Land Exchanges and Public Lands Bills in Utah

By Matthew Kirkegaard

Public land debates are some of the most divisive in Utah and throughout the American West, where vast portions of states are publicly owned. Disagreement often arises over whether to set land aside for recreational, scenic, and ecological purposes or open it to extractive development, such as for oil and gas. Different agencies with divergent mandates only cloud the situation. Among possible solutions, especially when dealing with school trust lands, which checker state maps, are land exchanges and county lands bills. By examining numerous studies, a wide range of perspectives, and past examples, this research seeks to weigh the merits of these approaches. Ultimately, the paper suggests land exchanges and county lands bills provide balance in conserving Utah’s land while providing for economic growth and public education funding. These methods should be used as important land management tools, providing more benefits than disadvantages to Utah’s land and people.
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SITLA inholdings within the then newly created 1.7 million acre Grand Staircase-Escalante National Monument (Flinders et al., 2002, p. 1) and other national monuments and parks for more developable land and $50,000,000 (Blaeloch, 2009, p. 28). Not only did this exchange resolve significant conflict over trust lands, it was also the largest land transaction since the Louisiana Purchase in the continental U.S. (Bryner, 2001, p. 573).

Most recently, the Utah Recreational Land Exchange Act of 2009 traded SITLA properties in important recreational and wildlife habitat areas to the BLM for lands with the potential for energy development (Grand Canyon Trust, 2012, para. 3). Conversely, the failed Federal-Utah State Trust Lands Consolidation Act of 2002, which attempted to trade trust lands out of the vast, rugged, and wild San Rafael Swell landscape of eastern Utah, illustrated the fragility of exchange agreements when the bill collapsed in Congress amidst allegations of fraud and claims that the deal disproportionately benefitted SITLA (Blaeloch, 2009, pp. 59-66).

County lands bills are substantially more complicated than basic two-party land exchanges due to the increased number of stakeholders directly involved and impacted, such as water conservancy districts, state agencies, federal agencies, county governments, pro-development entities, environmental organizations, and Congress (Blaeloch, 2009, pp. 9-22). County lands bills also carry with them a stronger intent than simple exchanges: to strike a long-term compromise between development and conservation that will guide the county and its land use long into the future. The singular successful example of a county lands bill in Utah was the Washington County Growth and Conservation Act of 2008, which designated extensive areas of the county as wilderness and National Conservation Area while allowing the federal government to sell thousands of acres of land for development near cities, such as St. George (Canham, 2009, para. 5). The deal was widely viewed as a model compromise between lands designated for conservation and development.

On both sides of the often vitriolic debate about public lands in the West, there are numerous concerns and criticisms regarding both land exchanges and county lands bills. The conservation community has expressed reservations about compromising sensitive land to create wilderness or other conservation designations, encouraging the sale of public lands for development as a bargaining chip for conservation, and not allowing wilderness designation bills to “rise or fall on their own merits” (Blaeloch, 2009, p. 84). For example, the Sierra Club, one of the largest environmental organizations in the United States with 1.4 million members and volunteers gives a less than emphatic endorsement of public land exchanges (Sierra Club, “Sierra Club Fact Sheet,” 2012, para. 1). The Sierra Club’s “Public Land Exchange Policy” advises that public land should only be traded when circumstances “meet the highest environmental standard” and instead expresses preference for “public acquisition of land by purchase” (Sierra Club, “Sierra Club Conservation Policies, 2001, para. 5). The organization lists alternatives to public land exchanges, such as “protective regulations, deed restrictions, protective easements, [and] purchase of development or transfer of ownership to a private land conservancy” (Sierra Club, 2001, para. 5). Don Steurer, Conservation/Mining Committee Chair of the Grand Canyon Chapter of the Sierra Club, went a step further saying, “Since land exchanges always have a downside when conservation is concerned, they should only be used as a last resort” (Steurer, “Canyon Echo,” 2002, p. 7). Despite this tough talk, it should be noted the Utah Wilderness Coalition, for which the Sierra Club was an Executive Committee member organization (Utah Wilderness Coalition, 2004, para. 1), did support The Utah Recreational Land Exchange Act (Grand Canyon Trust, 2012, para. 4). Other environmental/conservation organizations that also supported the exchange included The Nature Conservancy, Utah Open Lands, the Southern Utah Wilderness Alliance, the Utah Rivers Council, and the National Parks Conservation Association, to name a few (Grand Canyon Trust, 2012, para. 4).

Like those in the conservation community, those concerned with economic development also have fears of compromise, albeit from the opposite point of view. At the Utah State Legislature’s Natural Resources, Agriculture, and Environment Committee hearing on the plans from Emery, San Juan, and Piute Counties to present county lands bills to Congress—modeled after Washington County’s successful bill—Rep. John Mathis (R-Vernal) was uncomfortable with “locking up” Utah’s land from development (Loomis, 2011, para. 4). The proponents of the county lands bills in question, such as former Emery County Commissioner Randy Johnson, argued that they were not “locking up” any lands with significant mineral potential, but state lawmakers still had “reservations about creating wilderness in areas that may contain resources that no one yet knows about, such as rare earth minerals” (Loomis, 2011, para 10). Fear of locking up resources hearkens back to the designation of the Grand Staircase-Escalante National Monument by President Clinton on September 18, 1996, simultaneously hailed by some as a “bold stroke” and decried by others as “the mother of all land grabs” (Larmer, 2004, pp. 4-17). The monument’s creation called for exploration and extraction of coal deposits on the Kaiparowits Plateau valued at as much as $1 trillion, then under lease by the Dutch company Andalex Resources (Veravanich, 1996, p. 6). State officials estimated that a proposed Andalex Resources mine “could have generated 1,000 jobs, $1 million in revenue annually for Kane County, and an additional $10 million annually in federal and state taxes” (Veravanich, 1996, p. 10). Although another situation such as this is unlikely in any of the county lands bills proposed, this massive economic loss in favor of environmental protection and land conservation lives on in the memory of many Utahns. In this way, both the conservation and extractive development communities fear the compromise inherent in land exchanges and county lands bills. Conservationists fear irreversible development; developers and their supporters fear permanent conservation designation.

Perhaps the largest drawbacks to land exchanges and lands bills are the many valuation controversies that seem to arise without fail. For example, although the Utah Recreational Land Exchange Act became law in 2009 and is often characterized as a “win/win” for both the BLM and SITLA, the exchange has yet to be completed due to the BLM’s lack of funding for its half of the appraisal costs (Engelhorn, 2012, para. 1). Since the exchange has a five-year deadline, if the BLM is unable to come up with the money soon, the exchange deal and the resulting legislation all may have been for naught (Engelhorn, 2012, para. 4). Valuation problems cannot only stall exchanges, but they also have the potential to bring them down entirely, as was the case in the Federal-Utah State Trust Lands Consolidation Act of 2002. Unlike the Utah Recreational Exchange Act, this bill did not require formal appraisals of all land by third parties and instead amounted to a “handshake agreement” between SITLA and Terry Catlin, a BLM realty specialist (Blaeloch, 2009, pp. 61-62). Disagreements then surfaced regarding, among other things, the appraisal of lands with endangered species present and the appraisal of minerals which SITLA was to acquire, with one area in particular “containing oil shale deposits [BLM Appraiser James Kohler] estimated to be worth $44 million to $64 million” (Blaeloch, 2009, p. 62). When the valuation controversy received media attention, attempts at repairing the deal failed, as did the entire bill after a short time (Blaeloch, 2009, p. 62). However, had the exchange been completed, it was concluded “that the U.S. would lose between $97 million and $117 million in the exchange” (Blaeloch, 2009, p. 62). As clearly demonstrated by these two cases, concerns regarding the appraisal of lands...
proposed for exchange have proven to be significant roadblocks to exchanges in the past and will continue to be prominent obstacles in the foreseeable future.

Despite the challenges associated with land exchanges and county lands bills, there are a host of benefits to be considered as well. In terms of conservation, land exchanges have the potential to create continuity of management within conservation designations, such as when SITLA holdings were traded out of the Grand Staircase-Escalante National Monument as well as other national parks and monuments in Utah (Blaeloch, 2009, p. 28). This means that unique landscapes like the San Rafael Swell or the Greater Canyonlands country of southern Utah can be set aside primarily for conservation without the burden of the checkerboard-like land ownership often caused by scattered trust lands holdings. Furthermore, the burden of SITLA’s revenue generation mandate can also be lifted from these lands (Utah State Legislature, 2012, p. 1). Of course, there are also obvious conservation benefits that result from exchanges and public lands bills. Through the Utah Recreational Exchange Act, the BLM will acquire from SITLA about 46,000 acres in “Wilderness Study Areas, critical wildlife habitat areas and important recreational lands” (Grand Canyon Trust, 2012, para. 3). The Washington County lands bill designated hundreds of thousands of acres as wilderness, about half of it “overlaid on nearly all of Zion National Park, a little more than 120,000 acres” (Blaeloch, 2009, p. 77). The removal of inholdings and the new designation of wilderness or other protected areas are long-lasting conservation achievements that should not be overlooked.

Economic benefits are also substantial. County lands bills aim to open up some public land for development, with the intent to spur economic activity. Exchanges and lands bills allow SITLA to trade its trust lands out of areas where making revenue is difficult and into more lucrative, developable, and often mineral-rich portions of the state. Money earned from trust lands is then distributed to its beneficiaries, most significantly the Common School Fund, which directly funds Utah’s public schools (SITLA, “Who gets the money?” 2009, para. 3). In addition to the direct and indirect economic benefits of development, investment in education is necessary if future economic gains are to be made. The education advocacy group, Prosperity 2020, estimates approximately “two-thirds of all jobs in Utah will require postsecondary training beyond high school by 2018” (Prosperity 2020, 2012, para. 6). While developed land certainly produces economic benefits, so does land that is set aside for conservation due to its recreational opportunities and potential to draw tourists. In 2011 alone, just fewer than 5 million visitors came to national monuments and national recreation areas within Utah while another 6.3 million visited national parks within the state, according to the Utah Office of Tourism (2011). According to the Outdoor Industry Foundation, “active outdoor recreation” in Utah “contributes $5.8 billion dollars annually to Utah’s economy,” supporting “65,000 jobs across Utah” (Outdoor Industry Foundation, 2006, p. 5). While neither exchanges nor lands bills directly produce these visitation nor recreation results, they can rearrange land ownership so as to stimulate the positive economic effects which come with conservation while providing for extractive development elsewhere. These methods, through consolidation of lands with similar characteristics, have great potential to produce profitable “win/win” economic scenarios where both developed and conserved lands could generate enormous revenue and create jobs.

Finally, there are major trust-building benefits to lands bills and land exchanges in that they bring nearly all interested parties to the table, including state and county governments, federal agencies, and civil society, while also providing long-term plans for land use in the future. Both provide a sort of what University of Utah Professor Dan McCool (2001) calls a “public lands peace process...directed at preserving public lands and providing realistic economic alternatives to rural people affected by land preservation decision” (p. 618). The five key components of this “peace process” are “collaboration, give-and-take bargaining, incentive partnerships, new governing structures, and brainstorming” (McCool, 2001, p. 614). By McCool’s definitions, county lands bills and exchanges fit four of these five criteria. Although they do not create new governing structures, they are collaborative in that they allow for communicating “in a mutually respectful atmosphere in an effort to resolve problems” and they incorporate give-and-take bargaining and incentive partnerships, at the very heart of any land exchange (McCool, 2001, p. 614). Brainstorming, defined by McCool (2001) as the “spontaneous and free exchange of ideas,” is utilized to a lesser extent, generally in the first planning stages of an exchange or lands bill where almost any idea can be brought to the table (p. 617). These methods, in a form of “public lands peace process,” can avoid animosity and differences of opinion associated with public lands issues by preserving “the nobility of the preservation project” while offering a collaborative, inclusive process for public land management (McCool, 2001, p. 614; Rasband, 1999, p. 557). Exchanges could be used more effectively as part of a pre-conservation designation process, rather than post-designation hostility mitigation techniques (such as the case of the Utah Schools and Land Exchange Act of 1998 after the designation of Grand Staircase-Escalante National Monument), encouraging effective management in the future and ensuring, by local support, the longevity of any agreements put into place. The significance of the trust built through exchanges and lands bills, cannot be overstated.

When a land use and management plan extending long into the future is generated from an exchange or a lands bill, all parties benefit from the resulting predictability and stability. The environmentalist can be assured that a new wilderness area created out of a county lands bill or land exchange will protect that area in perpetuity; the developer can be assured that there is space for growth in the future. SITLA can continue to make its land profitable for Utah’s schoolchildren; the BLM can continue to maintain the diverse recreational opportunities available for the public. Moreover, these sorts of efforts often originate in the communities they affect, usually at the county or state level, such as the trade out of SITLA inholdings in the Utah Schools and Land Exchange Act of 1998, the Washington County lands bill, and the Utah Recreational Lands Exchange Act (Blaeloch, 2009 pp. 27-28, 75-76). The local roots, solidity, and permanence of land exchange or lands bill approach are some of their greatest positive attributes.

Land exchanges and lands bills should continue to be important in land management and planning in Utah, perhaps taking on an even more prominent role. As previously mentioned, only one county in the state has completed a lands bill, though other counties are currently developing and considering similar bills. Although this analysis has focused on Utah, another intriguing possibility involves expanding this sort of thinking to the rest of what former Utah Governor George H. Dern (1926) called the public land states of Arizona, California, Idaho, Nevada, Montana, New Mexico, Oregon, Washington, Wyoming, North Dakota, and South Dakota, most of which have similar land ownership and management situations to Utah. Further study in this area is needed and would surely prove enlightening, especially into quantifying the economic value of ecosystem services provided by protected public lands and how this may be factored into appraisals for land exchanges.

The examination of land exchanges and lands bills provided here has only scratched the surface of the exceedingly complex field of land management in the American West. However, it seems that if exchanges and lands bills are effectively executed, sensitive to all parties, and based on principles...
of open collaboration with those involved, their benefits generally outweigh their disadvantages. Today, many thousands of acres of trust lands remain in areas with little resource exploitation potential, but immense ecological and recreational value. Both of these facts seem to call for land exchanges or individual county lands bills. These land management methods have the potential to become “public lands peace processes,” provide for extractive development, generate economic activity from protected lands, preserve the “nobility” of large-scale land conservation, and increase funding for public schools (McCool, 2001, p. 614) (Rashand, 1999, p. 557). Carefully constructed public compromises enable exchanges and lands bills to serve their intended purposes while ensuring all parties are beneficiaries of the results of the process. Arguments against exchanges or lands bills are minimal if both conservationists and those in favor of natural resource development can concede that some compromise is in fact necessary. In short, these measures produce acceptable, though not optimal, results for all stakeholders, conserving land and ecosystems that otherwise would be without protection while ensuring stability and opportunity for development interests in endeavors that, through trust lands, will simultaneously help to fund Utah's schools. The lasting benefits of education funding, economic growth, conservation, expanded recreational opportunities, contiguous land management, and long term stability produced by exchanges and lands bills are simply too substantial to ignore.  

REFERENCES


