting public safety on or near BLM land during test and training procedures.

Section 104. Liability

Section 104 specifies that the United States (including all departments, agencies, officers, and employees of the United States) shall be held harmless and shall not be liable for any injury or damage to any individual or property suffered in the course of any mining, mineral, or geothermal activity, or any other authorized non-defense-related activity, conducted on the BLM land.

Section 105. Community Resource Advisory Group

Section 105(a) establishes the UTTR Community Resource Advisory Group (Community Group) to provide regular and continuing input to the Secretary and the Secretary of the Air Force on matter involving public access to, use of, and overall management of the BLM land within 90 days of the Act's enactment.

Subsection (b) sets forth the membership of the Community Group as follows: one representative of Indian tribes in the vicinity of the BLM land; not more than one county commissioner from each of Box Elder, Tooele, and Juab Counties, Utah; two representatives of off-road and highway use, hunting, or other recreational users of the BLM land; two representatives of livestock permittees on public land within the BLM land; one representative of the Utah Department of Agriculture and Food; and not more than three representatives of State or Federal offices or agencies, or private groups or individuals. The Community Group members shall elect a Chairperson and a Vice-Chairperson. Additionally, the Secretary of the Air Force is directed to appoint appropriate Air Force operational and land management personnel to serve as a liaison to the Community Group.

Subsection (c) outlines the terms and conditions of appointment to the Community Group. Each member shall serve voluntarily and without compensation, and shall be appointed for a term of four years. The Secretary shall select one half of the original members of the Community Group to serve for a term of four years and the other half to serve for a term of two years in order to ensure that replacement of members are staggered from year to year. The Secretary may reappoint or replace a member of the Community Group if the term of the member has expired; the member has retired; or the position held by the member has changed to the extent that the member's ability to represent the group or entity has been significantly affected.

Subsection (d) directs the Community Group to hold at least one meeting per year and sets forth the Community Group's responsibilities and notice requirements. This subsection further exempts the Community Group from the Federal Advisory Committee Act (5 U.S.C. App.).

Subsection (e) requires the Secretary and the Secretary of the Air Force, consistent with existing laws and regulations, to consider recommendations from the Community Group.

Subsection (f) terminates the Community Group ten years after the date of enactment of the Act.

Sec. 106. Savings clauses

Section 106(a) clarifies that nothing in the Act expands the boundaries of the weapon impact area of the UTTR.

Subsection (b) states that nothing in the title precludes the designation of new units of special use airspace or the expansion of existing units.

Subsection (c) states that nothing in this title limits or alters the Military Operating Areas of Airspace Use Agreement between the Federal Aviation Administration and the Air Force in effect on the date of enactment.

Subsection (d) states that nothing in the title limits or alters any existing right or right of access to the Knolls Special Recreation Management Area; or the BLM Community Pits Central Grayback and South Grayback; and any other county or community pit location within close proximity to the BLM land.

Subsection 106(e) states that nothing in this title authorizes any additional authority or right to the Secretary or the Secretary of the Air Force to temporarily close Interstate 80.

Subsection (f) states that nothing in this title affects the limitation established under section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-55).

Subsection (g) states that nothing in this title affects the memorandum of understanding entered into by the Air Force, BLM, the Utah Department of Natural Resources, and the Utah Division of Wildlife Resources relating to the reestablishment of bighorn sheep in the Newfoundland Mountains.

Subsection (h) states that nothing in this title alters any right reserved by treaty or Federal law for a Federally recognized Indian tribe for tribal use.

Subsection (i) states that nothing in this title diminishes, enhances, or otherwise affects any other right or entitlement of the counties in which the BLM land is situated to payments in lieu of taxes based on the BLM land, under 31 U.S.C. 6901.

Subsection (j) directs the Secretary and the Utah Division of Wildlife Resources to continue the management of wildlife improvements, including guzzlers, in existence as of the date of enactment.

TITLE II—BUREAU OF LAND MANAGEMENT LAND EXCHANGE WITH THE STATE OF UTAH

Section 201. Definitions

Section 201 contains the definitions for title II.

Section 202. Exchange of Federal land and non-Federal land

Section 202(a) specifies the terms of a land exchange. If the State offers to convey to the United States title to the non-Federal land, the Secretary is directed to accept the offer and upon receipt of all right, title, and interest in and to the non-Federal land, convey to the State (or a designee) all right, title, and interest of the United States in and to the Federal land.

Subsection (b) subjects the land exchange to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and other applicable law. The Secretary is directed to carry out the land exchange notwithstanding Public Law 106-65. Prior to the conveyance of the Federal land under this title, the Secretary is not required to undertake any additional land use planning under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

Subsection (c) subjects the authorized exchange to valid existing rights.

Subsection (d) requires title to the Federal land and non-Federal land to be exchanged in a format acceptable to the Secretary and the State.

Subsection (e) requires that the value of the Federal land and the non-Federal land to be exchanged be determined by appraisals conducted by one or more independent and qualified appraisers. The Secretary and the State may agree to use an independent and qualified appraiser retained by the State. The appraisals must be conducted in accordance with nationally recognized appraisal standards, and may take into account mineral and technical reports provided by the Secretary and the State. An appraisal shall be submitted to the Secretary and the State for approval, and is valid for three years after the approval date. The cost of the appraisal shall be paid equally by the Secretary and the State.

Subsection 202(f) sets forth the intent of Congress for the authorized land exchange to be completed not later than one year after the date of final approval by the Secretary and the State of the conducted appraisals.

Subsection (g) requires that at least thirty days before the date of conveyance of the Federal land and non-Federal land, all final appraisal and appraisal reviews for the Federal land and non-Federal land to be exchanged shall be available for public review at the office of the State Director of the BLM in the State. The Secretary or the State, as appropriate, shall publish notice that the appraisals are available for public inspection.

Subsection (h) requires the Secretary to consult with any federally recognized Indian tribe in the vicinity of the Federal land and non-Federal land to be exchanged before the completion of the land exchange.

Subsection (i) requires that the value of the Federal land and non-Federal land to be exchanged under this title shall be equal or shall be made equal in accordance with the outlined equalization process. Specifically, if the value of the Federal land exceeds the value of non-Federal land, the values shall be equalized as necessary by the State conveying to the Secretary certain parcels of State Trust land. If the value of non-Federal land exceeds the value of Federal land, the values shall be equalized as necessary by the Secretary making a cash payment to the State or by removing non-Federal land from the exchange.

Subsection (j) requires that if the Federal land or non-Federal land to be exchanged under this title 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 grazing to continue for the remainder of the term of the lease, permit, or contract. To the extent allowed by Federal or State law, on expiration of any grazing lease, permit, or contract, the holder shall be entitled to a preference right to renew the lease, permit, or contract. Nothing in this title prevents the Secretary or the State from cancelling or modifying a grazing permit, lease, or contract if the Federal land or non-Federal land subject to the permit, lease, or contract is sold, conveyed, transferred, or leased for non-grazing purposes by the Secretary or the State. If non-Federal land conveyed by the State under this title is used by a grazing permittee

or lessee to meet the base property requirements for a Federal grazing permit, 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.

Subsection (k) withdraws from the Federal land to be conveyed to the State under this title from mineral location, entry, and patent under the mining laws, subject to valid existing rights, pending conveyance of the Federal land to the State.

Section 203. Status and management of non-Federal land acquired by the United States

Section 203(a) requires that, upon conveyance to the United States, the non-Federal land shall be managed by the Secretary in accordance with applicable law and land use plans.

Subsection (b) requires that, upon conveyance to the United States, the non-Federal land located within the Cedar Mountain Wilderness shall be added to, and administered as a part of, the Cedar Mountain Wilderness.

Subsection (c) requires that, upon conveyance to the United States, the non-Federal land located in a national wilderness area or national conservation area shall be managed in accordance with the applicable provisions of subtitle O of title I of the Omnibus Public Land Management Act of 2009 (Public Law 111-11).

Section 204. Hazardous materials

Section 204(a) requires that the costs of remedial actions relating to hazardous materials on land acquired under this title shall be paid by those entities responsible for the costs under applicable law, except as provided for in subsection (b).

Subsection (b) requires that the Secretary of the Air Force bear all costs of evaluation, management, and remediation caused by the previous testing of military weapons systems and the training of military forces on non-Federal land to be conveyed to the United States under this title.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 10, 2016.

Hon. LISA MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2383, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

S. 2383—Utah Test and Training Range Encroachment Prevention and Temporary Closure Act

S. 2383 would require the Bureau of Land Management (BLM) to exchange 98,000 acres of federal lands in Utah for at least 84,000 acres of land and mineral estate administered by Utah's School and Institutional Trust Lands Administration (SITLA). The bill also would impose certain requirements on how BLM would manage 700,000 acres of federal lands near a military training range operated by the U.S. Air Force.

Because S. 2383 could affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that any net change in direct spending would not be significant over the 2017–2026 period. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 2383 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

The bill would require BLM to convey 98,000 acres of federal land in western Utah to SITLA in exchange for at least 84,000 acres of state lands. CBO expects that the value of the federal lands would equal or exceed the value of the state lands. If the value of the state lands is less than the value of the federal lands, the state would be required to convey additional lands in order to equalize values of the exchange. The federal lands that would be conveyed to SITLA are not located near mineral resources that are expected to generate receipts for the federal government under current law. Conveying those lands would reduce offsetting receipts from grazing on the affected lands and could reduce receipts from the development of geothermal resources; however, CBO estimates that the amount of lost receipts would not be significant and could be partially offset by proceeds from grazing on the state lands that BLM would acquire in the exchange.

S. 2383 also would prohibit mineral development on 700,000 acres of federal land located adjacent to the Utah Test and Training Range and could limit BLM's ability to grant new use permits or rights-of-way on those lands. Limiting those activities in the future could reduce offsetting receipts over the next 10 years; however, based on information from BLM, CBO estimates that any loss of receipts would be negligible.

S. 2383 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit the State of Utah and local governments through a land exchange. The land exchange could increase revenue from resource development on state trust lands that is used to fund public schools in Utah. Any costs incurred by the State of Utah or local governments associated with the land exchange or with agreements with federal agencies would result from voluntary commitments.

S. 2383 would impose a private-sector mandate, as defined in UMRA, by eliminating an individual's existing right to seek compensation from the federal government for damages occurring in the course of any authorized nondefense-related activity conducted on BLM land. Under current law private entities may seek compensation from the United States in a federal court for damages committed by persons acting on behalf of the United States. The cost of the mandate would be the net forgone value of awards and settlements in such claims. Information from the Department of

the Interior indicates that few, if any, of those types of claims related to activities on BLM land are brought against the United States. Because such claims would probably continue to be uncommon, CBO estimates that the cost of the mandate would be small and thus would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

On May 16, 2016, CBO transmitted a cost estimate for H.R. 4579, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act, as ordered reported by the House Committee on Natural Resources on March 16, 2016. H.R. 4579 contains provisions that are similar to S. 2383, and CBO's estimate of the costs for those provisions are the same.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs), Jon Sperl (for intergovernmental mandates), and Paige Piper-Bach (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2383. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2383, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2383, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Land Management and the Air Force at the April 21, 2016, Subcommittee on Public Lands, Forests, and Mining hearing on S. 2383 follows:

STATEMENT OF MIKE POOL, ACTING DEPUTY DIRECTOR FOR OPERATIONS, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

Thank you for the opportunity to present testimony on S. 2383, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act, which would allow the U.S. Air Force (USAF) to periodically use and close to public access approximately 703,621 acres of public lands ("shared use area") surrounding the Utah Test and Training Range (UTTR) in Box Elder, Juab, and Tooele Counties, Utah. The Administration supports the appropriate and responsible use of public lands for military purposes,

and appreciates the efforts of Senator Hatch and the Subcommittee to begin addressing the concerns we raised in testimony on the House version of this bill. We look forward to continuing that discussion, but our testimony today is based on the currently introduced version of the bill. While we believe that the bill's concept of short, periodic closures would serve the public interest better than the alternative of complete withdrawal, reservation, and closure of the lands at issue, the Administration opposes several provisions in the bill that would prevent the effective management of these lands. We would like the opportunity to work with the Subcommittee and Senator Hatch to address these significant concerns.

S. 2383 would also direct the exchange of approximately 70,650 acres of State-owned school trust land and approximately 13,886 acres of State-owned school trust mineral estate in Box Elder, Juab, and Tooele Counties, Utah, for approximately 98,253 acres of public lands in Beaver, Box Elder, Millard, Juab, and Tooele Counties, Utah. The Administration supports the completion of major land exchanges that further the public interest, consolidate ownership of scattered tracts of land to make them more manageable, and enhance resource protection. The Administration also supports the concept of this particular exchange, which would make management of the proposed shared use area more efficient during periodic closures. We have several concerns with the land exchange provisions in this bill, however. For example, some of the public lands proposed for exchange with the State contain a number of important resources and uses, including general habitat for the Greater Sage-Grouse, a historic mining district with several sites eligible for inclusion on the National Register of Historic Places, and lands withdrawn for public water reserves. We would like to work with the Subcommittee and the sponsor to resolve these concerns.

Finally, S. 2383 would recognize the existence and validity of certain unsubstantiated claims of road rights-of-way in Box Elder, Juab, and Tooele Counties, Utah, and require the conveyance of easements across Federal lands for the current disturbed widths of these purported roads plus any additional acreage the respective counties determine is necessary. The resolution of these disputed claims is not necessary for the management of the periodic closures around the UTTR.

For this and many other reasons, the Administration strongly opposes the resolution of these right-of-way claims in the manner laid out in this bill.

BACKGROUND

Public land withdrawals

Public lands are managed by the Department of the Interior (DOI) through the Bureau of Land Management (BLM). Public land withdrawals are formal lands actions that set aside, withhold, or reserve public land by statute

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

Utah Test & Training Range

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

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

Utah School and Institutional Trust Lands Administration

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.4 million acres of land and 4.5 million acres of mineral estate within the State of Utah. Many of these parcels are interspersed with public lands managed by the BLM, including in the areas under consideration in this bill. Although State trust lands support select public institutions, trust lands are not public lands. State trust lands generate revenue to support designated State institutions, including public schools, hospitals, teaching colleges, and universities.

Public land exchanges

Under FLPMA, the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. FLPMA provides the BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Among other purposes, land exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. The BLM conducts land exchanges pursuant to Section 206 of FLPMA, which provides the agency with the authority to undertake such exchanges, or when given specific direction by Congress. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful. The Administration notes that the process of identifying lands as potentially available for exchange does not include the clearance of impediments to disposal or exchange, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this clearance must occur before the exchange can be completed.

The BLM manages 22.8 million acres of public lands within the State of Utah for a wide range of uses, including energy production, recreation, livestock grazing, and conservation. In the recent past, the BLM has completed three large-scale exchanges with the State of Utah at the direction of Congress through the Utah Recreational Land Exchange Act of 2009 (P.L. 111-53), the Utah West Desert Land Exchange Act of 2000 (P.L. 106-301), and the Utah Schools and Land Exchange Act of 1998 (P.L. 105-335). Through these exchanges, over 296,000 acres of Federal land were conveyed to the State of Utah, and the United States acquired over 596,000 acres from the State.

Revised Statute 2477

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

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

S. 2383, UTAH TEST AND TRAINING RANGE ENCROACHMENT
PREVENTION AND TEMPORARY CLOSURE ACT

Utah Test & Training Range (Title I)

Title I of S. 2383 would authorize the USAF to periodically use and close to public access approximately 703,621 acres of public lands ("shared use area") surrounding the UTTR in Box Elder, Juab, and Tooele Counties, Utah. (Note, the text of the bill mentions 625,643 acres of BLM-managed land, but the BLM calculates that the legislative map's "Proposed Exchange Expansion Areas" actually total 703,621 acres.) Specifically, the bill directs the Secretary of the Interior and the Secretary of the Air Force to enter into a Memorandum of Agreement (MOA) that provides for continued management of the shared use area by the BLM and for limited use by the USAF.

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

The bill would allow any BLM-issued grazing leases or permits in effect on the date of enactment and covering the shared use area to continue at current stocking levels, subject to reasonable increases or decreases and reasonable regulations, policies, and practices. In addition, the legislation would withdraw the shared use area from all forms of appropriation under the public land, mining, mineral leasing, and geothermal leasing laws. Valid existing rights would be preserved. S. 2383 would also allow the Secretary of the Air Force to prevent the Secretary of the Interior from issuing any new use permits or rights-of-way in the

shared use area if the Secretary of the Air Force were to find such uses to be incompatible with current or projected military requirements. The USAF would be responsible to take action if any USAF activity causes a safety hazard on the public lands.

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

Analysis

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

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

The Administration also opposes any limits on the BLM's ability to amend or revise its Resource Management Plans (RMPs) with respect to lands in the shared use area.

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

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

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

Land Exchange (Title II)

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

The land exchanges would be completed subject to valid existing rights, and appraisals would be conducted. The Secretary of the Interior would be required to reimburse the State of Utah for 50 percent of the appraisal costs. If the value of the public lands proposed for exchange exceeds the value of the State lands, the State must convey additional parcels of trust land in Washington County,

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

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

Analysis

The Administration supports the completion of major land exchanges that consolidate ownership of scattered tracts of land, thereby easing BLM and State land management tasks and enhancing resource protection. We have several concerns with the land exchange provisions in this bill, however, and we would like the opportunity to work with the Subcommittee and the sponsor on amendments and other technical modifications to address these issues.

First, the public lands proposed for exchange with the State contain a number of important resources and uses, which include general habitat for the Greater Sage-Grouse, a historic mining district with several sites eligible for the National Register of Historic Places, wildlife guzzlers, portions of active BLM grazing allotments, off-highway vehicle recreational trails and access points, various utility and railroad rights-of-way, withdrawals for public water reserves, and lands withdrawn for a Solar Energy Zone. The Administration would like the opportunity to work with the Subcommittee and the sponsor on language and boundary modifications to ensure the protection of these resources and uses.

Furthermore, the Administration notes that the public lands proposed for exchange have not yet been analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. The Administration strongly supports these important review requirements because they provide for public engagement, opportunities to consider environmental and cultural impacts, and mitigation opportunities, and they help to ensure that unknown or unforeseen issues are not overlooked. As a result, the Administration would like the opportunity to work with the Subcommittee and the sponsor on language clarifying that these exchanges are subject to all parts of the FLPMA Section 206 land exchange process and other important environmental laws.

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

On the other hand, the Administration notes that if the public lands are of lower value than the State lands, any cash equalization payment made by the Secretary of the Interior to the State would be capped at 25 percent of the total value of the lands transferred out of Federal ownership, as required by the bill's reference to Section 206(b) of FLPMA. Even with this limitation, however, such a payment could significantly affect the BLM's other resource priorities. It is typical in administrative exchanges between governmental entities that all costs of the exchange, including but not limited to surveys and clearances, are split equally between the two parties. We trust that is the intention of S. 2383, but it is not specified and we recommend that this be made clear.

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

Additionally, the Administration opposes an appraisal taking into account the encumbrance created by mining claims for purposes of determining the value of the parcel of Federal land. It is BLM policy that in instances in which Federal land would be conveyed subject to mining claims, the appraisal would disregard the presence of the claims. Finally, the Administration is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed within DOI by the Office of Valuation Services.

Highway rights-of-way (Title III)

Title III of S. 2383 would recognize the existence and validity of certain claims of road rights-of-way in Box Elder, Juab, and Tooele Counties, Utah. It would also require conveyance to the respective county and the State of Utah as joint tenants with undivided interests of easements across Federal lands for the current disturbed widths of

the purported roads plus any additional acreage the respective county determines is necessary for maintenance, repair, signage, administration, and use.

Analysis

The Administration strongly opposes Title III for the following reasons. First, it is difficult for the BLM to evaluate the potential impacts of Title III's validation of claimed roads on the public lands based only on the official transportation maps for Box Elder, Tooele, and Juab counties referenced in the bill, which we have not yet received for review. It is unclear whether purported roads included on these maps coincide with the State and county claims included in the pending Quiet Title Act lawsuits, but other maps provided to the BLM show that they do. It is also unclear whether the official maps include additional purported roads that would be recognized under this bill. In order to fully evaluate the impacts of S. 2383 on the public lands, copies of these maps should be made available for analysis.

Second, regardless of whether the purported roads included on the official maps referenced in S. 2383 fully coincide with the State's and counties' pending R.S. 2477 claims, the Administration does not believe that R.S. 2477 rights-of-way asserted by State and county governments should be automatically recognized as valid and existing rights-of-way. In establishing the validity of an R.S. 2477 claim through the judicial process, the burden of proof is on the claimant to demonstrate that they have satisfied the applicable legal standard.

In contrast, S. 2383 would recognize all county assertions as valid and establish perpetual rights over public lands without applying that legal test. We are also troubled that the bill would give the counties complete discretion to decide whether additional Federal land outside of the current disturbed width is necessary for maintenance or other purposes. S. 2383 would not limit the widths or acreages that could be claimed as easements, and it is ambiguous as to whether the Secretary of the Interior would retain the authority to impose reasonable stipulations and conditions on these easements.

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

Third, Title III would likely validate many claimed rights-of-way that cross areas of environmental significance. For example, the BLM is aware of approximately 35

claimed rights-of-way located in the Deep Creeks, North Stansbury, Fish Springs, and Rockwell Wilderness Study Areas (WSAs), and eight claimed rights-of-way located in the Cedar Mountain Wilderness Area, which was designated in 2006 (P.L. 109-163). Furthermore, recognizing the validity of claimed rights-of-way that have not yet been litigated would limit the BLM's ability to manage travel and transportation in an approximately 814,000-acre area designated as priority sage-grouse habitat.

CONCLUSION

Thank you for the opportunity to provide testimony on S. 2383, the Utah Test and Training Range Encroachment Prevention and Temporary Closure Act. The Administration is committed to supporting military missions and training needs, while protecting natural resources and other traditional uses of the public lands. I would be happy to answer your questions.

STATEMENT OF MAJ GEN MARTIN WHELAN, DIRECTOR OF FUTURE OPERATIONS, DEPUTY CHIEF OF STAFF FOR OPERATIONS, HEADQUARTERS, U.S. AIR FORCE AND MS. JENNIFER L. MILLER, DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE FOR INSTALLATIONS

The Air Force's operational capabilities are advancing at a rate that challenges the geographic boundaries of our ranges; these constraints compromise effective test and evaluation and our ability to conduct realistic and relevant live training. One important aspect driving the need for larger geographic containment is the increasing size of weapon safety footprints. Paradoxically, as precision guided munitions become more accurate and reliable, the safety footprints become larger in part due to design but also due to greater employment distances. For safety reasons, the Air Force must control, for the duration of a mission, access by non-mission related personnel and the public to areas where there is even a very remote chance that debris or components could land if the weapon employment went catastrophically wrong. The Air Force's enviable test safety record is testimony to this extraordinary level of caution.

In the last 20 months, the Air Force expended over 27,000 munitions in support of OPERATION INHERENT RESOLVE, which is more than we expended during all of OPERATION IRAQI FREEDOM. The Air Force's involvement in such combat operations is not expected to decrease in the future. A well-trained force and continued testing and training of our improved combat capabilities are critical to our continued success supporting these operations. Technological advances incorporated in both our legacy and newest combat aircraft, and the weapons associated with those systems, represent an unprecedented leap in combat capability. These advances enable crews to identify and engage multiple targets from greater distances with improved accuracy. The technology that enables the great-

er employment distances and the ever increasing precision in weapons require larger segments of range and airspace to maintain the historically excellent record of weapons test and training safety. Safely containing large footprint weapons testing, like that historically accomplished at the Utah Test and Training Range (UTTR), is especially challenging. Some standoff weapon footprints will soon exceed the capability of our existing range enterprise configuration to provide the superior live-weapons testing, tactics, and techniques and the procedures validation environment that has long been a U.S. strategic advantage in capability and readiness. We are working diligently and creatively to overcome these limitations. In some cases, we have relied on modeling and simulation to accomplish specific events. In other cases, we simply accept certain levels of artificiality that degrade training quality for live events at the local and regional level. Given this gradual drift from realistic local training, it is imperative that we maintain certain irreplaceable live environments, like the UTTR, to accomplish those unique and uncompromising test and training events that require a highly relevant and realistic environment.

In the past and under select circumstances, the Department of Defense (DOD) components have assumed administrative jurisdiction over buffer lands, with full responsibility for land management. Generally, however, it is not efficient for the components to expend resources on full-time land management when all that is required is restricted access for short periods. Most military missions affecting extended buffer areas will only last a matter of hours; DOD component jurisdiction would result in significant additional restrictions on other government agencies and on compatible public uses such as recreation, hunting, and grazing.

As I previously stated, the Utah Test and Training Range provides a singular capability to test our advanced systems and to improve warfighting capabilities. Additional with the first operational basing of the F-35 Lightning at Hill AFB, the current safety buffers will be insufficient to meet future test and training requirements. If enacted, S. 2383 would provide the Air Force the capability to employ larger safety buffers at the UTTR through the temporary closure and use of current Bureau of Land Management (BLM) land and any State land transferred to BLM. This capability would only be exercised when needed, thus resulting in fewer impacts on other Federal, State, and local agencies and the public. The Air Force and the Department of the Interior (DOI) would enter into a Memorandum of Agreement (MOA) to address the management of the affected lands, and no land would be transferred to the Air Force. Exercise of the new measures provided in the legislation would be limited to a maximum of 100 hours per year in increments of no more than three hours.

This bill is similar to legislation allowing the overlap of weapon safety footprints on the Cabeza Prieta wilderness in Arizona. The use of the Cabeza Prieta is an example commonly cited by the Air Force on how to successfully enable the military mission while minimizing the impact on other agencies and the public. We believe that the bill's concept of short, periodic closures would serve the public interest better than the alternative of a complete withdrawal, reservation, and closure of the lands at issue. The Air Force believes that this bill as it pertains to Air Force mission matters would achieve the needed capabilities; however, the Air Force acknowledges the Administration continues to have concerns about several provisions in S. 2383 (as introduced) that may create challenges for the effective management of these lands. We welcome the opportunity to continue to working with the sponsor and the Department of the Interior to address these concerns.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.



