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HEARING ON H.R. 15, H.R. 150, AND H.R. 154

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

H.R. 15, A BILL TO DESIGNATE A PORTION OF THE OTAY MOUNTAIN REGION OF CALIFORNIA AS WILDERNESS; H.R. 150, A BILL TO AMEND THE ACT POPULARLY KNOWN AS THE RECREATION AND PUBLIC PURPOSES ACT TO AUTHORIZE DISPOSAL OF CERTAIN PUBLIC LANDS OR NATIONAL FOREST LANDS TO LOCAL EDUCATION AGENCIES FOR USE FOR ELEMENTARY OR SECONDARY SCHOOLS, INCLUDING PUBLIC CHARTER SCHOOLS, AND FOR OTHER PURPOSES; H.R. 154, A BILL TO PROVIDE FOR THE COLLECTION OF FEES FOR THE MAKING OF MOTION PICTURES, TELEVISION PRODUCTIONS, AND SOUND TRACKS IN NATIONAL PARK SYSTEM AND NATIONAL WILDLIFE REFUGE SYSTEM UNITS, AND FOR OTHER PURPOSES

FEBRUARY 4, 1999, WASHINGTON, DC

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THURSDAY, FEBRUARY 4, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL PARKS
AND PUBLIC LANDS,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:01 a.m., in Room 1324, Longworth House Office Building, Hon. James Hansen [Chairman of the Subcommittee] presiding.

Mr. HANSEN. It is time for the meeting to come to order; however, our first three witnesses haven't walked in the door yet, which makes it just a tad difficult. So, if it is all right with everybody, we will just wait just a moment. If they don't show up in a couple minutes, we will start with the first panel.

While we are doing that, I welcome the Ranking Member, Carlos Romero-Barceló from Puerto Rico, a very fine member of the Committee, and it has always been a pleasure to work with the gentleman from Puerto Rico, and I will look forward to working you through this next term.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. It has always been a great pleasure working with you. I know you to be a fair person and I look forward to working with you together on this Subcommittee.

Mr. HANSEN. So far, we have Mr. Udall as the only member who has come from far out, and we welcome Mr. Udall as a member of this Committee. We will look forward to working with you, and I spent many years working with your father who was an outstanding individual. Every time I think of Udall, Arizona just pops in my mind for some reason.

Mr. UDALL. Mr. Chairman, thank you. I am looking forward to being here as well. I think you know the Udalls are of Mormon stock, and my great grandfather came down from Utah and settled in northern Arizona, so we do have connections.

Mr. HANSEN. We won't hold that against you.

Mr. UDALL. Please don't.

[Laughter.]

One of the reasons I think we did so well in Arizona politically is my great-great grandfather was a polygamist, and he had 15 wives, and if you ran the numbers, there are more than 1 million Udall descendants. You figure there are only 600,000 people in a congressional district, you might have pretty good odds.

Mr. HANSEN. I understand that if Mormons can't convert them, they breed them, so it is one way or the other——

[Laughter.]

I don't have the privilege of coming from that kind of stock, but my wife had the same type of thing. In fact, her father came from a polygamist family in Montpelier, Idaho. When did you leave Arizona, may I ask?

Mr. UDALL. My mother is a native of Colorado; my father, you may remember, played basketball for the Nuggets. They met in the late forties in Denver and came back to Arizona, and when I got out of school, college that is, I moved back to Colorado in the early seventies. And I have, I am proud to tell you, on my mother's side of the family some people who served in public life there—Republicans as well. So, you know, there is some hope.

Mr. HANSEN. I do know some Udall Republicans just like there are some Babbitts that are Republicans in Arizona.

And speaking of Arizona, we are grateful to see the gentleman from Arizona, Mr. J.D. Hayworth, and the meeting will come to order.

STATEMENT OF HON. JAMES HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. HANSEN. This is the first meeting of the Subcommittee on National Parks and Public Land for the 106th Congress, and I would just like to take this opportunity to welcome our new members. We have talked to Mr. Udall; I don't see any other new members here at the present time. We are happy to have you with us, and we look forward to working with you.

This morning we will hear testimony on three bills: H.R. 15, to designate a portion of the Otay Mountain region of California as wilderness; H.R. 150, to amend the act properly known as the Recreation and Public Purpose Act to authorize disposal of certain public lands or national forest lands to local education agencies for use as elementary or secondary schools, including public charter schools, and H.R. 154, to provide for the collection of fees for the making of motion pictures, television production, and soundtracks in National Park System and National Wildlife Refuge System units.

The first bill, introduced by Congressman Bilbray of California, would create the Otay Mountain Wilderness Area in southern California. This area is right on the U.S.-Mexico border and contains several sensitive species, including the Mexican flannel bush and the Tecate Cypress. The Otay Mountain Area has good opportunities for solitude and primitive recreation, and its preservation is very important to people of San Diego County.

I have heard a few concerns that this bill might need to be finetuned to avoid blowing a hole in our border. I share those concerns; I want to assure people that the subcommittee will do whatever it needs to do in order to ensure that border patrol and drug interdiction activities will continue in this area.

We had the same issue arise during the 103rd Congress when we passed the California Desert Wilderness Protection Act, and I am confident that we can reach a similar solution here that will satisfy all parties concerned.

The second bill is H.R. 150 introduced by Mr. Hayworth of Arizona. H.R. 150, the Education Land Grant Act, would amend the Recreation and Public Act which covers the Bureau of Land Man-

agement public domain land to include Forest Service lands and would provide for an expedited review of the RPPA applications from local education agencies.

I commend Mr. Hayworth for introducing this bill again. This is a good idea that would help numerous rural communities. As it stands now, anytime we want to convey national forest lands to a community for a school, we have to come in here and push a bill all the way through Congress. H.R. 150 would give the Forest Service the statutory authority to make these decisions administratively.

The final bill we will hear today is H.R. 154 which was introduced by a fellow member of this subcommittee, Mr. Hefley, from Colorado. H.R. 154 would repeal the existing Department of the Interior regulatory prohibition on collecting fee units at the National Park System and the National Wildlife Refuge System for the use of these areas for commercial film production.

This bill also authorizes the Secretary to establish a fee schedule using a number of relevant factors, such as the number of people on site and the duration of the filming activities. However, the bill would not affect newsreel or television news activities.

I want to commend Mr. Hefley on reintroducing this bill which we also heard last year. Correcting the regulatory prohibition on collecting fees from the film industry for using our national treasures as backdrops for their production is long overdue, and I am glad to have this bill before us once again.

I want to thank all the witnesses for being here today to testify, including Mr. Jack Valenti, the well-known president of the Motion Pictures Association of America.

And with that said, I will turn to the ranking member of the committee, Mr. Romero-Barcelo, for any comments that he may have.

[The statement of Mr. Hansen follows:]

STATEMENT OF HON. JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Good morning. The Subcommittee on National Parks and Public Lands will come to order.

This is the first meeting of the Subcommittee on National Parks and Public Lands for the 106th Congress and I would just like to take this opportunity to welcome our new members. We are happy to have you with us and we look forward to working with you.

This morning we will hear testimony on three bills:—H.R. 15, to designate a portion of the Otay (O Tie) Mountain region of California as wilderness.—H.R. 150, to amend the Act popularly known as the Recreation and Public Purposes Act to authorize disposal of certain public lands or national forest lands to local education agencies for use as elementary or secondary schools, including public charter schools—and H.R. 154, to provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units.

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I have heard a few concerns that this bill might need to be fine tuned to avoid blowing a hole in our border. I share those concerns, and I want to assure people that the Subcommittee will do whatever it needs to do in order to insure that border patrol and drug interdiction activities will continue in this area. We had the same

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I want to thank all of our witnesses for being here today to testify on these bills, including Mr. Jack Valenti, the well-known president of the Motion Picture Association of America.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman, and it is, indeed, a pleasure to be here today at the first meeting of the year of the National Parks and Public Lands Subcommittee. We look forward to working with you on the many issues of the Subcommittee that we will likely face in this 106th Congress.

Although we are in a new Congress, the legislation before the Subcommittee today are not new measures. All three bills we are hearing today were considered and marked up by the Subcommittee in the last Congress. H.R. 15 the Otay Mountain Wilderness bill reflects a bill that was marked up by the Subcommittee in the last Congress. However, we understand that there are still some questions as to the effect of the language of section 6(b) of the bill which I am confident will be answered and addressed during this hearing and during the process.

H.R. 150, although we considered a similar bill last Congress, the bill that was introduced does not reflect what was adopted by the Resources Committee last Congress. The administration has concerns for the legislation that they will elaborate on in their testimony.

And with regards to H.R. 154, the film fee bill, we are not aware of any controversy associated with the legislation. The bill reflects language we worked out last Congress with all interested parties.

Mr. Chairman, we appreciate the attendance of the witnesses today and look forward to their testimony.

Mr. HANSEN. Thank you. I appreciate the gentleman's comments. We will start out with our three Members of Congress on the bills that are being considered. Gentlemen, we would like to point out to you that we have got three panels following your testimony and, the gentleman from California, the gentleman from Arizona, when you have completed your testimony, we would be very pleased to have you join on us on the dais, whatever your druthers would be.

Mr. Bilbray, we will start with you.

STATEMENT OF HON. BRIAN BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BILBRAY. Mr. Chairman, thank you very much for giving me a chance to be able to address your Subcommittee on behalf of the Otay Mountain Wilderness Act, H.R. 15. The bill is identical to that which was approved by your Subcommittee last year. Let me just tell you we have been working with all parties involved. We have the strong support from the Federal contingency, including the Border Patrol; the California Department of Forestry, the San Diego Board of Supervisors, which represents the 2.8 million million that live just to the north of this area, and the San Diego Association of Governments that represents all the local cities and government agencies in the region, and the Endangered Habitat League, a respected local environmental group. I also want to thank the senior Senator from California, Senator Feinstein, for her years of working to make sure that management of this area was balanced and effective from all sides of the issue.

I would like to point out that the concerns which have been expressed related to the border region are ones that do not go past me at all. As I think that you are aware, outside of maybe Silvestre Reyes or Duncan Hunter, there are not very many other Members of Congress who have been as involved or as committed to border security and border control.

I think, though, here with H.R. 15, we are able to prove that by working all the agencies together and naturally being sensitive to both missions, we can fulfill the mission of preservation of a wilderness area and the issue of border patrol.

And let me just say, quite frankly, Mr. Chairman, that not only are the two missions not mutually exclusive, they are essential to each other. There is no way to preserve the habitat potential for the Tecate Cypress and the other endangered species in the area without successfully controlling the immigration issues in the area.

Now, we have extensive experience in this region. If you will refer to your map, if you look down on the extreme left-hand corner of the map of what is showing the San Diego County/Imperial County region, there is the Tijuana Estuarine Research Preserve in that corner. That is the most protected land under our designation, practically, in the United States, and we have been able to work with Border Patrol and the Department of Interior to not only preserve the habitat in that area but also to control illegal immigration, and the two agencies have worked together consistently in that area. Otay Mountain is the next step in showing that immigration control and wildlife preservation are both essential and mutually compatible.

Now, I just had a discussion with the regional director of the Border Patrol yesterday about this item. They are very comfortable with this bill, Mr. Chairman, and if you are concerned that it could cause some problems for Border Patrol, let me refer you to the onsite map and the references to the cherry stemmed roads. We have learned that we need to have the ability, if necessary, to put structures up along the border, but we need proper access and communication. Border patrol and BLM have completed a road that runs

right along the border, and, if you notice, the wilderness area does not include the area actually on the border. That gives the Border Patrol the ability to build structures if need be, and to maintain their access roads. On either side of the cherry stemmed roads they have a 100 feet, which, if a physical structure is found to be needed in the future, can be accommodated, and the space is there to be able to do that.

Not just that, but this will be one of the few places along the border where we will have not just one, but the ability to place two lines of defense directly on the border, and the two cherry stemmed roads—you can tell there is one on the border and then there is one about a half a mile to a mile north of there—that gives the Border Patrol the level of confidence to be able to sincerely tell me yesterday that everything looks great. They are very comfortable with this proposal. In fact, they think this proposal will help to resolve the management difficulties it had in the past.

I would refer you to a letter by the Department of Interior; Secretary Babbitt has stated in this letter, dated February 3rd, 1999, that the Administration is in strong support of H.R. 15.

And, so I just leave you with this—I think we have worked it out; we have gotten all sides, everybody working together. Frankly, I think the history of cooperation along this part of the border has been more than productive, and I think with H.R. 15, we have been able to build on that, and I would like to take the next step. I hope it will set an example for more action, appropriate and balanced action, east of this area and elsewhere. So, I guess we are all learning as we are doing it and moving forward.

Mr. Chairman, I yield back my time.

[The prepared statement of Mr. Bilbray follows:]

STATEMENT OF HON. BRIAN P. BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for convening this hearing, and for the opportunity to testify before your Subcommittee on H.R. 15, the Otay Mountain Wilderness Act of 1999. I appreciate the attention of the Subcommittee to this important legislation, which would designate as wilderness a special and unique natural resource along our southern border with Mexico.

Mr. Chairman, as a lifelong resident of San Diego, I am very aware of the unique natural assets which are found at Otay Mountain, most of which is presently managed as a wilderness study area. This management has in large part been focused on conservation and enhancement of the region's plant and animal life, including unique scenic, cultural, and geologic assets, in addition to the wilderness values found at Otay. Historically, Otay's Mountain's close proximity to the U.S. Mexican border has also made it a flashpoint for the ongoing immigration control and narcotics interdiction efforts of the United States Border Patrol.

I am pleased to be able to report to you the high level of support which exists for H.R. 15 at the local, state, and Federal level. Secretary Bruce Babbitt recently toured Otay Mountain, and while I was unfortunately unable to accompany him, he was clearly impressed with its natural beauty, drawing comparisons to such crown jewels as Yellowstone and Yosemite, and is very supportive of this legislation. In fact, I'm told that he said he hoped to be able to return to Otay Mountain this year to "pop a champagne cork" in celebration of enactment of this legislation.

Local support, which is so critical to any successful resource management plan, is considerable—the San Diego County Board of Supervisors (on which I served prior to coming to Congress) will meet on February 17th to consider a resolution in support of H.R. 15 that is expected to pass unanimously; the San Diego Association of Governments (SANDAG) is also on record in support, as is the Endangered Habitats League, a respected regional conservation group.

I also want to thank my California colleague, our Senior Senator, for her ongoing active role in and support of this issue. Senator Feinstein has in the last several

years played a key role in facilitating increased access by to Otay Mountain by the Border Patrol, which has resulted in dramatic reductions in illegal activity along this border region. She deserves a great deal of credit for the progress which has been achieved there to date, and I am proud to have her support for this legislation, which will be in her capable hands upon being sent to the Senate.

As you are well aware, I first introduced this legislation in the 105th Congress as H.R. 3950, on which this Subcommittee held a hearing on July 28th of last year. Following this very productive hearing, H.R. 3950 was subsequently amended and passed unanimously by your Subcommittee in August. This revised language, which amended Section 6(b) of H.R. 3950 as introduced and was sought and supported by the Administration, reflected concerns expressed over the original Section 6(b) by the Departments of Justice and Interior, members of this Subcommittee, and the environmental community. The practical effect of this language, which is also found in H.R. 15, is to provide assurance that the Border Patrol and other law enforcement agencies will be able to continue to pursue their missions of national security in the Otay Mountain region effectively and without hindrance, while simultaneously protecting the surrounding resources as wilderness *and maintaining the integrity of the 1964 Wilderness Act.*

I would like to expand on this last point. Many of my colleagues, and especially my fellow Californians, have heard me speak to the volume and variety of law enforcement challenges we face along our southern border, both environmental and criminal. As I have made clear to you, Mr. Chairman, and to this Subcommittee at the July hearing, I would not be pursuing enactment of H.R. 15 in the first place if I did not firmly believe that we would be able, at the end of the day, to protect this wonderful and rugged place as wilderness for future generations of San Diegans and all Americans to enjoy, while simultaneously maintaining the formidable interdiction capabilities of the Border Patrol which are critical to our national security.

Mr. Chairman, I have remained in close contact with the Border Patrol throughout this process, and you will be interested to know that it is confident that the wilderness designation which will occur under H.R. 15 will be compatible with its ongoing mission in years to come. The Border Patrol worked closely with the BLM in designating the wilderness boundaries for Otay Mountain, including those for the essential access roads which they presently use. Indeed, the interagency cooperation which has occurred to date has already actually *improved* Border Patrol's ability to deter illegal immigration and apprehend the smugglers of narcotics and human beings which still unfortunately taint our border regions. The compromise language now found in Section 6(b) of H.R. 15 provides the ability for this success to continue, based on the flexibility found in Section 4(c) of the existing Wilderness Act.

In years past, the Border Patrol had expressed concerns about the potential designation of Otay Mountain as wilderness, due largely to its rugged terrain, which served as a "magnet" for illegal immigration and smuggling activities. However, by working with the Bureau of Land Management (BLM) and the California Department of Forestry (CDF) to construct new access to the area and along the border itself, and repairing and improving existing roads, the Border Patrol's ability to operate in the region has been greatly improved. There have already been noticeable reductions of traffic in both illegal immigration and narcotics as a result of this improved access.

Mr. Chairman, I appreciate the Administration's willingness to work with me, your Subcommittee, and other stakeholders to develop this compromise language which addresses these concerns in a satisfactory manner. I would like to again emphasize that I share the legitimate concerns which have been expressed in the past about "setting precedent" which might be detrimental to the landmark Wilderness Act of 1964 or be harmful to essential law enforcement activities along our borders; however, I am pleased with the level of consensus which now exists for this bill amongst the stakeholders. We all want the same things—we want to protect the natural beauty of Otay Mountain for future generations, we want to maintain strong and effective law enforcement at the border, and we want to maintain sound wildfire management practices.

I would like to talk for a moment about the kind of precedent which I am interested in setting with this bill, Mr. Chairman, because I believe that an important opportunity exists before us. Too often in years past, discussion or debate of various wilderness proposals have unfortunately been marked by conflict rather than consensus, and partisanship rather than partnership. I take heart in the fact that while there have been differences of opinion as to how best to refine H.R. 15 to achieve the results all stakeholders want, they have been expressed openly and in good faith, and that constructive dialogue has resulted in the legislative product before us today. It seems to me that the best legacy we could leave with H.R. 15 is beyond that of a simple wilderness bill, important though it is.

I have to believe that there are other regions of extraordinary beauty elsewhere in our country, possibly even in other border regions, where the critical missions of different departments or agencies have historically been viewed as being at "cross-purposes" with those of resource conservation or environmental protection. We have already seen the positive environmental results of the Border Patrol's increased access to the Otay Mountain wilderness study area and adjoining areas. The reductions in illegal smuggling and immigration there has directly translated into reduced impact on the resource itself—fewer illicit trails beaten through delicate and sensitive habitat, less trash and human waste, and, elsewhere in the vicinity, fewer sensitive animal and bird species being harmed or consumed for food, and less toxic chemical residue from makeshift drug labs, to list but a few benefits.

It is my hope that if we are successful in our efforts to designate wilderness at Otay Mountain, we can establish and shore up the precedent that wilderness designation is not inherently incompatible with critical law enforcement or other work being conducted in the same region, and vice versa. We should emphasize and support these opportunities, where Federal operating strategies can and should be made to complement each other, rather than be allowed to run completely independent of one another, and at cross purposes. In the instance of H.R. 15 and Otay Mountain, there is clear benefit to be derived both to our natural environment and our law enforcement strategies. Given the great importance of both these assets, I would like nothing more that to see this bill become law and serve as a blueprint for future cooperation and success, in which we can all share and benefit.

Mr. Chairman, thank you again for your consideration of this important legislation; I look forward to working with you and our colleagues to move H.R. 15 through the House of Representatives to the Senate, and ultimately to the President's desk. I have some supporting material which I would ask to be included in the record, and would be happy to answer any questions from the Subcommittee.

LETTER TO MR. BILBRAY FROM SECRETARY BRUCE BABBITT

THE SECRETARY OF THE INTERIOR,
WASHINGTON, DC,
February 3, 1999.

Honorable BRIAN P. BILBRAY
House of Representatives
Washington, D.C. 20515

DEAR MR. BILBRAY: Thank you for your letter of December 14, 1998, regarding the proposal to designate Otay Mountain in San Diego County as wilderness.

I regret that you were unable to join me on the Otay Mountain tour. I was pleased to meet the many individuals and local officials committed to preserving the special resources on Otay Mountain.

The conclusion of the group present was that the time was appropriate to designate Otay Mountain as part of the National Wilderness Preservation System. Bureau of Land Management Acting Director Tom Fry will be testifying on February 4, 1999, before the House Resources Subcommittee on National Parks and Public Lands on behalf of the Administration in strong support of H.R. 15.

I look forward to working with you to preserve the unique resources of this area as the legislation makes its way through Congress.

Sincerely,

BRUCE BABBITT,
Secretary.

Mr. HANSEN. Thank you very much. We appreciate your testimony.

Mr. Hayworth.

STATEMENT OF HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. HAYWORTH. Mr. Chairman, I thank you. It is good to see members of the Subcommittee, including my good friend from Colorado and, yes, Mr. Udall, there are Republican Udalls. In fact, the joke my staffer, Chris Udall, likes to tell is that your dad and others on your side of the family took a left turn out of St. Johns while brother Chris took a right turn out of the Round Valley. But be

that as it may, we are pleased to see you here in the 106th Congress, and my long-time colleagues thank you for this opportunity to testify in support of H.R. 150 or what my staff has taken to calling the Hayworth Educational Land Grant Act, or HELGA.

The idea for HELGA came from legislation I introduced in the 104th Congress which became public law. That bill conveyed 30 acres of U.S. Forest Service land in Apache County, Arizona to the Alpine Elementary School District for the purpose of building new school facilities. I am very pleased to have the principal of the Alpine School, Mr. David Silva, here to testify in support of HELGA which seeks to set up a mechanism that would allow for similar conveyances of federally-controlled land to school districts nationwide.

HELGA would amend the Recreation and Public Purposes Act, title 43, section 869 of the U.S. Code to authorize conveyances of small parcels of BLM or Forest Service land to public school districts. Currently, title 43, section 869 only allows conveyances of BLM land for certain purposes.

The size of any transfer would be limited to 640 acres which is the same limitation in title 43, section 869. Land in the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, National Wild and Scenic River System, National Trail System, National Recreation areas, and any specially designated lands are strictly prohibited from being subject to applications for conveyances. If at some point the land was used for non-public purposes, ownership of the land would revert back to the Federal Government.

Finally, the Secretary of the Interior, in the case of the BLM, and the Secretary of Agriculture, in the case of the Forest Service, must respond to applications for land by school districts within 60 days. If this deadline is not met, then the agency must report to Congress.

Many school districts, especially rural school districts, are financially strapped. For example, I want to briefly tell you about the Alpine School District. The district sits within Apache County in the eastern part of Arizona near the New Mexico border. Eighty-five percent of Apache County is federally-controlled land. As a result, the school district has relied in the past heavily on proceeds from timber harvesting.

Unfortunately, due to lawsuits, logging there has been halted. Consequently, the timber receipts that have gone toward funding the schools have all but dried up. Without a conveyance, Alpine's school district could not have afforded to pay the estimated $7,500 per acre to purchase land and at the same time pay for badly needed new school facilities. The prohibitive costs for acreage and new facilities make it nearly impossible for those financially strapped districts, like Alpine, to survive. However, by conveying land to the Alpine District and saving that district one-quarter of a million dollars, the district could afford to build new facilities, thus reducing class sizes and concentrating money where it is most needed, on the students. This is why we need to amend the Recreation and Public Purposes Act to include land conveyances from school districts on Forest Service lands.

In a moment, you will also hear from Apache County Board of Supervisors Chairman Art Lee and Apache County Manager Clarence Bigelow. I look forward to their testimony and their explanation of the challenges they face as a result of Apache County's large amount of federally-controlled land.

This situation is not isolated to the Alpine School District. As you may recall, last year when I testified before the Subcommittee, the city of Globe also testified about problems its schools face in rural Gila County. I have also received letters from other school districts facing similar problems.

Mr. Chairman, I have only incorporated one minor change to the original bill, H.R. 2223, which was introduced in 1997, because of the Forest Service's previous testimony. Last Congress' bill inadvertently would have allowed disposal of Forest Service lands by the Secretary of the Interior, although Forest Service lands are currently under the purview of the Secretary of Agriculture. I agree with the Forest Service that the language in H.R. 2223 did not clearly specify who had jurisdiction over Forest Service lands, and so the new bill reflects the change.

Nevertheless, even with this change, I expect the Forest Service to argue that the Secretary of Agriculture already has existing authority to accommodate public uses through the Townsite Act or the Sisk Act. While the Secretary does have the authority to convey land through various Acts of Congress, these lands can be only conveyed at fair market value. These are the same prohibitive costs I am trying to eliminate through my bill. Rural districts simply cannot afford the exorbitant costs of land and the construction of new school facilities.

Moreover, it is fair to ask what is more important, ensuring that Federal land is purchased at fair market value or that children are educated in adequate facilities. Mr. Chairman, the answer is obvious to me—that latter proposition, our children, are our most precious resource.

The Forest Service may also say that the government must be compensated for ceding Federal land to local education agencies. I would like to remind the Forest Service and the Subcommittee of two things: first, many States, especially those in the West, agreed to hand over large amounts of their land to the Federal Government in order to join the Union. The least we can do is give some of this land back to some of our most important constituents, our children. Second, while the Forest Service claims they are concerned that they will lose money by ceding land to various school districts, the Congressional Budget Office has scored my bill and concluded that HELGA would, "have no significant impact on the Federal budget."

Mr. Chairman, on both sides of the aisle, Members of Congress have talked about the importance of education. HELGA is a common sense proposal we can all agree on, because it will allow economically-challenged school districts throughout the U.S. to put more money where it counts, in the classroom. This is a goal I know we all support, and I hope this Subcommittee will act quickly and decisively on this legislation in order that we might help school children throughout rural America.

Thanks again, Mr. Chairman, and other members of this Subcommittee. I look forward to any questions you might have concerning HELGA.

[The prepared statement of Mr. Hayworth follows:]

STATEMENT OF HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, members of the Subcommittee, and distinguished guests, thank you for allowing me to testify in support of H.R. 150, what my staff has taken to calling the Hayworth Education Land Grant Act or HELGA. It is indeed a great honor to be before the Committee on which I was very proud to serve during the 104th Congress.

The idea for HELGA came from legislation I introduced in the 104th Congress that became public law. That bill conveyed 30 acres of U.S. Forest Service land in Apache County, Arizona to the Alpine Elementary School District for the purpose of building new school facilities. I am very proud to have the principal of the Alpine School, Mr. David Silva, here to testify in support of HELGA, which seeks to set up a mechanism that would allow for similar conveyances of federally-controlled land to local school districts nationwide.

In President Clinton's last three State of the Union addresses, he advocated spending $5 billion on new school construction. While I have serious reservations about the President's plan because of constitutional concerns, HELGA offers a way to help rural school districts with construction at little or no cost to the Federal Government. If the Administration is sincere in its efforts to help local communities build new schools, it should endorse this proposal unequivocally.

HELGA would amend the Recreation and Public Purposes Act—Title 43, Section 869 of the U.S. Code—to authorize conveyances of small parcels of BLM or Forest Service land to public school districts. Currently, Title 43, Section 869 only allows conveyances of BLM land for certain purposes.

The size of any transfer would be limited to 640 acres, which is the same limitation in Title 43, Section 869. Land in the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, National Recreation Areas, and any specially-designated lands are strictly prohibited from being subject to applications for conveyances. In other words, HELGA would not affect Federal lands of national significance. If at some point the land was used for non-public purposes, ownership of the land would revert back to the Federal Government.

Finally, the Secretary of the Interior, in the case of the BLM, and the Secretary of Agriculture, in the case of the Forest Service, must respond to applications for land by school districts within 60 days. If this deadline is not met, the agency must report to Congress.

As you know, Mr. Chairman, private land in the West is very expensive. And, while most federally-controlled land is located in the West, westerners also face another problem: rapidly growing populations. In fact, Arizona, Utah, and Nevada are the three fastest growing states in the nation. With less and less private land on which to build schools and other public facilities, the West will increasingly need to find new solutions to its growth problems. HELGA is one of the ways we can alleviate some of the West's concerns and, at the same time, help our children receive the education they need and deserve.

And while the West is growing rapidly, many school districts are financially-strapped for cash. For example, let me tell you about the Alpine School District's predicament. The district lies within Apache County, in the eastern part of Arizona near the New Mexico border. Some 85 percent of Apache County is federally-controlled land. As a result, the school district relies heavily on proceeds from timber harvesting.

Unfortunately, due to lawsuits, logging has been halted. Consequently, the timber receipts that had gone toward funding the schools have all but dried up. Without a conveyance, Alpine School District could not have afforded to pay the estimated $7,500 per acre to purchase land and, at the same time, pay for badly needed new school facilities.

The prohibitive costs for acreage *and* new schools make it nearly impossible for financially strapped school districts, like Alpine, to survive. However, by conveying land to the Alpine School District and saving the district $225,000, the district could afford to build new facilities, thus reducing class sizes and concentrating money where it is most needed: on the students. That is why we need to amend the Recreation and Public Purposes Act to include land conveyances for school districts on

Forest Service lands. In a moment, you will hear from Apache County Board of Supervisors Chairman Art Lee and Apache County Manager Clarence Bigelow. I look forward to their testimony and their explanation of the challenges they face as a result of Apache County's large amount of federally-controlled land.

This situation isn't isolated to the Alpine School District. As you may recall, last year when I testified before the Subcommittee, the City of Globe also testified about problems its schools face in rural Gila County. This county is the size of the state of Connecticut, yet only 3 percent of its land is under private control. The government controls an amazing 97 percent of the land. Globe's population is growing, but the schools are hamstrung by the prohibitive costs of buying acreage and paying for improved school facilities. HELGA is a simple way to help rural, economically-strapped school districts.

Mr. Chairman, I have only incorporated one minor change to the original bill—H.R. 2223—I introduced in 1997 because of the Forest Service's previous testimony. Last Congress's bill inadvertently would have allowed disposal of Forest Service lands by the Secretary of the Interior, although Forest Service lands are currently under the purview of the Secretary of the Agriculture. I agree with the Forest Service that the language in H.R. 2223 did not clearly specify who had jurisdiction over Forest Service lands, so the new bill reflects this change.

Nevertheless, even with this change, I expect the Forest Service to argue that the Secretary of Agriculture already has existing authority to accommodate public uses through the Townsite Act or the Sisk Act. While the Secretary does have the authority to convey land through various Acts of Congress, these lands can only be conveyed at "fair market value." These are the same prohibitive costs that I am trying to eliminate through my bill. Rural school districts simply cannot afford the exorbitant costs of land and new school facilities. Moreover, what is more important—ensuring that Federal land is purchased at fair market value or that children are educated in adequate facilities? Mr. Chairman, the answer is obvious to me.

My friends from the Forest Service may also argue that the government must be compensated for ceding Federal land to local education agencies. I would remind the Forest Service of two things. First, the states in the West agreed to hand over large amounts of their land to the Federal Government in order to join the union. The least we can do is give some of this land back to some of our most important constituents: children. Second, while the Forest Service claims they are concerned they will lose money by ceding land to various school districts, the Congressional Budget Office (CBO) has scored my bill and concluded that HELGA would "have no significant impact on the Federal budget."

Mr. Chairman, on both sides of the aisle, we have talked about the importance of education. HELGA is a commonsense proposal that we all can agree on because it will allow economically strapped school districts throughout the United States to put more money where it counts: in the classroom. This is a goal we all support, and I hope that this Subcommittee will act quickly and decisively on this legislation to help our school children in rural America.

Thanks again to you, Mr. Chairman and members of the Subcommittee, for allowing me to testify. I will remain here to answer any questions you may have regarding HELGA.

[The information may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Hayworth.

The gentleman from Colorado, Mr. Hefley.

STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. HEFLEY. Thank you, Mr. Chairman. I, too, would like to welcome my colleague from Colorado, the new gentleman from there, but I would also like to make a motion that this Committee cannot have two people by the same name on the Committee——

[Laughter.]

[continuing] if you father and uncle's picture is hanging in the room, or something about that.

Mr. Chairman, I apologize for having to take up the time of this Committee with this bill again this year. We worked very hard on it last year. This was a bill that there was cooperation between everybody—Democrats, Republicans, the legislative branch in the

form of this Committee, the administration in the form of the Interior Department, and, certainly, the Motion Picture Association—to try to work out a bill that everybody was happy with, and it passed the House without any trouble whatsoever, and then got involved in the machinations of the Senate in the last days over there where it got involved with being held hostage for something else and all that kind of thing. And, so here we are again, and I really appreciate the Chairman bringing this up early in the session so that maybe we can work our way through that.

Prior to 1948, filmmakers paid a market price to film on public land, but for some reason that practice was banned by regulation in 1948. This bill directs the Interior Department to develop a uniform policy for the collection of fees for the making of any motion picture, television production, soundtrack, or similar project for commercial purposes if it is determined that those uses are appropriate to and will not impair the value and resources of the land and facilities. The bill directs that these fees provide a fair return to the government and not less than the government's direct and indirect cost of processing applications and the use of the land and facilities, including necessary cleanup and restoration.

In drafting this policy, Interior is directed to develop a standard schedule of rates for such factors as the number of people on the site, the length of the stay, service to services, and use of special areas. This was suggested by a policy initiated by the Forest Service in California last year. Newsreel, news television productions, and most still photographers say those that are using props and models or sets would be exempt from the fees. Any proceeds resulting from this policy would be dispersed according to Rec Fee Demo Program. In other words, 80 percent of those proceeds would remain in the unit where filming takes place to be used for maintenance needs. The remaining 20 percent would go towards servicewide use.

In this bill, we have tried to strike a balance between the flexibility Interior wants and the certainty that the industry needs. A rate schedule will allow the industry a quick, ballpark estimate of the minimum cost for filming on public land. The regulatory approach recognizes there will be cases where the resources involved demand special treatment.

I believe everyone involved in the drafting of this legislation wants to see filming continue on public land. You know, for many folks this may be the only way they ever see the great jewels of our park system, the Yellowstones, and the Grand Canyons, and so forth. We want them to film on public land. It is good, I think, for the country; it is good for the economy. We want them to do it; we want them to have some certainty about what it is going to cost, so that that is not an arbitrary thing, and we want them to do it in such a way that it does not harm the resource.

I think this bill sets the framework that will be to the benefit of everybody, and I particularly again want to thank the Motion Picture Association for working with us so diligently on this. They will testify a little later. I think we have got a good bill, Mr. Chairman. We had a good bill last year; I think we have a good bill this year, and maybe by starting this early, we can actually get it through the entire process. Thank you very much.

[The prepared statement of Mr. Hefley follows:]

STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. Chairman, H.R. 154 seeks to correct an inequity that has existed within the Department of Interior for more than 50 years—a prohibition on the collection of fees by the National Park Service and the U.S. Fish & Wildlife Service for commercial filming on the lands they administer.

Prior to 1948, these agencies charged fees for the use of public lands for filming. I suppose many Americans got their first taste of the West through the classic Westerns of John Ford. Many of those films were made on public lands in Utah and Mr. Ford paid a standard fee for the use of those lands. But, for some reason known but to God, that practice was ended in 1948 and there it rested until last year when a constituent of mine wrote to ask why film makers like Steven Spielberg could film on public land for no more than the permit fee. It turned out she was right and this bill is the result.

H.R. 154 directs the Secretary of Interior to develop a policy for the collection of fees for the making of any motion picture, television production, soundtrack or similar project, for commercial purposes on lands administered by Interior agencies, if the Secretary determines that use will not impair the values and resources of the land and facilities.

The bill directs the Secretary to require a payment of fees in an amount determined to provide a fair return to the government and that said fee shall not be less than the direct and indirect costs to the government for processing permit applications and for the use of the land and facilities, including any necessary cleanup and restoration.

The bill further directs the Secretary, as part of this policy, to develop a schedule of rates for fees based on such factors as the number of people on site under a permit, the duration of their stay, surface disturbances and the use of special areas. These factors were drawn from a similar policy launched by some regions of the U.S. Forest Service last year.

It exempts from fees bonafide newsreel or news television production and most still photographers, save those using models, sets or props.

The bill further directs that proceeds from this policy shall be available without appropriation to be used by Interior in accordance with the formula and purposes outlined under the Recreation Fee Demonstration Program. Penalties will be in accordance with Title 18 of the U.S. Code. After some discussion, it was decided that film makers should be treated the same as any other permittee, whether that permittee grazes cattle, chops down a tree, mines coal or makes a movie.

Finally, the bill stipulates that this legislation go into effect 180 days after enactment, that the Secretary review and revise regulations issued as a result of this legislation within three years after enactment, and that he periodically review and revise those regulations, as needed, over time.

This bill is the product of a great deal of cooperation between both sides of the aisle in this Committee, from the Interior Department and from the Motion Picture Industry. We have tried to balance the film industry's needs for certainty with the Interior Department's desire for flexibility. I think we have had some success achieving that balance.

This bill remained an active item on the agenda of the 105th until the day it recessed. Despite a concerted effort by members and administration representatives including, I believe, Secretary Babbitt, it somehow fell through the cracks on the last day. It is my hope that we can avoid a repeat of that this year and that we can pass this bill, put the needed policy in place and get moving on this issue. There's no reason why we shouldn't be able to.

We all want to see filming continue on the public lands; the more people see them, the more will be stimulated to visit them. Even the film industry admits its only fair that one of the nation's leading industries and exporters pay a fair price for the use of these lands. It's possible revenues from this policy will take care of some maintenance needs on our public lands. At the same time, we don't want to see our public lands turned into sound stages. I think H.R. 154 can accomplish this. I urge your support.

[The information may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Hefley.

Questions for our colleagues? Mr. Romero-Barceló.

Mr. ROMERO-BARCELÓ. We have no questions. We just want to thank the witnesses for bringing forward the bills.

Mr. HANSEN. Thank you. Mr. Hefley, do you want to ask yourself any questions———

[Laughter.]

[continuing] or ask our two colleagues anything?

Mr. Udall.

Mr. UDALL. Thank you, Mr. Chairman. Just two comments—I didn't have questions, but I wanted to first acknowledge my colleague from Colorado, and I am new around here, as you know, and I would love to co-sponsor your bill. I think it sounds like it is a very, very important piece of legislation and would like to do that. Secondly, I would just like to thank the Chairman and Congressman Bilbray for bringing forward this BLM wilderness bill. I know in Colorado we have a maturing situation there with a lot of BLM lands, and I am looking forward to having a discussion about what we do with those lands as well. So, I appreciate that. Thank you.

Mr. HANSEN. Thank you, Mr. Udall. I have no questions for you.

Gentlemen, if you would like to come up and join us, we would be pleased and privileged to have you with us.

We will call our first panel. Mr. Tom Fry, Acting Director of Bureau of Land Management; Mr. Paul Brouha, Associate Deputy Chief, U.S. Forest Service; Mr. Stephen Saunders, Deputy Assistant Secretary, Fish, Wildlife, and Parks. If the gentlemen would like to take their place.

Gentlemen, we are privileged to have you here. The rules of this Committee are that you get five minutes. Seeing this morning we don't have too many folks here, we would be more than pleased if you—I was going to say go over, but I don't really mean that—please stay within your time. If you really have to go over a minute or two, I won't bang the gavel on you. You will see in front you just like a traffic light—green means go, yellow means wrap it up, and red means stop. So, five minutes goes in a hurry.

Mr. Fry, it is a pleasure to see you again, sir, and we will start with you if that is all right.

STATEMENT OF TOM FRY, ACTING DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. FRY. Thank you very much, Mr. Chairman. It is a pleasure to be here and to be on this panel. I would like to ask that my written remarks be made a part of the record.

Mr. HANSEN. Thank you. Without objection, so ordered, and that will be the case on all witnesses today. If you want to abbreviate your statement, your written comments will be part of the record.

Mr. FRY. Mr. Chairman, I want to thank Congressman Bilbray for his efforts on behalf of the Otay Mountain Wilderness bill. He had a similar bill last year that we were able to support. There were some changes made to the bill in Committee markup last Congress. The administration supported the bill last year, so I am here again today to reiterate that support for the bill as introduced by Congressman Bilbray.

Secretary Babbitt has taken a personal interest in the Otay Mountains and the Otay Mountain wilderness. He has recently

made a trip there and had an opportunity to tour the area with Representative Filner from San Diego County, the San Diego County Association of Governments, the California Biodiversity Council, the Sierra Club, the Endangered Habitat League, the Wilderness Society, the U.S. Border Patrol, BLM, and representatives from Senators Feinstein and Boxer's office. At the end of that tour, the Secretary reiterated his support for wilderness designation for this area.

I think I can represent, on behalf of all the parties involved, that everybody thinks this is an appropriate area for wilderness as it's currently drawn on the map. There have obviously been some questions raised about section 6(b), the provision of the bill which pertains to the Border Patrol and activities within the wilderness area. This is something that we have looked at with great interest within the administration.

The 6(b) language of this bill has been approved by the Justice Department in consultation with the Border Patrol and with the Department of the Interior, and we are fully supportive of the language that is currently in the bill. We recognize that others may differ with some of the language, and reasonable people can differ, but we think that this is the appropriate language that provides a good balance between protecting the interest of the Border Patrol and also protecting the standards of the 1964 Wilderness Act.

So, with that, Mr. Chairman, I recommend to this Committee that you report this bill, and we look forward to working with you to getting it through the entire Congress.

[The prepared statement of Mr. Fry may be found at end of hearing.]

Mr. HANSEN. Well, thank you, Mr. Fry. I appreciate your comments.

Mr. Brouha.

STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, U.S. FOREST SERVICE

Mr. BROUHA. Mr. Chairman, members of the Subcommittee, good morning, and thank you for the opportunity to present the administration's views concerning H.R. 150 which are the amendments to the Recreation and Public Purposes Act in order to dispose of National Forest lands to education agencies. The administration commented on the previous bill, H.R. 2223, regarding this subject during a hearing before this Subcommittee last year.

I am accompanied today by Mr. James B. Snow, who is the Deputy Assistant General Counsel for the Department of Agriculture. In the matter of land use law, we may need to use his skills and knowledge.

While the administration supports the objective of making Federal lands available under certain circumstances for public purposes, the administration strongly opposes this bill. First, the bill is unnecessary because current statutory authority exists to make land available for educational purposes. Second, the bill would permit the disposal of National Forest lands for less than fair market value. And, third, the deadline requirement to make the conveyance within 60 days is entirely inadequate.

Let me expand a little bit. The administration appreciates the efforts that the Subcommittee has made to address the concern raised last year regarding H.R. 2223, but we continue to have serious problems with the bill. First, to include the disposal of National Forest lands for public purposes under the Recreation and Public Purposes Act of 1926 is unnecessary because the Secretary of Agriculture has existing authorities to accommodate public uses through authorities to permit, lease, and exchange or dispose of National Forest lands.

For example, under the Townsite Act, the Secretary of Agriculture may convey full fair market value up to 640 acres of land to establish communities located in the State of Alaska or in the contiguous western States. Within certain limits, the Sisk Act of 1967 authorizes the Secretary of Agriculture to exchange lands with States, communities, or municipal governments or public school districts for lands or lands and money. Moreover, the Secretary of Agriculture can exchange National Forest lands with State and local government.

Secondly, the administration objects to H.R. 150 because it would permit the disposable of National Forest lands for less than fair market value. The taxpayers of the United States should receive fair market value for the sale, exchange, or use of their National Forest land.

Unlike the R&PPA, other land exchange laws require the Secretary of Agriculture to obtain fair market value for the exchanges or sales of the National Forest. Indeed, Federal policy backed by bipartisan consensus in the executive and legislative branches in recent decades has moved towards maximizing the return to the public for the value of the lands conveyed out of the Federal estate. The administration objects to legislation that would reverse that policy by opening the door to less than fair market value, consideration for the disposal of National Forest lands.

Third, the administration objects to the requirement that within 60 days a decision on these conveyances must be made. Decisions about the appropriate use of National Forest lands and resources are accomplished through the forest planning processes that are identified under the National Forest Management Act and the National Environmental Policy Act. Under NFMA and NEPA, the Forest Services analyzes important environmental considerations, and the public is intensively involved.

During this process, local Forest Service officials work closely with State and local governments to identify their concerns, the needs for the land, and lands appropriate for land ownership adjustments. These processes take time, and since every land adjustment is unique, it would be difficult to determine an appropriate amount of time necessary to complete environmental analyses. In fact, such a limit would only serve to create expectations that the agency could not meet and undermine the credibility of its public development processes and environmental analysis. The agency strongly believes that attempts to short-circuit environmental and public processes will only lead to more controversy.

In closing, Mr. Chairman, while the administration supports the general objective of making Federal lands available for educational purposes, the administration strongly opposes H.R. 150. However,

the administration remains open to discussions with the Subcommittee on other ideas for this bill.

This concludes my statement. I would be happy to answer questions, sir.

[The prepared statement of Mr. Brouha may be found at end of hearing.]

Mr. HANSEN. Thank you very much. I appreciate your statement.

Mr. Saunders, we will turn the time to you, sir.

STATEMENT OF STEPHEN SAUNDERS, DEPUTY ASSISTANT SECRETARY, FISH, WILDLIFE, AND PARKS

Mr. SAUNDERS. Thank you, Mr. Chairman, I am happy to join the choir singing the praises of H.R. 154. I think there will be more praise sung by your third panel from the key interest groups that are involved in this. We are strongly supportive of this bill even though it is perhaps unusual for somebody from a Department to come and say that about a problem that is really created by the Department itself.

For the past half-century, we have had a regulation on our books that keeps the Park Service from recovering fees for the use of the resources in our National Parks. For the past 40 years, that has also applied to the Fish and Wildlife Service, and there is no real sense for that. We can't even find out why that was done to begin with.

The Fish and Wildlife Service and the Park Service would like join to BLM and the Forest Service in being able to charge some kind of fee that would ensure a fair return to the taxpayers for the use of the resources. State and local governments do this; tribes do it. We see no reason why we should tie our hands the way we have.

The bill has been worked out. As has been said, we enjoyed the opportunity to work with you on it last year. I think the success in having everybody reach agreement was shown by the vote in the House, and we see no reason why the Senate shouldn't go along, and we thank you, Mr. Chairman, for your action on this early in the year.

I would be happy to answer any questions you may have.

[The prepared statement of Mr. Saunders may be found at end of hearing.]

Mr. HANSEN. Thank you very much. We appreciate that positive response.

Questions now for the panel? The gentleman from Puerto Rico will be recognized for five minutes.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. Yes, I do have questions for Mr. Brouha.

Mr. Brouha, I understand from your testimony that you currently have the authority to make available National Forest land for public school purposes. Do you in fact use this authority?

Mr. BROUHA. Yes, we do, sir.

Mr. ROMERO-BARCELÓ. Can you give us an idea of how many schools you have permitted on National Forest land using the current authority?

Mr. BROUHA. We have made use of the authorities that are available to us under the Townsite Act approximately nine times in the past 10 years.

Mr. ROMERO-BARCELÓ. Nine times in the past 10 years?

Mr. BROUHA. Yes, and we have six that are currently under processing. And then under the Sisk Act, we have about 25 applications and transfers that have occurred during the last decade.

Mr. ROMERO-BARCELÓ. You have only used it nine times in the past 10 years. How long is the average time that it takes from the time that the land is requested to the time that the land has been given for the education purposes? Is there an average amount of time? Is it a short time? Is it years? Is it months?

Mr. BROUHA. Well, let me clarify a point, sir, if I may. When I refer to nine times, they weren't necessarily all for educational purposes, but the length of the process normally takes one or two years.

Mr. ROMERO-BARCELÓ. One or two years. So, the school would have to wait for one or two years until the land would be made available to them under the present process.

Mr. BROUHA. That is correct.

Mr. ROMERO-BARCELÓ. The other thing I would like to say: You mentioned in your testimony that the taxpayers should be reimbursed for this land. Now, if this were being given to private purposes, I can see that, but this is also being given for taxpayers. I mean they are for the children of taxpayers. So, I don't understand taking money from one pocket to put it in the other pocket. I don't understand that concept of making that fair market value of the land when it is for educational purposes. Don't we in the Federal Government have many instances where land is given to the States or to local communities when they are for educational purposes and for health purposes for free?

Mr. BROUHA. We do, in fact, have many instances of those conveyances having been made under the existing authorities that the BLM enjoys for this current Act. However, the track record for the Forest Service and the Department of Agriculture is because this was a reservation from the public estate has been to require fair market value as provided for under the Townsite Act and under the Sisk Act.

Mr. ROMERO-BARCELÓ. I know, that is what the law is now, but because that is the law is that fair that the fair market value exacted for land that is going to be used for educational purposes?

Mr. BROUHA. Again, I think the Congress has made that assessment and essentially reinforced that concept over time and recently so, in fact.

Mr. ROMERO-BARCELÓ. That is what we are trying to reevaluate here.

Mr. BROUHA. Yes, sir.

Mr. ROMERO-BARCELÓ. Well, thank you very much.

Mr. HANSEN. Mr. Hefley.

Mr. HEFLEY. Well, you know, my line of questioning would fall within the same line of my friend from Puerto Rico's was. When States like Arizona and Colorado and many of the western States were settled, one of the reasons that we ended up with so much Federal land is no one wanted it then. I mean, this wasn't land that was good for homesteading, and no one really wanted it. So, the Federal Government took it to use for good public purposes or at least to hold it and maintain it and so forth. And it seems to

me that if we find a good public purpose for it, that it doesn't make any sense to make a little, poor school district somewhere in Arizona have to pay full market value, maybe development cost value and that kind of thing, for the land. If a better public purpose than just having it sit there is to have a school on it, somehow or other it seems to me that that is the direction we ought to go. And you are saying the Department would resist that kind of change in the law? You said that we had established this policy of fair market value, but if we want to change that policy based upon higher and better use of the public land, not to a commercial enterprise but to something like education, would you resist that kind of a concept? Would you resist that kind of a change?

Mr. BROUHA. Sir, again, I think it is certainly within the prerogative of the Congress to make that assessment. However, I might point out that "camel's nose under the tent" sort of applies here, because while we support education, we also support public health, fire and police protection, the citing of court houses, and municipal facilities. So, at this point, I think you could see how this notion then gets expanded, and the point then becomes where do you stop it? And the Congress in the past has agreed that fair market value was a requirement, and, again, that may be something you wish to reevaluate.

Mr. HEFLEY. Well, you might want to look at the base closing process where we also have the requirement of fair market value, but we do make exceptions many time. We have made exceptions during these last three base closing or four base closure rounds for other good public purposes. And the Department might want to reevaluate that, and this might be a kicker to get them to do that. It seems to me that—like my friend said—that taking it out of one pocket and putting it in the other and particularly a pocket which doesn't have it; a poor school district in Arizona which doesn't have the money to take out of that pocket, it seems to me this is a way we can help them with a good public purpose, and I would hope that the Congress and the Department would reevaluate it. Thank you very much.

Mr. HANSEN. Thank you. The gentleman from Colorado, Mr. Udall.

Mr. UDALL. Mr. Chairman, I have nothing to say. I must have made a mistake—the same mistake you make at an auction, scratching your ear or putting your hand up. So, I have nothing to say, I am just listening. Thank you, sir.

Mr. HANSEN. Thank you. The gentleman from Washington, Mr. Inslee.

Mr. INSLEE. I am with Mr. Udall on this, Mr. Chair.

[Laughter.]

Mr. HANSEN. Okay, thank you. The gentleman from Arizona, Mr. Hayworth.

Mr. HAYWORTH. I thank the Chairman, and I thank my colleague from Puerto Rico and my colleague from Colorado for their line of inquiry and their very valid observations. Let me thank the witnesses who are here.

Mr. Brouha, I listened with great interest to your testimony, and let me preface my remarks mindful of your testimony to make the common observation that any piece of legislation at the Subcommit-

tee and the Full Committee level is a work in progress. And I understand the administration's concern about the time period involved in reviewing local school districts' applications, but I would also just call on you to reiterate or perhaps amplify your response to my colleague from Puerto Rico. In the past, under the curtain of the current legislation and the ability administratively to set aside land for educational purposes, would you again repeat the answer you gave to my friend from Puerto Rico? How many times has this been utilized in say the last 10 years?

Mr. BROUHA. In the last 10 years, the Secretary of Agriculture has made National Forest lands available to communities adjacent to National Forests in the 11 contiguous western States and Alaska in 9 cases. We are currently working on an additional six. Of those nine completed cases, six were in the Southwest. Of the six ongoing cases, five are in region 3. And in the last 10 years—that is under the authority of the Townsite Act—and in the last 10 years, under the authority of the Sisk Act, we have made National Forest lands available to States, counties, or municipal governments for publics in 25 cases. We are currently working on an additional four cases, and this doesn't include the exchanges that we have made for other appropriate parcels of land.

Mr. HAYWORTH. So, with a quick mathematical check, combining those two existing avenues of administrative ability, under 50 cases—that is fair to say—in under 50 cases has this been utilized—I think we can both agree on that observation. And if I am not mistaken, in response to my colleague from Puerto Rico, you were saying the average time limit to effectuate some sort of change of this type has been between one or two years?

Mr. BROUHA. That is right, but there is an ability to permit those sites for those uses much more rapidly. So, the effect is not to, in fact, prevent the use of them.

Mr. HAYWORTH. Let me just say this to members of the Subcommittee and to you, Mr. Brouha, as you represent the Forest Service: If the Secretary of Interior or the Secretary of Agriculture or someone needs 90 days to review the application, I am not averse to that. What I think we are going to hear in subsequent testimony, what I found from personal experience—and my colleagues who are new to the Congress might be interested in this—when the people of the Alpine School District came to me—and what you are going to find in the States from the West that you represent—right now, we kind of have a crazy quilt process where you have to draw up an individual piece of legislation or work administratively over a long, long period of time to effectuate the change.

The good news for the Alpine District, as will be testified later, Mr. Chairman, is the fact that we were able to get this done literally on the last day of the 104th Congress in a huge piece of legislation. It is good news that we eventually got it done, but the purpose of the legislation is to set up a uniform way to get this done to effectuate the change that my colleague from Puerto Rico pointed out, amplified by my colleague from Colorado and to serve our children—and I know this is not your area, Mr. Brouha, nor will I ask you to try and quantify as we talk about fair market value of Federal land. I know there is no way to quantify the value of

improving education for our children especially children, because that comes under the category of priceless.

Just one final question: Do you dispute the finding of the Congressional Budget Office which said—as I pointed out in my testimony—that HELGA would "have no significant impact on the Federal budget?" Do you dispute that?

Mr. BROUHA. Given the $3.7 trillion budget, sir, I would hardly be able to dispute that.

Mr. HAYWORTH. I thank you for your testimony and your courtesy, and I thank the Chairman and yield back the balance of my time.

Mr. HANSEN. I thank the gentleman from Arizona.

Mr. Brouha, you find yourself in a position of coming up here representing the Forest Service, and we don't mean to be unkind or beat up on you, but of all the three bills we are looking at, you have the controversial one. And this is my 19th year on this Committee. I guess I could give you a list, quite a long list, of where we have given and traded and sold land that wasn't really market value.

The other question comes up, determining market value is not an easy thing to do. And as the gentlemen have all pointed out, public policy has a lot to do with that. What is right? For example, myself and Mr. Hefley work on the Armed Services Committee and sometimes a mountain home, for example, up near Idaho got a bombing range. Maybe it isn't Federal for Federal, but this is another thing that the public does, whether it be State, and the list just goes on and on of people who don't get that.

So, we don't mean to be unkind to you in any way; please don't take it that way, but I think you will find a consensus of both sides of the political aisle will beat up on you a little bit on this one, because we are a little concerned when a school district—and we know how tough it is to raise our kids. And, frankly, out in the West, we have this problem. The Federal Government owns most of our land, and we have this little thing we call payment in lieu of taxes, and myself and the gentleman from Montana changed that some time ago, but the Forest Service, BLM, and others—I am not blaming them; Congress has more to do with it than they do—we don't really live up to it.

So, the Forest Service comes out; the BLM comes out; they play on our ground; they bring people out. The people they bring out cause fires; they cause trash; they cause accidents, and they ask our little broke counties to go fix those things. So, we run out and do it, but yet they don't pay their share.

So, here you are, if you are a county commissioner in any one of those western States; you put in your budget payment in lieu of taxes, and you are counting on it. Yet, they don't pay their share. Rarely do they pay their share. In my 19 years in Congress I haven't seen them ever pay their share. In Garfield County in Utah, it is 97 percent owned by the Federal Government and most of that is Forest Service. So then when it comes down to trading some ground, they want their full share, and I use that as my example.

Let me just ask you, I noticed from your testimony I think you have three main concerns. Your first concern is that you said they

have the ability to give land to schools under the Townsite and Sisk Act. I just want to make sure I understand the situation. Does the Townsite Act or the Sisk Act give the Forest Service the authority to sell land to a school at less than full market value?

Mr. BROUHA. No, it does not.

Mr. HANSEN. Say it a little louder, please.

Mr. BROUHA. No, it does not.

Mr. HANSEN. So, if Alpine School District needs to buy land at less than market value, neither of those Acts will help us, is that right?

Mr. BROUHA. Not with the Forest Service, no, sir.

Mr. HANSEN. Second, the administration says it is strongly opposed to selling land to schools at less than full market, and I guess we could ask why, but that has been pretty well handled by my colleagues in what they have talked about.

And, finally, the Forest Service feels that 60 days is too short to make the RPPA decisions. Actually, you probably have a good point there, and I would like to get any suggestions that Forest Service could give us on how we could alter the bill to give your agents here a little more flexibility while keeping in mind, of course, the intent of the requirement which is to expedite these sort of decisions.

I want to point out to you basically public policy is to try and help American citizens, and military are swapping ground around like it is going out of style constantly, because we feel the need to protect the security of America. The same thing with some States which we did the school trust land with BLM not too—last year which was a dramatic change. But I honestly feel that in a situation—we are not asking Chrysler and Mercedes Benz to put something up there, we are asking a rather—if it is like you Don—I think it is—these school districts are barely making it; not enough money to do it, and, yet there are kids all over the place and somehow we have to educate them. Frankly, I feel you are going to find a consensus of this House and both political parties will be to make a change here. I would suggest very strongly that you work out some kind of flexibility or suggestions to us to make a change on issues of public policy. Yes, sir, go ahead.

Mr. BROUHA. If I may comment, sir. The fundamental difference, I think, is with respect to the Bureau of Land Management, we were continuing the disposal of the public estate, and it wasn't really until 1976 under FLPMA that we actually developed organic purposes which gave the BLM a continued reason as an organization and as an agency to exist.

The Forest Service was made with the reservation out of public estate, in most cases, especially in the West, and what we have here is a fundamental difference in public land law and public land policy, and certainly we do wish to work with the Subcommittee and with the members of the Subcommittee and would respond to requests that you have made as to some suggestions, and we will be pleased to provide those for you in the coming weeks if you would like.

Mr. HANSEN. I am sure we would appreciate that. If you could give us some suggestions on how to break this logjam. Frankly, I don't know of anything more frustrating than trading land, selling

land, swapping land. It is the most frustrating thing we go through around here. So, as you know, we have had a number of hearings on how do we trade land. And, frankly—don't take this disrespectfully; I know no one in this room has much to do with it, and it rests here with Congress—but it is the biggest fudge factory in the world.

Forty years ago, I was a city councilman in Farmington, Utah, and we had a piece of Forest Service right in the middle of our town, and we grew around it. We were 600 people when I was a kid; now it is 16,000 people. And we would say to the Forest Service, "Is there a way—we have got you surrounded, is there a way we can get rid of this thing?" "Oh, yes, we will work on it." And it went to Ogden and to Denver and to Washington, and nothing ever happened.

I went to the State legislature and tried to do it. I became Speaker of the House and tried to do it. I was back here for years, and finally, we put it in an omnibus bill, and I think the gentleman from Arizona pointed out occasionally we have to go to the Colorados and the Arizonas and the Utahs and the Idahos and say, let us put a bill together and we all swap land legislatively, because we can't seem to get it done with the Park Service, the Forest Service, the Bureau of Reclamation as the case may be.

So, I am venting my frustrations on you, and I appreciate you taking that, but if you would like to come up with some recommendations, I would like to do it, because, to me, I don't know why we are spending our time on something that seems so meritorious that we could just get it over with and take care of little school district in a short time.

Please don't take this personally; we do appreciate you being here, and we will excuse this panel and turn to the third panel, not the second panel. Mr. Hefley, who is one of the busiest men in Congress, serving on the Armed Services Committee; he is chairman of the Military Construction Committee, and one of the leaders on the Ethics Committee, I would like to point out——

[Laughter.]

[continuing] has to leave, so we will turn to the third subcommittee which is Mr. Jack Valenti, president and CEO of Motion Pictures Association of America and Mr. Philip H. Voorhees, Director of National Programs, National Parks and Conservation Association, and we appreciate both of you gentlemen being with us.

Gentlemen, it is a pleasure to have you before us. You know the rules; it is just a red light. We give you five minutes. If you just feel in your heart of hearts you have got to speak a little longer than that, well, we are not really pushed for time; we can give you a few more minutes.

Mr. Valenti, it is an honor to have you with us today, sir, and we will turn to you.

STATEMENT OF JACK VALENTI, PRESIDENT AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Mr. VALENTI. Thank you, Mr. Chairman, and members of this Committee. When Abraham Lincoln made his first speech, he ran for Congress, he said to his constituents "Politics are short and

sweet like the old woman's dance." So, I will try to be Lincolness today, short and sweet.

First, I want to say that the movie industry supports H.R. 154, and I want to especially applaud Mr. Hefley and all of his colleagues for the design work they did on this legislation. I think it is first class. The movie industry is quite willing and ready to pay reasonable fees for filming, and I think the architecture of the way these fees will be developed takes a common sense approach, and that is the number of people in the production crew and the number of days of the shoot. That is really the only sensible way that you can gauge how to make these fees work.

So, I think the bill is a model of simplicity and clarity but most of all it has a clean set of rules which apply to all public lands, so that any movie company instantly knows if it intends to shoot on that land for, say, 10 days and they bring in 12 people, the know instantly what their costs will be, and that takes all the burden off the taxpayer, and I vote for that.

I have a couple of suggestions which I offer you that I hope you will consider and in your wisdom decide whether or not they make any sense. On page 2 of the bill, lines 4 and 5, it says something about the Secretary shall determine if the use is appropriate. Now, that language has the smell to me of script approval. Script approval before the shoot begins, and it seems to me that we ought not involve the Secretary in First Amendment issues. That is boggy ground, and it ought terrain that we should avoid else judicial antagonisms arise.

My second suggestion has to do page 3, and I think it is line 7 which talks about surface disturbances being a part of the fee. Well, as members of this Subcommittee know, any renovation of surface disturbances is part of what we call cost recovery which the movie companies have been paying gladly in years past. Mr. Chairman, almost without exception, when a production company finishes its shoot on public lands, it leaves the landscape in far better shape than when they began the shoot, and I have got example after example after example.

Finally, I want to say that you should know that the American movie dominates all the theaters, television screens, video stores, and more than 150 countries on this wrapped and weary planet, and, indeed, the film industry returns to this country annually more than $4 billion in surplus balance of trade which is a phrase that is seldom heard in the corridors of this Congress when we are today bleeding from trade deficits.

And, moreover, and my final point is that every time billions of people—and that is what we are talking about—see a American films that have been filmed on U.S. public lands, it is the most enticing kind of tourism ad that you can imagine, and we are enticing millions of people to come here as kind of global free advertising to the American treasury. I know that possibly you may be enchanted with what I am saying up here, but I think I will stop now, because that is the essence of what I wanted to say.

[The prepared statement of Mr. Valenti may be found at end of hearing.]

Mr. HANSEN. Well, thank you very much, Mr. Valenti.

Mr. Voorhees, it is always a pleasure to have you before the Committee. We will turn to you now, sir.

STATEMENT OF PHILIP H. VOORHEES, DIRECTOR OF NATIONAL PROGRAMS, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. VOORHEES. Mr. Chairman, I appreciate your scheduling this as one of the first things up in this Committee this year. Mr. Hefley, I very much appreciate your leadership on the issue. We are totally on board with your bill, with your approach, and I agree fully with virtually everything that has been said about the bill in past witnesses as well as Mr. Valenti.

Of course, there is a long and storied history of filming involvement in public lands dating well before the 1948 prohibition of return of fees to the Park Service and Fish and Wildlife Service which comes about by unknown reasons, I think, for all of us. Nonetheless, it is time to correct the problem, and I am pleased to say that last year in early April, NPCA put together a forum to discuss the issue with representatives of NPCA as well as virtually all of the other industry sectors to sit down for a day-long discussion with congressional staff. Virtually everybody who has been involved has an interest in the issue to really work out what are the finer points of what is needed for legislation. I am very pleased to say that there was full cooperation with all the industry sectors, and there was a lot of very constructive and useful information interchange, both among the industry representatives as well as those of us in conservation, the members of congressional staff, and all of the land management agencies. With that, we came out with a variety of points that are listed in the written testimony, and I don't think I need to go through what are really ensconced in one way or another in Mr. Hefley's legislation, and I very much appreciate that.

I think if there is only point that I would add to the structure of the bill, something which is substantially silent, I think, in the legislation as it is written now, and that is including as a factor in how you calculate the fee. It is the size of the physical footprint. Surely, there is a strong metric that you can use in calculating what an appropriate fee would be in terms of the number of folks involved in the filming, but I imagine there are probably occasions in which you have a larger expansive land needed for the shoot but not all that many people involved, and if that is the case, I think that ought to be a reasonable consideration when you are talking about developing a structure for a fee schedule.

That really is the only point that I would like to make, but I will say that in my review of the bill and my involvement with the land management agencies and with staff in trying to move through what are the points that need to be covered in any legislation as it moves forward, the concern about the Secretary determining an appropriateness—the concern you raised earlier, Mr. Valenti—doesn't strike me that that is the intent at all. I think the intent probably—and I don't mean to step in front of you, Mr. Hefley—is that the Secretary have the ability to determine whether certain kinds of, say, pyrotechnic are acceptable or not on certain kinds of public lands in certain situations. It doesn't strike me as being

overstepping the bounds, but I am sure there is no flavor here of censorship. I really doubt there is that intent, and from our perspective that can be worked out to make it more in line with your concerns. I certainly would want to be on board with that.

With that, really, frankly, Mr. Chairman, Mr. Hefley, and other members of the Committee, I conclude my testimony. I want to express my appreciation for your bringing up this legislation so early. We were fully on board last year. This is yet another example of the direction I think we need to go in in terms of having commercial users of public lands pay their fair share especially in light of increasing fees being asked of the general public for visitation and use. So, I think it is fully in line with the direction in which we want to go. On concessions reform, Mr. Chairman, you are a leader on that issue, and I appreciate that, because it has been a long time in coming, and finally it is done. This is another thing that should line up behind up, and, again, I want to express my appreciation for everybody in the industry who has been involved in agreeing that this can and should be done and can be done easily with the agreement of all parties in a way that is totally fair to all concerned. Thank you.

[The prepared statement of Mr. Voorhees may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Voorhees.

The gentleman from Puerto Rico, questions for our witnesses?

Mr. ROMERO-BARCELÓ. No questions. I just wanted to take the opportunity to say hello my good friend, Jack Valenti, and it has been a quite a while. I haven't seen you, and it is nice to see you again, Mr. Valenti, and I appreciate your testimony, and I don't think there is any controversy about this bill at all, so I appreciate also your comments and your suggestions. Thank you very much.

Mr. VALENTI. Thank you.

Mr. HANSEN. Thank you. The gentleman from Colorado, Mr. Hefley.

Mr. HEFLEY. Yes, I want to thank both of you gentlemen, not only for your testimony but for your help. Jack, you and your people have been just super as we work through this process. I wish all the bills went like this, and, likewise, with the Park Department. I think both of you have made some interesting suggestions here that we will take note of and see if we can clarify that in some way. There certainly was no intent to give the Interior Department script approval. That wasn't the idea as our friend from the Parks Service said, and we will see if we can clarify that.

Also, when we get this bill out of the House—and we hope to do it as soon as possible—we would appreciate your help as we get to the Senate. I don't think there is controversy over there, it is just a matter of getting them to move, and if you will help us with that, we will work hard at it and you will too, and maybe we can have this thing out and solved fairly early in the year, and we hope so. I thank both of you for all your work on this.

Mr. HANSEN. I appreciate the gentleman's comments. I hope you take those to heart. You have got to realize in 1981 when I came here as a freshman Tip O'Neil said, "The House does all the work; the Senate gets all the attention," and this Committee sent 30-something bills, close to 40 bills, over to the Senate last time, and

they didn't do zilch with most of them. We moved most of them in the last minutes of the last days of unanimous consent, and, frankly, there is nothing I find more frustrating than to send a good piece of legislation over and have those guys sit on it forever. But, of course, they are running for President, and we understand how important that is.

[Laughter.]

The gentleman from Arizona.

Mr. HAYWORTH. I thank the Subcommittee Chairman, and just to my friends who testified today, thank you, especially my good friend, Jack Valenti, sir, we know you have a career that supplements what transpires on the silver screen, but your performance today was worthy of five stars, and we thank you for it.

Mr. HANSEN. We thank you for being here. Mr. Valenti, in 1981, you took our freshman class to see a show on you called "Eye of the Needle" and I remember that——

Mr. VALENTI. You have got a good memory, Mr. Chairman.

Mr. HANSEN. We appreciate that and remember that very well, and as Mr. Hefley points out, we will move this legislation. I don't think there is any controversy with this one except getting it out of the Senate. I would hope you just give it all the shot you can, and thank you so very much, and we will excuse this panel.

Mr. VALENTI. Thank you very much.

Mr. VOORHEES. Thank you.

Mr. HANSEN. Our final panel will be Mr. David Silva, H.R. 150 he will be talking to. Mr. Silva is the principal of Alpine Elementary School from Apache County, Arizona; Mr. Arthur N. Lee, supervisor of District 3, Apache County, Arizona, and Clarence Bigelow, county manager, Apache County, Arizona. We appreciate you gentlemen being with us; that is very kind of you.

As you have seen, the controversial issue today is you folks. So, can you handle your testimony in five minutes? You know the rules; you have heard what others have said. If you have to go over, by all means go ahead.

Mr. Silva, we will turn to you, sir.

STATEMENT OF DAVID SILVA, PRINCIPAL, ALPINE ELEMENTARY SCHOOL, APACHE COUNTY, ARIZONA

Mr. SILVA. Thank you, Mr. Chairman, members of the Committee. First, let me express a word of appreciation to Congressman J.D. Hayworth. Through his efforts and the Congress of the 104th, 1996, Alpine was the proud recipient of Federal land, and the community of Alpine, the elementary school governing board, and the students of Alpine expressed their appreciation to members who currently serve, who perhaps served on the previous Congress that enabled Alpine to acquire the Federal land.

As a principal of the Alpine Elementary School, let me just profile quickly the Alpine School District. Alpine Elementary School is a small school district in northeastern Arizona, as Congressman Hayworth has pointed out. It is completely surrounded by Federal land, forest land. The principal economy of the Alpine community has been the forest industry and cattle ranching. With the demise of the forest, the timber sales currently, the minimizing of grazing lands to the cattlemen in the area, Alpine is severely, negatively

impacted. In addition to lack of industry, we are limited in a tax base because of the limited private land. Alpine is a community of approximately 5 miles square, give or take, and so the economy is severely depressed. It was refreshing to hear earlier that it appeared on both sides of the aisle that there is a sensitivity to the plight of rural schools in America.

This bill, H.R. 150, as I understand it, seems like a reasonable solution to other districts facing similar problems as the Alpine school. I say this because having experienced the process in previous years, to get an answer to the time frame from the initial inception or introduction of the bill to the time that it was actually recorded in the county recorders office was about 18 months, and there were numerous stumbling blocks along the way the school district had to cover, namely covering the cost of the appraisal; namely, covering the cost of the survey; namely, covering the cost of the environmental impact and hazardous waste. So, there were numerous costs that were related to the process.

To give you an idea of the 18 month process and the finality of the recording of the bill in October of 1997, there is also the development of infrastructure with water, sanitation, the utilities, electricity, power, and so the process is much lengthier than we would actually imagine going into it.

I see, personally, having reviewed the language of H.R. 150, that it would provide for benefits without giving order of priority but, namely, the youth would be the direct beneficiaries of this legislation. Secondarily, there would be uniformity. It appears that there would be uniformity in processing of BLM and Forest lands. There would be equity to schools, and in the equity all students, again, would be the direct beneficiaries.

I would be happy to respond to questions as they arise. Congressman Hayworth understands the community of Alpine very well. I am sure that he has visited and communicated with each of you individually, and, again, we wish to express our thanks to you, Congressman Hayworth, for your efforts in the past.

At this point, I will conclude my remarks, and I will answer questions directly as they may arise. Thank you again for the opportunity to appear before you.

[The prepared statement of Mr. Silva may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Silva.

Mr. Bigelow.

STATEMENT OF CLARENCE BIGELOW, COUNTY MANAGER, APACHE COUNTY, ARIZONA

Mr. BIGELOW. Thank you, Mr. Chairman, members of the Committee. Apache County is very familiar with camels getting their nose under the tent. For example, we had a thriving timber industry and were promised by the Forest Service it would continue. We had a thriving cattle industry and were promised that would continue if we would concede and allow some dissipation of the forest industry and cattle industry. We now have no timber industry. The cattle industry is virtually having its last gasp.

We believe that this bill, H.R. 150, is very essential to our county and other counties in our State and adjoining States. For example,

had Alpine had to purchase that 30 acres, the land in the Alpine area is going for roughly around $24,000 an acre. You can imagine what that would have cost the Alpine school district had they tried to purchase that land from the Forest Service. No way could they have done it when they have a maintenance and operating budget of approximately $340,000. The land would have cost them several times more than their annual operating budget.

Vernon, in our county, is in a similar situation. The school district there is virtually surrounded by forest land. The school district in Gila County up in the timber area has the same problem. The Navajo County School District in the Pinetop Lakeside area has the same problem. They are on permit right now in Navajo County. Permits are like the old proverbial statement, "The Lord giveth and the Lord taketh away." Well, the Forest Service does the same thing. We have that classic example in the permit of the cattlemen having no longer permits or permits cut astronomically below value.

A permit is nothing but a hope that you can keep the school district on that land. Greenlee County has two school districts on permit in the Eagle Creek area and in the Blue River area which is now being impacted very heavily by the environmental concerns. How long will those permits lasts? We don't know, but we do know that permits disappear when the pressure is on. The land exchange creates a problem; it doesn't really work in our county. All of the land exchanges that have occurred with the Forest Service eliminate private land in the forest area and then the exchange is in the premier land near Tucson, Phoenix, and the metropolitan areas, so we then continue to lose tax base. Our country right now has approximately 14 percent private land in the county, and it is decreasing every time land exchange occurs. So, our only hope for education in these mountain communities clear across from Flagstaff into New Mexico is this bill that J.D. Hayworth has presented to give security to our education and to our young people.

That, basically, is my added comments to my written statement which you have, and we implore you to seriously, carry this bill and pass it, and, hopefully, the whole Congress will pass it, because it is vital to your rural counties in the western States. Thank you.

[The prepared statement of Mr. Bigelow may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Bigelow.

Mr. Lee.

STATEMENT OF ARTHUR N. LEE, SUPERVISOR, DISTRICT 3, APACHE COUNTY, ARIZONA

Mr. LEE. Chairman Hansen and members of the Committee, thank you for this opportunity just to testify. For the record, my name is Arthur N. Lee, supervisor from Apache County. On behalf of Apache County and the Coalition of Arizona and New Mexico Counties for Stable Economic Growth, I come before you today in support of H.R. 150.

For several years now, our county's mountain community schools have suffered economic hardship. Dropping enrollments are common as logging, ranching, and mining families are forced by regula-

tions and court decisions to move out of the towns they grew up in. In Apache County and Greenlee County alone, at least five school districts—Alpine, Blue, Eagle Creek, Vernon, and Round Valley—face these problems. The result of losing these families is a drop in bonding capacity, school property tax revenues, and in-school district revenues. With loss of funds and bonding ability, our mountain schools are in many cases unable to acquire property critical to the service of their students. This happened in the Alpine School District which is in my county supervisors district. Fortunately, with assistance from my good friend J.D. Hayworth, we were able to get a grant of land for them.

In Round Valley area alone, we just lost the Eagle Sawmill, the largest remaining sawmill in the Southwest. Due to the forced elimination of timber harvesting, they were forced to permanently close the mill and lay off 70 remaining workers. When the mill ran at full capacity in 1989, it directly and indirectly employed almost 700 people, including mill workers, loggers, timber haulers, and so forth.

While hope remains that good sense will return the harvesting of timber in time to save our forests from catastrophic fires and save our mill, it is equally important to save our cattle industry.

As a result of the loss of timber and the cattle industry, more families will move out of our school district. It will force the schools to lay off teachers, cut critical programs, and cripple the quality of our children's education.

Mr. Chairman, the problems I have described to you are happening to schools in many rural Arizona and New Mexico counties as a result of lawsuits and environmental regulations that continue to shut down our economic base industries, destroy our way of life, and ruin the education of our children. For example, the Blue and Eagle Creek schools in Greenlee County are located in public forest lands. The loss of ranching and timber families have forced these schools to periodically close, and they live on constant fear that their schools land leases will not be renewed.

In Navajo County, Arizona, costs of regulations for schools on public lands drives the cost of education up at a time of increasing uncertainty. In Greenlee County, Arizona, only 3.8 percent of the total land base is private ownership. with some school districts located in areas with less than 1 percent private property. The ability of these schools to receive a grant of land would give them more security and improve their financial situation.

The passage of this bill should also help many school districts lower their expenses by eliminating those schools' need to lease property, lower the cost of building expenses, and provide quality outdoor educational opportunities for our children. In addition, local governments can benefit from greater social stability and expansion on essential community services.

Mr. Chairman, for the sake of our children, our families, and our schools, we urge that you pass H.R. 150. Thank you very much.

[The prepared statement of Mr. Lee may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Lee. The gentleman from Puerto Rico.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. I only wanted to thank the witness for their testimony and for giving us the living examples of the needs that they have in their communities for this land and the lack of land available in western areas and western States. I can't think of anybody—and the other committee I belong to is the Education and Workforce Committee—I can't think of a single member of the House Education and Workforce Committee who would not agree with the purposes of this legislation, and I don't think of any Members of Congress that would not agree with the purposes of this legislation. There are still things that we are going to have to iron out, but I don't see any problem. I am sure that they will be ironed out, and I think that you can rest assured that Mr. Hayworth's efforts will be available eventually to all of the communities in the West. That is my feeling. Thank you very much.

Mr. HANSEN. I appreciate the gentleman's comments and agree with them. The gentleman from Arizona.

Mr. HAYWORTH. I thank the Subcommittee chairman, and I thank my colleague from Puerto Rico for his support of this and I especially thank my constituents who are here, Mr. Silva in his role so important on the front lines of education offering eloquent testimony of the challenges involved in trying to envision a project; trying to literally get something done; clearing all the hurdles created by the challenges—some would be tempted to say almost the persecution of rural communities and the livelihoods that have been traditional and very practical and I believe help strive to strike a balance in these rural communities, but also reminding us of our most precious resource, our children.

To my good friend, Mr. Bigelow, who very eloquently pointed out how familiar rural westerners are with the phrase used by Mr. Brouha of the Forest Service about the camel's nose under the tent. This seemingly relentless march to subjugate those who live in western States involved in legitimate entities to somehow suspend those economic endeavors; to create hardship for those who administer the laws within the counties and I felt especially eloquent his notion that the regulatory agencies are now put in a position where they giveth and they taketh away. And let the record indicate, Mr. Chairman, that here we sit in a Subcommittee hearing, and perhaps those who joined us from the administration were not required to stay, but the Subcommittee Chair pointed out to us the importance of public policy, and, yes, as constitutional officers, we are accountable, but how far afield in the culture of Washington it is for those who are charged with the execution of public duties, many of whom are noble and work hard, who come under the heading of bureaucrats, how unfortunate it is that our friend from the Forest Service who was here could not extend the dignity or make the time in his schedule to stay here and hear the eloquent testimony of people on the front lines such as my colleagues.

Mr. Lee, you pointed out not only within your supervisory district, but throughout the areas of my congressional district and throughout the rural West the challenges faced. I think it is unfortunate that even as our friend from the Forest Service very politely took the suggestion of the Subcommittee Chair, for whatever purposes and pressures of scheduling, no one could stay and listen to

the testimony of my constituents. I know it has not fallen on deaf ears within this Subcommittee chamber, and I look forward to working with people on what is truly a bipartisan aim to improve education for children living in the rural West.

Mr. HANSEN. Thank you. I appreciate the gentleman's comments. The gentleman has brought an issue up that has always been kind of a sticky point in this Committee, and seeing this is our first hearing of the 106th, I didn't think of it, but in the past, sometimes we put these folks on first and let the Forest Service, BLM, and Park Service sit there, and make sure they come on last so they can respond. In fact, if I had thought about that, I probably would have done that. It didn't cross my mind, but I have asked Mr. Griffith here, my staff, to make sure that the Forest Service gets your testimony which will going out today to them.

And let me join with my friend from Puerto Rico and other members who have commented on this, I have you have an extremely meritorious issue before you here. As far as this Subcommittee is concerned, we will move this legislation. I think it will probably also move through the full Committee without any trouble. I would seriously doubt if there would be many problems on the floor. If I was giving anybody counsel here today, I would say the problem happens to be over in the House of Lords, and if you make sure you go over there and petition your Arizona folks and your western senator friends to move it, you will probably get something done. They are notorious for putting things off.

I think the hallmark of the Senate is "When in doubt, procrastinate," and I say that somewhat respectfully, but not much. But, anyway, if I was you—I don't think you are going to have any problem on this side, but over there that thing has a way of just sitting. You may see that I am the true prophet when this happens.

Anyway, with that said, I thank all three witnesses for their excellent testimony, and I think this concludes the matter. This Subcommittee stands adjourned.

[Whereupon, at 11:29 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF TOM FRY, (ACTING) DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify on H.R. 15, the Otay Mountain Wilderness Act of 1999. I want to commend the bill's sponsor, Congressman Brian Bilbray for introducing this legislation which recognizes the unique nature of the area by protecting its many outstanding and precious natural resources for generations to come.

The Bureau of Land Management (BLM) strongly supports H.R. 15. We also recognize and appreciate the Subcommittee's work last Congress which amended H.R. 3950, the Otay Mountain Wilderness bill, also introduced by Mr. Bilbray. Our only objection to H.R. 3950 was the Section 6(b) language on Border Enforcement, Drug Interdiction, and Wildland Fire Protection. The amended Section 6(b) language, which appears in H.R. 15, was requested by the Administration and is in keeping with the mandate and intent of the 1964 Wilderness Act.

I want to comment briefly on Secretary Babbitt's recent tour of Otay Mountain. While there, the Secretary met with many individuals and local officials committed to preserving the special resources of this area. He was very impressed, encouraged, persuaded and enlightened by the diverse group he traveled with including Representative Bob Filner, San Diego County representatives, the staffs to Senators Feinstein and Boxer, staff to Congressman Brian Bilbray, the San Diego Association of Governments, the California Biodiversity Council, the Sierra Club, the Endangered Habitat League, The Wilderness Society, the U.S. Border Patrol and BLM officials.

H.R. 15 would designate 18,500 acres of the Otay Mountain area in eastern San Diego County, adjacent to the U.S.–Mexico International Border, as BLM wilderness. Otay Mountain is located in an extremely unique and diverse area of the country. The area is important to San Diego's ongoing habitat conservation initiatives which the Department strongly supports. BLM currently manages Otay Mountain to preserve and maintain its wilderness character and we strongly support its continued protection and the wilderness designation envisioned in H.R. 15.

I would like to provide a brief discussion of certain aspects of the area's history and resources to help new Subcommittee Members better understand the vast array of public land management issues in this scenic and ecologically diverse area. The Otay Mountain area has long been recognized by the public as a unique ecosystem. As early as 1962, the Secretary of the Interior created the Otay Mountain National Cooperative Land and Wildlife Management Area. Management direction for the area has focused on conservation of the area's flora, fauna, ecologic, geologic, cultural and scenic values as well as the protection of its wilderness values. In the 1980's, BLM established the Western and Southern Otay Mountain WSAs and, with strong public support (including a 1982 resolution from the San Diego Board of Supervisors), ultimately recommended a large portion of the WSAs as wilderness.

In addition to its natural attributes, the area has opportunities for solitude, open space and primitive recreation, and possesses nationally significant biological values. These include stands of rare Tecate Cypress and 15-20 other sensitive vegetative species. The proposed wilderness also contains an Area of Critical Environmental Concern which was established by BLM with strong public support. In addition, the City of San Diego has identified the region as a "core reserve" in open-space planning, and the California Department of Fish and Game and local universities have had a long interest in studying and monitoring the area's flora and fauna. Wilderness designation would secure a unique ecosystem in the National Wilderness Preservation System.

Unfortunately, the area has experienced extensive resource damage in the last few years as a result of undocumented immigrants attempting to cross through the region. In addition, an October 1996 wildfire inflicted considerable short-term damage. However, with close coordination and onsite work among the BLM, California Department of Forestry and Fire Protection, the Border Patrol, the City, County, and other interests, a dramatic reduction in illegal traffic has occurred and the area appears to be restoring itself.

Finally, as a result of a recent court decision by the United States District Court for the District of Columbia which concerned maps that were not on file at the time legislation was enacted, we believe that it is essential for the Committee to work with the Department to develop a dated and filed map prior to the enactment of this legislation.

This concludes my statement and I would be glad to answer any questions you may have.

STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to be here today to present the Administration's views concerning H.R. 150, amendments to the Recreation and Public Purposes Act to dispose of National Forest lands to education agencies. The Administration commented on H.R. 2223 regarding this subject during a hearing before this Subcommittee last year. I am accompanied today by James B. Snow, Deputy Assistant General Counsel, Department of Agriculture.

While the Administration supports the objective of making Federal lands available in certain circumstances for public purposes, the Administation strongly opposes this bill.

First, the bill is unnecessary because current statutory authority exists to make land available for educational purposes. Second, the bill would permit the disposal of National Forest lands for less than fair market value. Third, the deadline requirement to make the conveyance decision within 60 days is entirely inadequate.

Concerns about H.R. 150

The Administration appreciates the efforts the Subcommittee has made to address the concern raised last year regarding H.R. 2223. However, H.R. 150 continues to raise serious problems for the Administration.

First, to include the disposal of National Forest lands for public purposes under Recreation and Public Purposes Act of 1926 (R&PPA) is unnecessary because the Secretary of Agriculture has existing authorities to accommodate public uses through authorities to permit, lease, exchange, and dispose of National Forest lands. For example, under the Townsite Act, the Secretary of Agriculture may convey, for fair market value, up to 640 acres of land to established communities located adjacent to National Forests in Alaska and in the contiguous western states. Within certain limits, the Sisk Act of 1967 authorizes the Secretary of Agriculture to exchange lands with states, counties, or municipal governments or public school districts for lands or lands and money. Moreover, the Secretary of Agriculture can exchange National Forest lands with State and local governments.

Second, the Administration objects to H.R. 150 because it would permit the disposal of National Forest lands for less than fair market value. The taxpayers of the United States should receive fair market value for the sale exchange, or use of their National Forest lands. Unlike the R&PPA, other land exchange laws require the Secretary of Agriculture to obtain fair market value for exchanges or sales of National Forest lands. Indeed, the Federal policy backed by bipartisan coalition in the executive and legislative branches in recent decades has moved toward maximizing return to the public for the value of lands conveyed out of Federal ownership. The Administration objects to legislation that would reverse that policy by opening the door to less than fair market value consideration for the disposition of National Forest lands.

Third, the Administration objects to the requirement that, within 60 days, a decision on the R&PPA conveyance must be made. Decisions about the appropriate uses of National Forest lands and resources are accomplished through the forest planning process under the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA). Under NFMA and NEPA, the Forest Service analyzes important environmental issues and the public is extensively involved. During this process, local Forest Service officials work closely with state and local governments to identify their concerns, needs for land, and lands appropriate for land ownership adjustments.

These processes take time, and since every land adjustment is unique, it would be difficult to predetermine an appropriate amount of time necessary to complete the environmental analysis. In fact, such a limit would only serve to create expectations that the agency could not meet and undermine the credibility of its public involvement process and environmental analysis. The agency strongly believes that attempts to short circuit environmental and public processes will only lead to more controversy.

Closing

Mr. Chairman, while the Administration supports the general objective of making Federal lands available for education purposes, the Administration strongly opposes H.R. 150. However, the Administration remains open to discussions with the Subcommittee on other ideas for this bill.

This concludes my statement. I would be happy to answer any questions you and Members of the Subcommittee might have.

STATEMENT OF STEPHEN SAUNDERS, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE & PARKS

Thank you for the opportunity to present the Department of the Interior's views on H.R. 154, a bill to provide for the collection of fees for the making of motion pictures, television productions, and soundtracks on all Department of Interior lands and facilities, including those in the National Park System, National Wildlife Refuge System units, Bureau of Land Management managed lands, and facilities managed by the Bureau of Reclamation. The Administration supports this bill, which is in accord with the President's FY 2000 Budget.

H.R. 154 would allow the Secretary of the Interior to charge a fee sufficient to provide a fair return to the government for filming on lands administered by the Department of the Interior. The bill is identical to the version of H.R. 2993 that was reported out of the House Committee on Resources in the 105th Congress and passed the House. H.R. 154 would also repeal the present regulations governing the issuance of film permits in parks, and refuges. Under existing regulation 43 CFR. 5.1 (b), the National Park Service (NPS), and the U.S. Fish and Wildlife Service (FWS) are prohibited from charging fees for the making of motion pictures, television productions, or sound tracks in NPS or FWS units. The regulation does not prohibit NPS and FWS from recovering the costs associated with administering film permits.

Units of the park system, the wildlife refuge system, and BLM managed lands have played significant roles in many different types of motion picture, television productions, and commercial advertisements. Over the past three fiscal years, more than 1,000 permits were issued for filming on BLM managed lands. NPS has issued approximately 4,500 filming permits during this time. Many of the permits issued by NPS, BLM, and FWS are for small productions, some of which are commercial in nature, others of which are educational. However, all three agencies issue a significant number of permits to makers of major television and motion picture productions.

Although parks and refuges were created to conserve and protect natural resources and wildlife, they have played important roles in many high-grossing films. The 400-year old fortification known as "El Morro" in San Juan National Historic Site was used in the movie "Amistad" to depict a slave-trading market; the white sands of White Sands National Monument were used in the movie "Star Wars" to depict an otherworldly landscape; and the Linville Falls Trail in Blue Ridge Parkway was used for the ambush scene in "Last of the Mohicans." These are but a few of the hundreds of memorable films that have been filmed in national parks over the years. The list includes "Dances with Wolves," filmed in part in Badlands National Park, "The Deer Hunter," made in part in Lake Chelan National Recreation Area, and "In the Line of Fire," filmed at several NPS sites throughout the National Capital Region. FWS units have also played host to memorable motion pictures. The exciting chase scene at the opening of "The Raiders of the Lost Ark," with Harrison Ford was filmed in Hanalei and Huleia National Wildlife Refuges. The movie "Uncommon Valor," a story about a Vietnam War veteran, was filmed in part at the same refuges in Hawaii. Recently, filming of the movie "Random Hearts" with Harrison Ford occurred in part at Patuxent Research Refuge in Maryland.

It is often the unique nature of public lands that attracts filmmakers. In some cases, public lands may be the only option for a filmmaker whose story is inextricably tied to something that may only exist on public lands. We believe the public has the right to be compensated for the commercial use of this uniqueness.

The Bureau of Land Management (BLM) filming policy is governed by the 43 CFR 2920 regulations, which allows the agency to recover its costs for processing and monitoring permits and charge fair market value for filming. Cost recovery can be substantial on major productions. The BLM allows each of its state offices to set their own fee schedules based on market values of filming activities on other lands. The California office, for instance, will charge up to $600 per day per location for the use of its public lands for filming. The BLM's fee schedule does not appear to be a deterrent for filming on the public lands managed by BLM, as these lands have been used as sites for such films as "The Horse Whisperer," "The River Wild," and "Maverick." The United States Forest Service is also statutorily authorized to charge fair market value for filming. It allows its regional offices to set fee schedules which are similar to BLM's fee schedules. For example, the Southern California Regional office of the Forest Service charges up to $600 per day per location for filming in Forest Service sites in southern California.

Other land-owning governmental entities charge even higher fees than our sister Federal agencies. The Navajo Nation, for instance, charges up to $2,000 a day for the use of Monument Valley, the site of many memorable films. Similarly, the city

of Beverly Hills in California charges fees that exceed $2,000 per day for filming in its city parks.

Ironically, the NPS and the FWS charged for filming prior to November 1948. Prior to 1945, film-permitting policy was governed by Secretarial Orders which allowed the NPS to charge as much as $500 per day for filming. That is equivalent to more than $10,000 in today's dollars. In 1945 a new Secretarial Order was put in place that permitted NPS to negotiate even higher fees than this for large-scale productions. These fees were more than twice the amount that the General Land Office (BLM's predecessor agency) was allowed to charge at the time. It is unclear why this policy was changed in late 1948, but it should be noted that when NPS charged for filming, movies were still made in parks. Many films, including 1947's "Sea of Grass," starring Spencer Tracy, and filmed in Canyon de Chelly National Monument, and 1948's "Yellow Sky," starring Gregory Peck, and filmed in Death Valley National Monument, were made when NPS charged for filming.

In late 1948, the precursor to the current 43 CFR 5.1 was issued, which prohibited NPS from charging filming fees. Another change in this regulation in 1957 prohibited FWS from charging fees for filming. We have searched our files but have not yet discovered why the regulations on filming fees were changed for NPS and FWS.

NPS and FWS are also concerned that their inability to charge fees may be attracting permit applications from filmmakers who would seek other lands if fees were charged. The mission of NPS and FWS is to protect natural and cultural resources and wildlife. These agencies were not set up to attract filming business. Yet, by prohibiting these agencies from establishing fees the present regulations make these public lands more attractive to filmmakers whose films could also be made on other governmental or tribal lands. H.R. 154 would correct this anomaly by repealing 43 C.F.R. 5.1 and giving the Secretary of the Interior the authority to charge fees that are at least comparable to the fees charged by other agencies.

The authority given to the Secretary would allow the Secretary to establish a schedule of rates for fees based on such factors as the number of people on site, duration of activities, the use of "special use" areas including wilderness, and any surface disturbances authorized under a permit. H.R. 154 would allow the fees collected for filming on Interior public lands and facilities to be distributed in the same manner as revenue collected under the recreation fee demonstration program. Under this program, fees are remitted to a special account in the Treasury. Eighty percent of the fees in the account go back to the park, refuge unit, or BLM office that generated the fees. Twenty percent of these fees are available for distribution throughout the NPS, FWS, and BLM systems.

Subsection (b) of H.R. 154 provides that no fee shall be charged for any bonafide newsreel or news television film gathering, or for still photography that does not include product or service advertisements or the use of models, sets or props or would not result in damage to resources or a significant disruption to normal visitor uses. We support this provision.

The Department is extremely supportive of the goals of H.R. 154. The public deserves to receive a fair return for the use of Department lands and facilities that play an important role in motion pictures, television productions, and soundtracks. The public will also benefit from a fee distribution system that would allow each land management agency to retain the fees generated under these permits. We are confident that H.R. 154 would accomplish this goal without compromising the Department's primary mission of protecting the resources under its care. Thank you for this opportunity, and I would be happy to answer any of your questions.

STATEMENT OF JACK VALENTI, PRESIDENT & CEO, MOTION PICTURE ASSOCIATION OF AMERICA

Mr. Chairman, members of the Subcommittee, thank you for allowing me to testify on H.R. 154, which deals with the filming of motion pictures in the National Parks and public lands. I am here today to add MPAA support for the bill.

The Motion Picture Association of America is an assembly of the seven largest producers and distributors of movies, television programs, and home videos in the world: The Walt Disney Company, Sony Pictures Entertainment, Metro Goldwyn-Mayer, Viacom, Twentieth Century Fox Films, Universal Studios and Warner Bros. In an era when the specter of "deficit" balance of trade haunts the Congress, the U.S. film/TV/home video industry is a robust contributor of billions of dollars of "surplus" balance of trade. It is a confirmed fact that the American movie is the most wanted export of the United States.

There's a wonderful world of grand vistas in the public lands. Such splendor imprisoned on film attracts audiences, which in turn beckon to producers, who are willing to pay uniform and reasonable fees for that privilege. Currently, whenever one of the major film companies wants to film in the National Park, they face different rules and regulations in different locations. The standards and requirements which they confront are sometimes so burdensome it makes filming in the parks quite unenticing. Result? Oftentimes producers seek private lands and state parks, as well as locations outside the United States. These alternatives grow more alluring when the parks make it difficult to film. Establishing a reasonable, predictable fee schedule could eliminate one source of uncertainty and help forge a positive, cooperative partnership between the producers and the parks.

Our films are received joyously and hospitably on all the continents where people of varying cultures and creeds reside. Billions of people watch American movies every year. Therefore, in cinemas and homes throughout the world scenes of American parks are avidly viewed and admired. It's fair to say, then, that not only is park filming beneficial to the parks for the revenues it could produce, but also for the huge global reach of movies which captures the landscapes of the parks and enthralls international audiences, as well as the citizens of our own land. It's a kind of "free global advertising"for the National Parks.

The objective of H.R. 154 is to encourage filming in the parks in return for reasonable fees, which will provide new revenues to the parks without burdening the taxpayers. We support that goal. I am here today to declare our enthusiasm for the aim of this bill and perhaps offer some suggestions we believe will add to the benefits the bill confers on the parks.

Right now, the National Parks Service cannot charge fees for filming. Although the parks can be reimbursed for costs of filming (Ranger time, parking, use of campgrounds, et cetera) these reimbursements don't provide real financial support to the parks. As a result, park administrators can become indifferent to filming, or even hostile because their efforts to promote movie making in the park don't produce for them any direct return. What happens is that film producers do regularly make contributions to non-profits associated with the parks, but it's all a grab bag of unpredictable and wildly inconsistent levels.

Last Congress, we came to this Committee with suggestions for bringing discipline to the fee process, attracting producers to the parks, and enlarging benefits to the parks. I would like to thank the Committee, and in particular, Congressman Joel Hefley for working with all the interested parties and coming up with the reasonable approach embodied in H.R. 154.

We support H.R. 154 for several reasons:

FIRST, because the fee is based fundamentally on the number of people in the crew and the number of days of the shoot. Why is this the most sensible approach? Size of the crew is the best indicator of the complexity of the shoot.

LETHAL WEAPON IV might have 35 people on the special effects crew alone. TITANIC had 45 people in its costuming segment. A smaller film group might not have that many people in its entire crew. A TV commercial crew might number only 10 people.

This approach is simple, clear, and predictable. Every producer knows immediately what the costs will be.

SECOND, the Hefley bill applies the fee schedule uniformly to all of Interior's lands, not just the national parks. Out of the current rag-tag fee process will come a clean set of rules applied across the board.

THIRD, in H.R. 154, the land where the filming occurs retains most of the fees (80 percent) collected. Not only does this relieve some taxpayer burden, but also it will surely enliven park administrators' interest in being hospitable to film producers and that they will reap the rewards that come from responsible filming in the parks.

FOURTH, we appreciate the work this Committee did in the last Congress to clarify the meaning of the statutory phrase that requires the Secretary of Interior to determine that the use of the filming permit is ""appropriate." On page 3, of report 105-678 accompanying H.R. 2993, I quote *"The word 'appropriate' is included to ensure this legislation tracks with other fee structures and as a common sense guide for the Secretary in issuing permits under this bill. The Congressional intent of the word 'appropriate' should not be construed by nor does it confer rights upon the Secretary for script approval or censorship. The word 'appropriate' means that permits should not be issued at sights where filming activity will result in a gross disruption of public use of the site."*

Last Congress we came to you with suggestions to make this legislation workable, and we thank you for listening. In fact, we are so pleased that you listened that we have a further suggestion . . .

Streamline the fee structure by limiting the factors for deriving the fee to the (1) number of people on site and (2) duration of activities under a permit. Surface disturbances are actually a "cost" and thus would be reimbursed to the local parks as such. "Streamlining" is a popular word in Congress and by limiting the factors, the process would be even simpler and more predictable for all.

We applaud the efforts of Mr. Hefley and of the Committee. Film producers want to film in the national parks. They want to pay fees which are reasonable, sensible, certain—and expeditiously determined. Most of all, they are pleased that their films, exhibited in over 150 countries, advertise to the world the unduplicatable beauties of our national parks, irreplaceable treasures which belong to the American citizenry.

We look forward to working with you.

STATEMENT OF PHILIP H. VOORHEES, DIRECTOR OF NATIONAL PROGRAMS, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. Chairman, and members of the Subcommittee, my name is Phil Voorhees. I represent the National Parks and Conservation Association (NPCA) whose testimony I present today. NPCA is America's only private, non-profit citizen organization dedicated solely to protecting, preserving, and enhancing the National Park System.

I am delighted to appear before you to testify in support of Mr. Hefley's filming fee reform legislation.

NPCA supports the Subcommittee's intent to charge reasonable and fair fees for commercial filming and recording activities in areas administered by the National Park Service and Fish and Wildlife Service. We appreciate the opportunity to present our views on this small, yet important aspect of commercial use of our Federal lands. I will focus my remarks on the legislation as it relates to the National Park System.

Background

The relationship between Hollywood and the national parks is long and storied. From "Star Trek" to "Star Wars" to "Robinson Crusoe on Mars," national parks have provided the backdrop for both box office blockbusters and forgettable B movies, to say nothing of thousands of filmed commercials. The list of movies filmed in the parks runs tens of pages long and includes such films as "Thelma and Louise," "Maverick," "Forest Gump" and "Gettysburg."

The films and commercials run the gamut of genre types from westerns to science fiction, but one thread remains common throughout. *Every one of the films, whether it made money or not provided almost nothing to the parks in return for the privilege of using public lands.* As the law now stands, the National Park Service is authorized to recoup only the cost of monitoring the filming, a negligible application fee and the cost of any damage remediation. For example, when Mister Spock needed to beam down to the planet Vulcan for the film "Star Trek," Hollywood chose the geothermal terraces of Yellowstone. In return, we understand the Park Service received the grand sum of $300, while the film went on to gross more than $50 million.

By comparison, if the same scene were filmed on private property, the production company would have had to pay up to $8,500 per day as a location fee. This issue boils down to a question of fairness. It is simply unreasonable to ask the visiting public to pay increased entrance and use fees while at the same time fees for commercial uses of the national parks—from concessions to commercial filming—have remained astonishingly low, or even free. When it passed S. 1693 (the National Parks Omnibus Management Act of 1998) last year, Congress took a significant step toward ensuring that the government would receive a fair return from concessioners operating in the parks. It is time to take that same step with the film industry.

To the extent that the commercial filming industry has openly announced its willingness to correct this imbalance, the Committee has a rare opportunity to craft a solution that both addresses the problem fairly and reflects the support of both the conservation community and the affected industry. Before continuing, I want to voice NPCA's appreciation to the many facets of the commercial filming industry, for their openness and cooperation in finding a solution to this problem.

Opportunities for Legislative Solution

Rather than addressing the specific language of H.R. 154, I will focus on some of the principles that need to be reflected in any piece of legislation if it is to address the needs of the parks while incorporating the reasonable desires of the filming industry.

On April 8 of last year, NPCA invited representatives of the commercial filming industry, the National Park Service, Bureau of Land Management, Fish and Wildlife Service, Forest Service and congressional staff to a workshop session to discuss the dynamics of commercial filming on Federal lands and parks in the U.S. We were interested in identifying the advantages and problems associated with commercial filming activities, identifying the needs and differing approaches of the land management agencies in hosting these activities, and arriving at a common understanding of facets necessary for improvement of the current situation in the eyes of both the industry and the land management agencies.

After a day-long discussion, all parties arrived at an understanding that the following characteristics must be reflected in any legislation, if that legislation is to improve upon the current situation and provide more equitable fees for the use of the parks:

- The National Park Service should recover all "direct" and "indirect" costs associated with commercial filming projects within the National Park System.
- In addition, the National Park Service should charge a fee for use of Federal property. Such fee should provide a "fair return" to the Park Service.
- All fees collected (cost recovery and site) should be retained by the Park Service, and should be available for expenditure without further appropriation.
- The filming industry needs to have certainty in the permitting and fee determination process.
- Nonetheless, the industry recognizes that there will be different standards for filming on the various public lands due to the differing resource protection and use mandates among the land management agencies.
- A set fee schedule, based on the impact (footprint) of the filming activity is an appropriate method for determining site fees.
- Still photographers who are not using "models or props" should neither be required to obtain a permit nor required to pay a separate fee for commercial filming activities.
- Legislation should avoid the use of the term "fair market value."

Problems with Fair Market Value

Last year, NPCA testified in support of House legislation that also would have allowed the Park Service to charge a fee for filming activities in the parks. That legislation proposed using a "fair market value" approach for determining the fee the Park Service would charge those filming in the parks. However, after hosting last year's workshop, we became convinced that, while conceptually fair, in practical terms, a fair market valuation would be extremely difficult to calculate.

The central issue, as identified and discussed in the workshop, is what is the "market" that would be used for the purposes of comparison? States do not provide an adequate comparison because of the perceived side benefits flowing to the state and local communities from increased exposure, general commerce (food service, lodging, et cetera) associated with commercial filming, and potentially increased tourism revenues. Because of these factors, many states provide the access for free or at very low rates. Another complicating factor in determining fair market value is the difficulty in finding comparable locations. There is only one Statue of Liberty, Devils Tower, or Crater Lake in the world, and the uniqueness of the geologic and cultural features of the national parks are frequently the very reason the industry is attracted to that location. There may be no comparable setting on state or other lands.

For these reasons, we would recommend against an approach that specifically identifies "fair market value" as the yardstick to assess commercial filming fees. Although it sounds good and is the principle we have supported with respect to park concessioners and other private companies making a profit through their use of the parks, in this circumstance the practice of assessing fair market value may create problems too difficult to overcome.

Additional Concerns

As currently written, H.R. 154 does not adequately reflect the primary need and responsibility of the NPS to protect the resources, first and foremost. If NPS specific commercial filming requests are likely to place park resources at risk, they must deny the permit outright, or insist on changes to provide the protection needed. Adding such an explicit provision does not imply that the commercial filming industry has an extended record of running roughshod over park resources. Rather it recognizes that problems have arisen in the past. Above all, park resources must be protected. Such language provides a necessary—if seldom invoked—safeguard against contingencies.

Another concern is for the level and distribution of the fees that result from this legislation. As with all use fees, whether derived from visitor entrance and use of the resources or commercial uses of the parks, it is vitally important that the Congress be mindful of the risk of creating perverse incentives for filming and other park activities. No matter the origin, fee streams should not be allowed to drive or otherwise influence park management decisions. Congress should be wary of "incentivizing" commercial filming fees for park managers to the degree that the attraction of the additional revenues colors decision making.

NPCA's Recommendation

The points of agreement reached during NPCA's workshop with the land managers, industry representatives and congressional staff represent a significant portion of our general recommendation for legislation as it continues to evolve. The need for certainty in building a schedule approach is compelling. We would recommend therefore that a base schedule be developed for assessing fees on an individual park basis that includes the following considerations: (1) physical footprint of the proposed filming event; (2) size of the crew required for the filming; (3) length of use of the park; and (4) the level of disturbance, both in terms of inconvenience to the visitor and intrusiveness of the use. All of these factors can be arranged in a schedule that would allow the industry certainty in the cost, and would allow the Park Service to streamline the process for consideration. In addition, all such fees should be assessed as supplementary to the direct and indirect cost of managing the use of the parks by the commercial filming industry, and separate from any bonding or insurance requirements.

Thank you again for the opportunity to present NPCA's views on commercial filming in the national parks.

STATEMENT OF CLARENCE A. BIGELOW, MANAGER-CLERK, ST. JOHNS. ARIZONA

Chairman Hansen & Members of the Committee:

Thank you for this opportunity to testify. For the record, my nane is Clarence Bigelow. I currently serve as the County Manager for Apache County, Arizona.

On behalf of our children, our parents and our schools, I offer the following in support of House Resolution 150.

- The government and schools of Apache County, as well as other Eastern Arizona Counties, face increasing economic and fiscal hardship at a time of increased service demands. Small schools in our County are especially hard hit by dropping enrollments, which result in lower student revenues from the state at a time of high per student costs and increasing regulatory mandates.[1] Drops in student enrollment can be attributed in large part to the 1990-1998 reduction in workforce, and January, 1999 closure of the Eagar, Arizona sawmill, as well as the decimation of the ranching industry. The timber and ranching industries are the traditional economic base of Apache County.
- Smaller schools in Eastern Arizona Counties are located in communities surrounded by public lands, making it too expensive for these schools to acquire needed land in areas of limited tax base. For instance, the Alpine school in Apache County is surrounded by forest lands, which drives the full cash value of the limited private lands in its school districts to an average of $24,000 dollars per acre. Assuming that a minunum of ten acres is needed for buildings, expansion, parking, and playground facilities, it could cost Alpine $240,000 just for needed land. In comparison, the entire 1998/99 maintenance, operations, and capital tax levy for Alpine is $324,000.

  Fortunately, thanks to the diligent efforts of Congressman J.D. Hayworth, Alpine recently received a land conveyance to assist its efforts to upgrade. Unfortunately, other schools such as Vernon in Apache County continue to face high annual student costs, unsatisfactory land space, and unsafe conditions for students.[2] This legislation would help schools such as Vernon to relocate away from high traffic areas, develop safe and adequate facilities, and ensure the school's future; it will also be very beneficial to the Round Valley School District in Apache County, which is bordered by the U.S. Forest.

  Schools and other local government facilities located on leased public lands are also a serious concern for Eastern Arizona Counties. Navajo County, Arizona, for example, is faced with the possible expensive purchase of 640 acres

[1] Mandates come from several areas, including evolving health and safety rules, facilities standards, nutritional requirements, and student performance criteria

[2] Annual student costs in Vernon are approximately $894,000 dollars for 77 students.

of public lands that schools are located on. Greenlee County, Arizona has at least two schools (Blue and Eagle Creek) located on leased forest lands, with only 160 private parcels in their collective tax base.[3] One of Gila County, Arizona's major schools is located in a County Supervisor's district that has less than 1 percent of private property within the Supervisor's district, with the rest being untaxable public lands.

Faced with these challenges, it is clear that passage of this legislation would help these Counties immensely in their efforts to ensure the stability of their schools, and create the ability for poor school districts to generate needed revenues from school owned lands.

Apache County has obligations to maintain over 930 miles of roads on our public lands and over 900 miles of roads on the Navajo Nation for school bus routes and emergency vehicle access. Hopefully, passage of this legislation may make it possible for local governments to receive assistance to maintain these roads.

In conclusion, as you deliberate on the passage of House Resolution 150, please keep in mind the economic and fiscal devastation facing rural Counties as a result of too many regulations, and an overwhelming volume of lawsuits related to the environment and endangered species. While we feel that this bill is critical for schools and local governments, it is our hope that you will also address in separate actions the more serious issues of regulation, litigation, and Endangered Species reform.

Thank you.

STATEMENT OF ARTHUR N. LEE, COUNTY SUPERVISOR, APACHE COUNTY, ARIZONA

Thank you for this opportunity to testify. For the record, my name is Arthur N. Lee, County Supervisor from Apache County, Arizona.

On behalf of Apache County and the Coalition of Arizona/New Mexico Counties for Stable Economic Growth, I come before you today in support of House Resolution 150. For several years now, our Counties' mountain community schools have suffered economic hardship. Dropping enrollments are common, as logging, ranching, and mining families are forced by regulations and court decisions to move out of the towns they grew up in. In Apache and Greenlee County alone, at least five school districts (Alpine, Blue, Eagle Creek, Vernon, and Round Valley) face this problem.

The result of losing these families is a drop in bonding capacity, school property tax revenues, and in-school student revenues. With this loss of funds and bonding ability, our mountain schools are in many cases unable to acquire property critical to the service of their students. This happened to the Alpine school, which is in my County Supervisors District. Fortunately, with the assistance of Congressman J. D. Hayworth, we were able to get a grant of land for them.

In the Round Valley area, we just lost the Eagar sawmill, the largest remaining sawmill in the Southwest. Due to the forced elimination of timber harvesting, they were forced to permanently close the mill and lay off the 70 remaining workers. When the mill ran at full capacity in 1989, it directly and indirectly employed almost 700 people, including mill workers, loggers, timber haulers, etc. While hope remains that good sense will return the harvesting of timber in time to save our forests from catastrophic fire and save our mill, it is equally important to save our cattle industry.

As a result of the loss of the timber and cattle industries, more families will move out of our school districts, which will force the schools to lay off teachers, cut critical programs, and cripple the quality of our children's education.

Mr. Chairman, the problems I have described to you are happening to schools in many rural Arizona and New Mexico Counties, as a result of lawsuits and environmental regulations that continue to shut down our economic base industries, destroy our way of life, and ruin the education of our children. For example, the Blue and Eagle Creek schools in Greenlee County, Arizona are located on public forest lands. The loss of ranching and timber families has forced these schools to periodically close, and they live in constant fear that their schools' land leases will not be renewed. In Navajo County, Arizona, costs of regulations for schools on public lands drive the costs of education up at a time of increasing uncertainty. In Gila County, Arizona, only 3.8 percent of their total land base is private property, with some school districts located in areas with less than 1 percent private property. The ability of these schools to receive a grant of land would give them more security, and improve their financial situation.

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[3] 72 private parcels for Blue and 94 for Eagle Creek

The passage of this bill should also help many school districts lower their expenses by eliminating those schools' need to lease property, lower the cost of building expansion, and provide quality outdoor educational opportunities for our children. In addition, local governments can benefit from greater social stability, and expansion of essential community services.

Mr. Chairman, for the sake of our children, our families, and our schools, we urge that you pass House Resolution 150.

Thank you for your time.

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106TH CONGRESS
1ST SESSION

H. R. 15

To designate a portion of the Otay Mountain region of California as wilderness.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. BILBRAY introduced the following bill; which was referred to the Committee on Resources

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A BILL

To designate a portion of the Otay Mountain region of California as wilderness.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Otay Mountain Wilderness Act of 1999".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The public lands within the Otay Mountain region of California are one of the last remaining

1 pristine locations in western San Diego County,
2 California.
3 (2) This rugged mountain adjacent to the
4 United States-Mexico border is internationally
5 known for its diversity of unique and sensitive
6 plants.
7 (3) This area plays a critical role in San
8 Diego's multi-species conservation plan, a national
9 model made for maintaining biodiversity.
10 (4) Due to its proximity to the international
11 border, this area is the focus of important law en-
12 forcement and border interdiction efforts necessary
13 to curtail illegal immigration and protect the area's
14 wilderness values.
15 (5) The illegal immigration traffic, combined
16 with the rugged topography, also presents unique
17 fire management challenges for protecting lives and
18 resources.
19 **SEC. 3. DESIGNATION.**
20 In furtherance of the purposes of the Wilderness Act
21 (16 U.S.C. 1131 et seq.), certain public lands in the Cali-
22 fornia Desert District of the Bureau of Land Manage-
23 ment, California, comprising approximately 18,500 acres
24 as generally depicted on a map entitled "Otay Mountain
25 Wilderness" and dated May 7, 1998, are hereby des-

1 ignated as wilderness and therefore as a component of the
2 National Wilderness Preservation System, which shall be
3 known as the Otay Mountain Wilderness.

4 **SEC. 4. MAP AND LEGAL DESCRIPTION.**

5 (a) IN GENERAL.—As soon as practicable after the
6 date of enactment of this Act, a map and a legal descrip-
7 tion for the Wilderness Area shall be filed by the Secretary
8 with the Committee on Energy and Natural Resources of
9 the Senate and the Committee on Resources of the House
10 of Representatives. Such map and legal description shall
11 have the same force and effect as if included in this Act,
12 except that the Secretary, as appropriate, may correct
13 clerical and typographical errors in such legal description
14 and map. Such map and legal description for the Wilder-
15 ness Area shall be on file and available for public inspec-
16 tion in the offices of the Director and California State Di-
17 rector, Bureau of Land Management, Department of the
18 Interior.

19 (b) UNITED STATES-MEXICO BORDER.—In carrying
20 out this section, the Secretary shall ensure that the south-
21 ern boundary of the Wilderness Area is 100 feet north
22 of the trail depicted on the map referred to in subsection
23 (a) and is at least 100 feet from the United States-Mexico
24 international border.

1 **SEC. 5. WILDERNESS REVIEW.**

2 The Congress hereby finds and directs that all the
3 public lands not designated wilderness within the bound-
4 aries of the Southern Otay Mountain Wilderness Study
5 Area (CA–060–029) and the Western Otay Mountain Wil-
6 derness Study Area (CA–060–028) managed by the Bu-
7 reau of Land Management and reported to the Congress
8 in 1991, have been adequately studied for wilderness des-
9 ignation pursuant to section 603 of the Federal Land Pol-
10 icy and Management Act of 1976 (43 U.S.C. 1782), and
11 are no longer subject to the requirements contained in sec-
12 tion 603(c) of that Act pertaining to the management of
13 wilderness study areas in a manner that does not impair
14 the suitability of such areas for preservation as wilderness.

15 **SEC. 6. ADMINISTRATION OF WILDERNESS AREA.**

16 (a) IN GENERAL.—Subject to valid existing rights
17 and to subsection (b), the Wilderness Area shall be admin-
18 istered by the Secretary in accordance with the provisions
19 of the Wilderness Act (16 U.S.C. 1131 et seq.), except
20 that—

21 (1) any reference in such provisions to the ef-
22 fective date of the Wilderness Act is deemed to be
23 a reference to the effective date of this Act; and

24 (2) any reference in such provisions to the Sec-
25 retary of Agriculture is deemed to be a reference to
26 the Secretary of the Interior.

1 (b) BORDER ENFORCEMENT, DRUG INTERDICTION,
2 AND WILDLAND FIRE PROTECTION.—Because of the
3 proximity of the Wilderness Area to the United States-
4 Mexico international border, drug interdiction, border op-
5 erations, and wildland fire management operations are
6 common management actions throughout the area encom-
7 passing the Wilderness Area. This Act recognizes the need
8 to continue such management actions so long as such
9 management actions are conducted in accordance with the
10 Wilderness Act (16 U.S.C. 1131 et seq.) and are subject
11 to such conditions as the Secretary considers appropriate.

12 **SEC. 7. FURTHER ACQUISITIONS.**

13 Any lands within the boundaries of the Wilderness
14 Area that are acquired by the United States after the date
15 of enactment of this Act shall become part of the Wilder-
16 ness Area and shall be managed in accordance with all
17 the provisions of this Act and other laws applicable to such
18 a wilderness.

19 **SEC. 8. NO BUFFER ZONES.**

20 The Congress does not intend for the designation of
21 the Wilderness Area by this Act to lead to the creation
22 of protective perimeters or buffer zones around the Wil-
23 derness Area. The fact that nonwilderness activities or
24 uses can be seen or heard from areas within the Wilder-

1 ness Area shall not, of itself, preclude such activities or
2 uses up to the boundary of the Wilderness Area.

3 **SEC. 9. DEFINITIONS.**

4 As used in this Act:

5 (1) PUBLIC LANDS.—The term "public lands"
6 has the same meaning as that term has in section
7 103(e) of the Federal Land Policy and Management
8 Act of 1976.

9 (2) SECRETARY.—The term "Secretary" means
10 the Secretary of the Interior.

11 (3) WILDERNESS AREA.—The term "Wilderness
12 Area" means the Otay Mountain Wilderness des-
13 ignated by section 3.

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106TH CONGRESS
1ST SESSION

H. R. 150

To amend the Act popularly known as the Recreation and Public Purposes Act to authorize disposal of certain public lands or national forest lands to local education agencies for use for elementary or secondary schools, including public charter schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. HAYWORTH introduced the following bill; which was referred to the Committee on Resources

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A BILL

To amend the Act popularly known as the Recreation and Public Purposes Act to authorize disposal of certain public lands or national forest lands to local education agencies for use for elementary or secondary schools, including public charter schools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Education Land Grant Act".

SEC. 2. DISPOSAL OF PUBLIC LANDS OR NATIONAL FOREST LANDS FOR USE FOR ELEMENTARY AND SECONDARY SCHOOLS.

(a) IN GENERAL.—Section 1 of the Act entitled "An Act to authorize acquisition or use of public lands by States, counties, or municipalities for recreational purposes", approved June 14, 1926 (Chapter 578; 44 Stat. 741; 43 U.S.C. 869), popularly known as the Recreation and Public Purposes Act, is amended—

(1) in subsection (a)—

(A) by striking "Secretary of the Interior" each place it appears and inserting "Secretary";

(B) by inserting "or national forest lands" after "public lands" each place it appears; and

(C) by inserting "including to a local education agency for use for an elementary or secondary school, including a public charter school," after "public purposes,";

(2) in subsection (b)(i)(C) by striking "Secretary of the Interior" and inserting "Secretary";

(3) in subsection (c)—

(A) by inserting "or the Department of Agriculture" after "Department of the Interior" the first place it appears; and

(B) by striking "in any national forest, national park, or national monument, or national

1 wildlife refuge," and inserting "in the National
2 Park System, the National Wildlife Refuge Sys-
3 tem, the National Wilderness Preservation Sys-
4 tem, the National Wild and Scenic Rivers Sys-
5 tem, the National Trails System, any Bureau of
6 Land Management area of critical environ-
7 mental concern, or any national recreation
8 area,"; and
9 (4) by adding at the end the following:
10 "(d) DEADLINE FOR CONSIDERATION OF APPLICA-
11 TION FOR USE FOR SCHOOL.—If the Secretary receives
12 an application from a duly qualified applicant that is a
13 local education agency seeking a conveyance of land under
14 this Act for use for an elementary or secondary school,
15 including a public charter school, the Secretary shall—
16 "(1) before the end of the 10-day period begin-
17 ning on the date of that receipt, provide notice of
18 that receipt to the applicant; and
19 "(2) before the end of the 60-day period begin-
20 ning on the date of that receipt—
21 "(A) determine whether or not to convey
22 land pursuant to the application, and notify the
23 applicant of that determination; or

"(B) report to the Congress and the applicant the reasons that determination has not been made.".

(b) SECRETARY DEFINED.—Section 1 of such Act (43 U.S.C. 869) is further amended by adding at the end the following:

"(e) SECRETARY DEFINED.—In this Act, the term 'Secretary' means—

"(1) the Secretary of Agriculture, with respect to any disposal of national forest lands under this Act; and

"(2) the Secretary of the Interior, with respect to any disposal of public lands under this Act.".

(c) CONFORMING AMENDMENTS.—Such Act is further amended—

(1) in section 2 (43 U.S.C. 869–1) by striking "Secretary of the Interior" each place it appears and inserting "Secretary"; and

(2) in section 3 (43 U.S.C. 869–2)—

(A) in subsection (a) by striking "Secretary of the Interior" and inserting "Secretary"; and

(B) in subsection (b)(6)(B) in the last sentence by striking "public lands" and inserting "public lands or national forest lands that are

1 under the administrative jurisdiction of the Sec-
2 retary,".

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106TH CONGRESS
1ST SESSION

H. R. 154

To provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. HEFLEY introduced the following bill; which was referred to the Committee on Resources

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A BILL

To provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in National Park System and National Wildlife Refuge System units, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FEE AUTHORITY AND REPEAL OF PROHIBITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Interior (in this section referred to as the "Secretary") may permit, under terms and conditions considered

1 necessary by the Secretary, the use of lands and fa-
2 cilities administered by the Secretary for the making
3 of any motion picture, television production, sound-
4 track, or similar project, if the Secretary determines
5 that such use is appropriate and will not impair the
6 values and resources of the lands and facilities.

7 (2) FEES.—(A) Any permit under this section
8 shall require the payment of fees to the Secretary in
9 an amount determined to be appropriate by the Sec-
10 retary sufficient to provide a fair return to the gov-
11 ernment in accordance with subparagraph (B), ex-
12 cept as provided in subparagraph (C). The amount
13 of the fee shall be not less than the direct and indi-
14 rect costs to the Government for processing the ap-
15 plication for the permit and the use of lands and fa-
16 cilities under the permit, including any necessary
17 costs of cleanup and restoration, except as provided
18 in subparagraph (C).

19 (B) The authority of the Secretary to establish
20 fees under this paragraph shall include, but not be
21 limited to, authority to issue regulations that estab-
22 lish a schedule of rates for fees under this paragraph
23 based on such factors as—

24 (i) the number of people on site under a
25 permit;

(ii) the duration of activities under a permit;

(iii) the conduct of activities under a permit in areas designated by statute or regulations as special use areas, including wilderness and research natural areas; and

(iv) surface disturbances authorized under a permit.

(C) The Secretary may, under the terms of the regulations promulgated under paragraph (4), charge a fee below the amount referred to in subparagraph (A) if the activity for which the fee is charged provides clear educational or interpretive benefits for the Department of the Interior.

(3) BONDING AND INSURANCE.—The Secretary may require a bond, insurance, or such other means as may be necessary to protect the interests of the United States in activities arising under such a permit.

(4) REGULATIONS.—(A) The Secretary shall issue regulations implementing this subsection by not later than 180 days after the date of the enactment of this Act.

(B) Within 3 years after the date of enactment of this Act, the Secretary shall review and, as appro-

1 priate, revise regulations issued under this para-
2 graph. After that time, the Secretary shall periodi-
3 cally review the regulations and make necessary
4 changes.

5 (b) COLLECTION OF FEES.—Fees shall be collected
6 under subsection (a) whenever the proposed filming,
7 videotaping, sound recording, or still photography involves
8 product or service advertisements, or the use of models,
9 actors, sets, or props, or when such filming, videotaping,
10 sound recording, or still photography could result in dam-
11 age to resources or significant disruption of normal visitor
12 uses. Filming, videotaping, sound recording or still pho-
13 tography, including bona fide newsreel or news television
14 film gathering, which does not involve the activities or im-
15 pacts identified herein, shall be permitted without fee.

16 (c) EXISTING REGULATIONS.—The prohibition on
17 fees set forth in paragraph (1) of section 5.1(b) of title
18 43, Code of Federal Regulations, shall cease to apply upon
19 the effective date of regulations under subsection (a).
20 Nothing in this section shall be construed to affect the
21 regulations set forth in part 5 of such title, other than
22 paragraph (1) thereof.

23 (d) PROCEEDS.—Amounts collected as fees under
24 this section shall be available for expenditure without fur-
25 ther appropriation and shall be distributed and used, with-

1 out fiscal year limitation, in accordance with the formula
2 and purposes established for the Recreational Fee Dem-
3 onstration Program under section 315 of Public Law 104–
4 134.

5 (e) PENALTY.—A person convicted of violating any
6 regulation issued under subsection (a) shall be fined in
7 accordance with title 18, United States Code, or impris-
8 oned for not more than 6 months, or both, and shall be
9 ordered to pay all costs of the proceedings.

10 (f) EFFECTIVE DATE.—This section and the regula-
11 tions issued under this section shall become effective 180
12 days after the date of the enactment of this Act, except
13 that this subsection and the authority of the Secretary to
14 issue regulations under this section shall be effective on
15 the date of the enactment of this Act.

○

Alpine Elementary School
P.O. Box 170
Alpine, Arizona 85920
(520)339-4570 (520)339-1806 fax

January 28, 1999

1. David B. Silva

2. P.O. Box 170
Alpine, Arizona 85920

3. a. Phone 520-339-4570
b. Fax 520-339-1806

4. Alpine Elementary School District # 7

5. BA Elementary Education Arizona State University 1967
MA Elementary Education Northern Arizona University 1971
Arizona Elementary Teaching Certificate
Teacher - Alhambra Elementary School Dist. - Phoenix, Az. 1967-79
Apache County School Supt. - Apache County, State of Arizona 1979-1992
Member of Arizona State Board of Education 1986-1993
Headteacher - Administrator - Alpine Elementary School, Alpine, Az. 1992-current
Alpine Elementary School - Recipient of 30 Acres Federal Land H.R. 3547 104th Congress 1996

6. Arizona Teaching Certificate 1967 - Current

7. Teacher, County School Superintendent, Alpine Elem. School Headteacher
Alpine Elem. School District Recipient of 30 Acres Federal Land Grant 1996

8. Apache County School Superintendent, Apache County, Az. Elected 1979-92
Administrator Alpine Elementary School District 1992-Current

It is my opinion that H.R. 150, introduced by Congressman J.D. Hayworth, will provide equity to elementary and secondary schools in their ability to acquire federal land for school construction and related purposes. The ability to transfer current forest lands to other agencies is clarified in H.R. 150. In addition, H.R. 150 will reduce labor intensive efforts and acquisition costs.

Availability of public land and related costs are the most serious constraints in acquiring adequate land for schools. The passage of H.R. 150 will streamline the land acquisitions process and enable other schools, like Alpine, to construct school facilities.

Legislative efforts of the 106th Congress could tremendously assist school districts adjacent to federal lands and benefit future generations of our youth.

ATTACHMENTS

No. 1 Apache County Primary Tax Rates by Tax Area FY98-99

No. 2 Quit Claim Deed Dated Sept. 29, 1997 and Recorded on October 9, 1997.
Conveyance of Land

No. 3 Copy of Escrow Instructions Dated October 3, 1997

No. 4 Copy of Alpine Chamber of Commerce Brochure

Alpine Elementary School District Profile

Alpine Elementary School District is a small-rural K-8 grade school located in northeastern Arizona. It is surrounded by the Apache-Sitgraves National Forest. Alpine is a non-incorporated community. (See Attachment No. 4) The nearest incorporated towns lie approximately 30 miles to the north. Alpine Elementary School District is identified as a state agency. Apache County government directly impacts not only the school district but also the community.

Economically, the Alpine Elementary School District has been negatively impacted by the restricted cutting of timber on adjacent national forest land. Limited private land created an almost impossible situation for school construction purposes.

Another factor that created difficulty for the school to plan for the future was the high tax rate. Currently, it is the second highest in southern Apache County assessed at $4.45 per $100 of assessed value. (See Attachment No. 1)

Thanks to H.R. 3547 passed by the 104th Congress, Alpine Elementary School District received thirty acres of federal land. (See attachment No. 2) "Quit Claim Deed" Recorded October 9, 1997.

The closing of escrow occurred on Oct. 3 1997. (See attachment No. 3) Actual recording of Quit Claim Deed occurred on Oct. 9, 1997.

Without the support of Congressman J.D. Hayworths effort with the 104th Congress, Alpine Elementary School District would not be in the position to develop a school site with related facilities and playing fields.

Currently the Alpine School has a site plan committee working to unsure adequate infrastructure such as: water, electric power, and a sanitation system.

The Alpine Elementary School District is high with optimism that it will serve as a model school district for others through out the nation.

Apache County is comprised of approximately 85% federal land. This includes both Bureau of Land Management and U.S. National Forest lands. Alpine Elementary School District is located in the southern portion of the county totally surrounded by the National Forest.

Attachment No. 1

APACHE COUNTY
PRIMARY TAX RATES BY TAX AREA FY98-99

		STATE OF AZ.	COUNTY (SCHOOL) EQUAL.	APACHE COUNTY	(001) SCHOOL MAINT. & OP.	(610) SCHOOL CAP. OUTLAY	(620) SCHOOL CAP. LEVY	(630) SCHOOL ADJ. WAYS	TOTAL SCHOOLS RATE	TOTAL PRIMARY TAX RATE
ST. JOHNS #1 (*)	100	0.00	0.53	0.3101	3.1997	0.2863			3.4860	4.3261
	150	0.00	0.53	0.3101	3.1997	0.2863			3.4860	4.3261
CONCHO #6	600	0.00	0.53	0.3101	3.7468	0.2769			4.0237	4.6638
	602	0.00	0.53	0.3101	3.7468	0.2769			4.0237	4.6638
	603	0.00	0.53	0.3101	3.7468	0.2769			4.0237	4.6638
ALPINE #7	700	0.00	0.53	0.3101	3.8731	0.5797			4.4528	5.2929
	701	0.00	0.53	0.3101	3.8731	0.5797			4.4528	5.2929
	702	0.00	0.53	0.3101	3.8731	0.5797			4.4528	5.2929
WINDOW ROCK #8	800	0.00	0.53	0.3101					0.0000	0.8401
	801	0.00	0.53	0.3101					0.0000	0.8401
VERNON #9	900	0.00	0.53	0.3101	3.5376	0.3027			3.8403	4.6804
	904	0.00	0.53	0.3101	3.5376	0.3027			3.8403	4.6804
	910	0.00	0.53	0.3101	3.5376	0.3027			3.8403	4.6804
ROUND VALLEY #10	1000	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1001	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1002	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1003	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1005	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1006	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1030	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
	1060	0.00	0.53	0.3101	3.0053	0.2800			3.2853	4.1254
PUERCO #18	1800	0.00	0.53	0.3101					0.0000	0.8401
	1801	0.00	0.53	0.3101					0.0000	0.8401
	1802	0.00	0.53	0.3101					0.0000	0.8401
GANADO #20	1900	0.00	0.53	0.3101					0.0000	0.8401
	1901	0.00	0.53	0.3101					0.0000	0.8401
McNARY #23	2300	0.00	0.53	0.3101	2.3600				2.3600	3.2001
	2301	0.00	0.53	0.3101	2.3600				2.3600	3.2001
CHINLE #24	2400	0.00	0.53	0.3101					0.0000	0.8401
RED MESA #27	2700	0.00	0.53	0.3101					0.0000	0.8401

Attachment No. 2

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:
Alpine School District
Attn: David Silva
PO Box 170
Alpine, Az 85920

INSTRUMENT # 97006690
OFFICIAL RECORDS OF
APACHE COUNTY
JEANNE UDALL

REQUEST OF:
FIRST AMERICAN TITLE CO
DATE: 10/09/97 TIME: 04:00 PM
BOOK: 877 PAGE: 271 - 274

QUITCLAIM DEED

Escrow No. 278-031-73229 14

Courtesy Recording
FIRST AMERICAN
TITLE
No Title Liability

EXEMPT A-3

BKT: 877 PAGE 271

QUITCLAIM DEED

THIS QUITCLAIM DEED, dated this 29 day of September, 1997, between the UNITED STATES OF AMERICA, acting by and through the Forest Service, United States Department of Agriculture, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102, hereinafter called Grantor, to the Alpine Elementary School District NO. 7, of Apache County, P.O. Box 170, Alpine, Arizona, 85920, hereinafter called Grantee:

WITNESSETH: The Grantor is directed by Public Law 104-333, cited as "Omnibus Parks and Public Lands Management Act of 1996," Title I I, Sec. 217, to convey certain land or interests therein, the provisions of which have been met;

NOW THEREFORE, the Grantor, without consideration, does hereby remise, release, and quitclaim unto the Grantee, its successors and assigns, all right, title, interest and claim in and to that certain parcel of real property including any improvements thereon, situated in the County of Apache, State of Arizona, and described as follows:

GILA AND SALT RIVER MERIDIAN
T. 5 N., R. 30 E.
sec. 14--N1/2NE1/4SE1/4, N1/2S1/2NE1/4SE1/4.

Containing 30.00 record (30.40) surveyed acres, more or less.

The grantee, its heirs and assigns, and successors in interests, shall indemnify, defend, hold the United States of America, its various agencies and or employees, harmless from any damage, loss, claims, liability, and costs resulting in any way from any activities, past present, or future by any entity, on the above described property, specifically including, but not necessarily limited to, those activities by which hazardous substances or wastes as defined by federal or state environmental laws were stored, used, or otherwise disposed on the subject property, and any response or natural resource damage actions related in any manner to said hazardous substances or wastes. This covenant may be enforced by the United States in a court of competent jurisdiction.

SUBJECT TO:

1. The terms and conditions set forth in SEC. 217 of the Act cited as Omnibus Parks and Public Lands Management Act of 1996," P.L. 104-333, quoted in part as follows:

   "(b) CONDITION OF CONVEYANCE.--The conveyance made under subsection (a) shall be subject to the condition that the School District use the conveyed property for public school facilities and related public school recreational purposes."

   "(c) THE RIGHT OF REENTRY.--The United States shall retain a right of reentry in the property to be conveyed. If the Secretary determines the conveyed property is not being used in accordance with the condition in subsection (b), the United States shall have the right to reenter the conveyed property without consideration."

"(d) ENCUMBRANCES.–The conveyance made under subsection (a) shall be subject to all encumbrances on the property existing as of the date of the enactment of the Act."

IN WITNESS WHEREOF, the Grantor, by its duly authorized representative has executed this Quitclaim Deed pursuant to the delegation of authority promulgated in Title 7 CFR 2.60 and 49 FR 34283, August 29, 1984.

UNITED STATES OF AMERICA

By: H. Wayne Thornton
H. WAYNE THORNTON
Director of Lands and Minerals
Region 3, Forest Service
United States Department of Agriculture

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 29 day of September, 1997, by H. Wayne Thornton, known to me to be the Director of Lands and Minerals, Region 3, Forest Service, United States Department of Agriculture, who being by me duly sworn stated that he signed said instrument on behalf of the United States of America under authority duly given, and he executed same as the free act and deed of the United States of America for the consideration and purposes therein contained.

Lydia Gurule
Notary Public

My commission expires: June 24, 2001

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:

Alpine School District
Attn; David Silva
PO Box 170. Alpine. Az 85920

INSTRUMENT # 97006691
OFFICIAL RECORDS OF
APACHE COUNTY
JEANNE UDALL

REQUEST OF:
FIRST AMERICAN TITLE CO
DATE: 10/09/97 TIME: 04:00 PM
BOOK: 877 PAGE: 275 - 276

GRANT OF EASEMENT

Escrow No. 278-031-73229 2/4

Courtesy Recording
FIRST AMERICAN
TITLE
No Title Liability

ALPINE ELEMENTARY SCHOOL DISTRICT NO; 7, OF APACHE COUNTY, ARIZONA, herein known as "Grantor" does hereby grant to LARRY WHITMER, a married man as his sole and separate property, his successors and assigns, a perminatnt Easement for a Water line over, across and under the four feet on both sides of the following described centerline;

The centerline of said water line is described as attached hereto in Exhibit "A"

Dated this 3rd day of October, 1997

ALPINE ELEMENTARY SCHOOL DISTRICT NO. 7 OF
APACHE COUNTY, ARIZONA

Mary Phelan

BY: MARY PHELAN, PRESIDENT OF THE
SCHOOL BOARD

STATE OF ARIZONA)
) ss.
County of Apache)

This instrument was acknowledged and executed before me this 8 day of Oct, 1997 by MARY PHELAN who acknowledged to be the PRESIDENT of ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7 OF APACHE COUNTY, ARIZONA, SCHOOL BOARD, and that as such officer, being authorized so to do, signed the name of the School Board as such officer.

My Commission Expires:

Vickie L. James
Notary Public

OFFICIAL SEAL
VICKIE L. JAMES
Notary Public - State of Arizona
APACHE COUNTY
My Commission Expires Oct. 29, 1999

EXHIBIT "A"
Description of Spring Line

A spring water line the center line is described as follows:
Starting at the C-E 1/16 Corner of section 14, T.5 N.,R.30E. and running S 89°05'40"W along the property line a distanceof 150.14 feet to the water line and the point of beginning. Thence S 27°23'41"W a distance of 190.30 feet to a point, thence S 27°02'42"W a distance of 142.92 feet to a point.

INSTRUMENT # 97006692
OFFICIAL RECORDS OF
APACHE COUNTY
JEANNE UDALL

REQUEST OF:
FIRST AMERICAN TITLE CO
DATE: 10/09/97 TIME: 04:00 PM
BOOK: 877 PAGE: 277 - 278

ALPINE SCHOOL DISTRICT
ATTN: DAVID SILVA
PO BOX 170
ALPINE, AZ 85920

73229 3/4

Courtesy Recording
FIRST AMERICAN
TITLE
No Title Liability

ELECTRIC LINE—RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, (whether one or more) ALPINE SCHOOL DISTRICT NO 7 OF APACHE COUNTY, ARIZONA (unmarried) (husband and wife) for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto NAVOPACHE ELECTRIC COOPERATIVE, INC., a cooperative corporation (hereinafter called "Cooperative") whose post office address is Box 308, Lakeside, Arizona, 85929, and to its successors or assigns, the right to enter upon the lands of the undersigned and including the right of full ingress and egress to said easement for the purpose hereafter specified, situated in the County of APACHE State of ARIZONA and more particularly described as follows:

SEE ATTACHED EXHIBIT "A", MADE A PART HEREOF

and to construct, operate and maintain an electric transmission and/or distribution line or system on or under the above described land and/or in, upon or under all streets, roads or highways abutting said lands, together with poles, wires, transformers and other necessary appurtenances, including, but not limited to guys and anchors which may be placed outside the specified easement; to inspect and make such repairs, changes, alterations, improvements, removals from, substitutions and additions to its facilities as Cooperative may from time to time deem advisable, including by way of example and not by way of limitation, the right to increase or decrease the number of conduits, poles, wires, cables, handholes, manholes, connection boxes, transformers and transformer enclosures; to cut, trim and control the growth of trees and shrubbery or remove any obstruction located within ten (10) feet of the center line of said line or system, or that may interfere with or threaten to endanger the operation and maintenance of said line or system (including any control of the growth of other vegetation in the right-of-way which may incidentally and necessarily result from the means of control employed); to keep the easement clear of all building, structures or other obstructions; and to license, permit or otherwise agree to the joint use or occupancy of the lines, system or, if any of said system is placed underground, of the trench and related underground facilities, by any other person, association or corporation.

The undersigned agree that all poles, wires and other facilities installed in, upon or under the above described lands at the Cooperative's expense shall remain the property of the Cooperative, removal at the option of the Cooperative.

The undersigned covenant that they are the owners of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character except those held by the following persons:

It is further understood that, whenever necessary, words used in this instrument in the singular shall be construed to read in the plural and that words used in the masculine gender shall be construed to read in the feminine.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 3RD day of OCT, 19 97

ALPINE SCHOOL DISTRICT NO 7

Mary Phelan

BY: MARY PHELAN, PRESIDENT

STATE OF ARIZONA }
COUNTY OF APACHE } ss

Before me, Vickie L. James a Notary Public, in and for the County of APACHE State of ARIZONA, on this day personally appeared MARY PHELAN known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that SHE executed the same for the purpose and consideration therein expressed.

Given under my hand and seal this 8 day of October, 1997

OFFICIAL SEAL
VICKIE L. JAMES
Notary Public - State of Arizona
APACHE COUNTY
My Commission Expires Oct. 29, 1999

Vickie L. James
Notary Public

My Commission expires:

BK 877 PAGE 277

EXHIBIT "A"
Description of Power Line

The center line of a power line is described as follows:
Starting at the E 1/4 Corner of section 14, T.5 N.,R.30E. and running S 31°06'08"W a distance of 6.47 feet to the point of beginning. Thence S 87°13'54"W a distance of 976.82 feet to a point, thence S 46°57'48"W a distance of 283.08 feet to a point where two lines diverge. The northwest fork bears N 51° 51'00"W a distance of 190.33 feet to the property line. The southwest fork bears S 46°57'48"W a distance of 151.99 feet to a point, thence S4°03'48"E a distance of 133.93 feet to a point. Two lines diverge at this point, the southwest line bears S57°21'39" W a distance of 60.01 feet to the property boundary. The southeast fork bears S10°25'04"E a distance of 126.97 feet to a point, thence S14°34'35"E a distance of 451.07 feet to a point, thence N61°44'48"E a distance of 170.86 feet to a point, thence S16°09'13" E a distance of 13.31 feet to the property boundary.

The center line of a power line is described as follows:
Starting at the E1/4 corner of Section 14, T.5 N., R.30E. and running S31°06'08"W a distance of 6,47 feet to the point of beginning. Thence S0°32'00"W along the section line a distance of 563.67 feet to the end of the power line.

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:

Alpine School District
Attn; David Silva
PO Box 170, Alpine, Az 85920

INSTRUMENT # 97006693
OFFICIAL RECORDS OF
APACHE COUNTY
JEANNE UDALL

REQUEST OF:
FIRST AMERICAN TITLE CO
DATE: 10/09/97 TIME: 04:00 PM
BOOK: 877 PAGE: 279 - 280

Escrow No. 278-031-73229 4/4

GRANT OF EASEMENT

Courtesy Recording
FIRST AMERICAN
TITLE
No Title Liability

ALPINE ELEMENTARY SCHOOL DISTRICT NO; 7, OF APACHE COUNTY, ARIZONA, herei known as "Grantor" is the owner of the following described property situated in Apache County, Arizor to wit

The centerline of a county road is described as attached hereto in Exhibit "A" and being 50 feet on both sides of the centerline.

Grantor wished to grant and establish, exclusive rights-of-way and easements for ingress and egress, fc roadway on, over along and across said property.

NOW, therefore for good and valuable consideration, grantor does hereby grant and convey to Apach County, Arizona perpetual easements over the said property.

Dated this 3rd day of October, 1997

ALPINE ELEMENTARY SCHOOL DISTRICT NO. 7 O
APACHE COUNTY, ARIZONA

Mary Phelan

BY: MARY PHELAN, PRESIDENT OF THE
SCHOOL BOARD

STATE OF ARIZONA)
) ss.
County of Apache)

This instrument was acknowledged and executed before me this 8 day of Oct, 1997 by MAR' PHELAN who acknowledged to be the PRESIDENT of ALPINE ELEMENTARY SCHOOL DISTRIC NO: 7 OF APACHE COUNTY, ARIZONA, SCHOOL BOARD, and that as such officer, being authorize so to do, signed the name of the School Board as such officer.

My Commission Expires:

OFFICIAL SEAL
VICKIE L. JAMES
Notary Public - State of Arizona
APACHE COUNTY
My Commission Expires Oct. 29, 1998

Vickie L. James
Notary Public

BK: 877 PAGE 279

Description of COUNTY ROAD

The center line of a county road is described as follows:

Starting at the E 1/4 Corner of section 14, T.5 N.,R.30E. and running S 0°32'00"W a distance of 995.75 feet to the SNS 1/256, thence N88°53'23"W a distance of 589.18 feet to the point of beginning Thence N41°45'59'E a distance of 814.72 feet to a point, thence along a curve, concave to the northwest, which has a radius of 703.22 feet and the long cord of which bears N32°00'14"E a distance of 100.08 feet to a point on the section line.

ESCROW INSTRUCTIONS TO **First American Title**

P.O. Box 987, Springerville, Arizona 85938
(520) 333-4151 • Fax: (520) 333-4153

Attachment No. 3

DATE: 10/03/97 ESCROW OFFICER: Vickie L. James, C.S.E.O. ESCROW NO. 279-31-73229

THESE ESCROW INSTRUCTIONS CANCEL AND SUPERSEDE THOSE DATED 03/16/97.

UNITED STATES OF AMERICA, acting through the United States Department of Agriculture, Region 3, Forest Service

HEREIN CALLED SELLER

ADDRESS: PO BOX 640, SPRINGERVILLE, AZ 85938
TELEPHONE NO. home work

AND

ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7, OF APACHE COUNTY, ARIZONA

HEREIN CALLED BUYER

ADDRESS: PO Box 170, Alpine, AZ 85920
TELEPHONE NO. home (520) 339-4570 work (520) 333-2780

hereby employ First American Title Insurance Agency, Inc. to act as ESCROW AGENT in connection with a sale of the hereafter described property upon the following terms and conditions, including the General Provisions incorporated herein, which shall be complied with by said parties on 10/30/97, except as otherwise specified herein.

THESE INSTRUCTIONS ARE NOT BINDING UPON ESCROW AGENT UNTIL FULLY EXECUTED AND DEPOSITED WITH ESCROW AGENT.

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SELLER REPRESENTS PROPERTY ADDRESS TO BE: ALPINE, AZ

SALES PRICE	$ 225,000.00	PARTY OBLIGATIONS (X)	SELLER	BUYER
which is represented by: by Gift / Act of Congress transfer to Buyers as disclosed on page 3 BROKER COMMISSION None	 $ 225,000.00	ESCROW FEE TRANSFER FEES (IF ANY) IMPROVEMENT LIEN ABMTS FIRE INSURANCE POLICY None RECORDING FEES: All by Buyer THERE SHALL BE NO PRORATIONS		X X X
NET PROCEEDS due Seller to be payable to Seller, if any.		NO PERSONAL PROPERTY INCLUDED IN THIS ESCROW.		

SEE THE FOLLOWING PAGES FOR CONTINUED TERMS AND CONDITIONS

THESE ESCROW INSTRUCTIONS CONSIST OF 3 PAGES, PLUS ANY NOTED EXHIBITS

SELLER'S SIGNATURES:

UNITED STATES OF AMERICA, FOREST SUPERVISOR
APACHE-SITGREAVES N.F.'S REGION 3 FOREST SERV

BY: _____
JOHN C. BIDELL, FOREST SUPERVISOR

BUYER'S SIGNATURES:

ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7 OF
APACHE COUNTY, ARIZONA

BY: _____
MARY PHELAN, PRESIDENT OF THE SCHOOL BOARD

GENERAL PROVISIONS

SELLER AND BUYER AGREE:

1. That Escrow Agent, in connection with these instructions, cannot give legal advice to any party hereto.

2. To deposit with Escrow Agent all documents and monies necessary to complete the sale as established by the terms of these instructions.

3. That all funds for the escrow be paid to Escrow Agent unless otherwise specified and that the disbursement of any funds be made by check of Escrow Agent.

4. Escrow Agent is authorized to act upon any statement furnished by a lienholder or his agent, without liability or responsibility for the accuracy of such statements.

5. Escrow Agent is authorized to pay from available funds held by it for said purposes any amounts necessary to procure documents and to pay charges and obligations necessary to consummate this transaction, including a Reconveyance Tracking fee.

6. Escrow Agent shall have no responsibility to see that fire insurance provided for herein is renewed upon expiration or otherwise kept in force, either during the interim and/or subsequent to close of escrow and further authorize Escrow Agent to complete the necessary Fire Insurance Endorsement Request.

7. That when these instructions and all title requirements have been complied with, Escrow Agent is authorized to deliver or record in the appropriate public office all necessary documents, disburse all funds and have said Title Insurance Policy issued.

8. That any amendments or addendums to these escrow instructions shall be in writing, executed by the Seller and Buyer. Escrow Agent shall not be bound by any unilateral instructions.

9. To indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with these instructions or any interpleader action and will pay the same on demand.

10. To grant Escrow Agent a lien upon the property herein described and authority to reimburse and offset itself for its charges and for all damages or expenses which it may incur or sustain in connection herewith, from all of the rights, title and interest of the Seller and Buyer in all of the documents and money deposited hereunder.

11. If any date for compliance with these instructions occurs on a day Escrow Agent is closed for business, the requirement may be met on the next succeeding day Escrow Agent is open for business. "Close of Escrow" shall mean the effective date of the Policy of Title Insurance.

12. If either party, after having fully complied, elects to cancel these instructions because of the failure of the other party to comply with any of the terms within the time limits provided herein, the party electing to cancel shall deliver to Escrow Agent a written notice demanding that the other party comply within thirteen (13) days after receipt of notice by Escrow Agent or that these instructions shall be cancelled. If other party fails to comply, these instructions shall be cancelled. Escrow Agent shall:
    (a) First: Pay to the party electing to cancel any earnest money deposited, and pay other money to the party who made the deposit.
    (b) Second: Return all documents deposited to the party who delivered them, except documents executed by both Seller and Buyer, which shall be retained in the cancelled Escrow file.

13. Escrow Agent shall, within three (3) days after receipt of any Notice, Demand or Declaration, including those received by facsimile, send it to the party to whom it is directed by enclosing a copy of said instrument in an envelope addressed to said party at the last written address which said party shall have filed with Escrow Agent. If no written address has been filed, the notice shall be sent in care of General Delivery at the City in which the office of the Escrow Agent is located as shown on the first page of these instructions. The notice shall be deposited in the United States mail. The mailing of any such instrument by Escrow Agent in the manner herein provided shall constitute notice of the contents of such instrument to the party to whom the instrument is directed as of the date of such mailing and no further notice shall be required.

14. Escrow Agent will not accept payments under a cancellation notice, unless in cash, certified or cashier's check or money order.

15. If under these instructions a commission is to be paid to a licensed Real Estate Broker, regardless of the provisions of Paragraph 12(b) above, upon the cancellation of these instructions by notice the Real Estate Broker shall receive one-half of the earnest money, not to exceed the total amount of commission. Further, the party obligated to pay the commission shall not acquiesce in any mutual cancellation without written approval of the Real Estate Broker.

16. Escrow Agent has the right to resign upon written notice thereof mailed to the parties ten (10) business days prior to the effective date. If such right is exercised, all funds and documents shall be returned to the party who deposited them except documents executed by both Seller and Buyer which shall be retained in the cancelled Escrow file.

17. Escrow Agent may at its election, in the event of any conflicting demands made upon it concerning these instructions or this escrow, hold any money and documents deposited hereunder until it receives mutual instructions by all parties or until a civil action shall have been concluded in a court of competent jurisdiction, determining the rights of the parties. In the alternative, Escrow Agent may at anytime at its discretion, commence a civil action to interpleed any conflicting demands to a court of competent jurisdiction. In the event of any interpleader action commenced by Escrow Agent, Escrow Agent shall be entitled to recover reasonable attorney's fees and expert witness expenses together with all costs incurred in such action. The order discharging Escrow Agent shall provide for the payment of such fees and expenses from the amount deposited into court by Escrow Agent and, to the extent such sum is insufficient to fully reimburse Escrow Agent, the court shall designate the party or parties responsible for any additional payment.

18. In the event of any litigation or arbitration relating to the interpretation or enforcement of these instructions or any provision hereof, or seeking a declaration of the rights or obligations of any party hereunder, the prevailing party or parties in such proceedings will be entitled to recover, in addition to any other available remedy, reasonable attorney's fees, expert witness fees and all costs incurred therein, which fees and expenses shall be determined by the court or arbitrator, and not by a jury, in a separate proceeding. The rights of Escrow Agent under this provision are in addition to any rights which Escrow Agent may have under any indemnification provision of these instructions. Any action shall be commenced in the county in which the real property subject to these instructions is situated.

19. To complete and execute the Standard Account Servicing Instructions of Escrow Agent if Escrow Agent is hereby employed and appointed to act as Account Servicing Agent.

20. The title insurance to be provided, unless otherwise specified, shall be evidenced by the standard coverage form of title insurance of First American Title Insurance Company, on file with the Insurance Director of the State of Arizona subject to exceptions shown in the Commitment for Title Insurance and Policy of Title Insurance issued.
    NOTE: There are some matters for which First American Title assumes no liability, including but not limited to unrecorded liens, personal property taxes; transfer of personal property; utility charges, boundary lines, location of improvements and possession; compliance with zoning, building ordinances and building restrictions; reservations and exceptions in Patents.

ESCROW INSTRUCTIONS TO - FIRST AMERICAN TITLE
P.O. Box 987, Springerville, Arizona 85938
(520) 333-4151

DATE: 03/18/97 ESCROW NO. 278-031-73229

CONTINUED TERMS AND CONDITIONS:

These instructions and any amendments hereto may be executed in one or more counterparts.

The Seller and Buyer respectively, under the above numbered escrow, hereby certify that the executed escrow instructions form the only binding agreement between said parties, as no formal written or oral purchase agreements have been entered into between the parties.

By executing this instruction the parties acknowledge they have obtained legal counsel to represent them in this escrow.

The undersigned Seller and Buyer do hereby direct Escrow Agent to utilize, in this escrow transaction, the legal description attached hereto and made a part hereof marked "Exhibit A".

Sellers and Buyer have agreed that all costs in connection with this escrow shall be that of the Buyer. The Sales price stated herein, is for market value only, there are no monies due the Seller herein, as the property being transferred herein, is being granted by an Act of Congress as a Gift to the Alpine School District.

Seller and Buyer have agreed that the property described herein in Exhibit "A" will be conveyed by Quitclaim Deed, wherein, Escrow Agent will record the following easements, executed by the Alpine School District;

An easement for water line, as more fully described in said easement to and for the benefit of Larry Whitmer;
an easement to Apache County for a road, as more fully described therein and;
an easement to Navapache Electric Co-Op, as more fully described therein.

Said easements to be Concurrently and subsequent to the Quitclaim Deed. Escrow Agent is by execution herein, hereby instructed to record said easements at the close of this escrow.

Contrary to any printed provisions contained herein, Escrow Agent is instructed to close this escrow upon receipt of all funds and documents necessary to close, without further written instructions from either party.

It is understood and agreed by and between the Seller and Buyer herein, that there will be no policy of Title Insurance issued in connection with this escrow. No title insurance is being issued and there has been no examination of title under the above numbered transaction by First American Title. The Escrow settlement and documentation has been assembled based solely upon information provided into escrow by the Buyer and Seller and First American Title assumes no responsibility for the accuracy and/or completeness thereof. The representations of the parties to the escrow transaction are hereby affirmed and the undersigned parties further acknowledge that should any discrepancy, disparity, omission or change arise subsequent to settlement, the parties will pursue the resolution and correction thereof direct and outside of escrow and hereby release First American Title from any liability therefor.

Escrow Agent is by execution instructed to close this escrow upon receipt of all documents and funds necessary pursuant to the terms contained herein.

As a memorandum to Escrow Agent, the following is an agreement between the Buyer(s) and Seller(s) for which Escrow Agent shall have no responsibility and/or liability:

Seller and Buyer shall satisfy themselves that all conditions and agreements between the parties have been met prior to close of escrow.

The execution of documents and final deposit of funds into the escrow, to close this escrow, shall be deemed the release of said contingencies and/or conditions by Seller and Buyer.

Seller and Buyer have agreed that the Buyer shall obtain an independent inspection in connection with any known or unknown hazardous substances, and furnish to Seller a copy prior to the close of this escrow, Escrow Agent shall not be concerned with the delivery of said inspection/report, it shall be handled between the parties DIRECT AND OUTSIDE of escrow.

P.O. Box 987, Springerville, Arizona 85938 • (520) 333-4151

DATE: 03/18/97 **ESCROW NO. 278-031-73229**

EXHIBIT "A"

LEGAL DESCRIPTION:

The North half of the Northeast quarter of the Southeast quarter and the North half of the South half of the Northeast quarter of the Southeast quarter of Section 14, Township 5 North, Range 30 East of the Gila and Salt River Base and Meridian, Apache County, Arizona.

First American Title Insurance Agency, Inc.
404 East Main Street • Springerville, Arizona 85938
Mailing Address: P.O. Box 987 • Springerville, Arizona 85938
(520) 333-4151 • Fax: (520) 333-4153

SETTLEMENT STATEMENT

PRE-AUDIT ONLY 06/25/1997 (10:50 AM) SUBJECT TO ADJUSTMENTS AT CLOSING

DATE: June 25, 1997 SETTLEMENT DATE:

ESCROW OFFICER: VICKIE L. JAMES, C.S.E.O. ESCROW NUMBER: 278-31-73229

SELLER: UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE, REGION 3, FOREST SERVICE

BUYER: ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7, OF APACHE COUNTY, ARIZONA

PROPERTY: METES & BOUNDS
ALPINE, AZ

	SELLER CHARGES	SELLER CREDITS	BUYER CHARGES	BUYER CREDITS
SA[illegible] PR[illegible]		225,000.00	225,000.00	
BY GI[illegible] NO OUTSIDE ESCROW	225,000.00			225,000.00
DISBURSEMENTS/CHARGES				
FIRST AMERICAN TITLE				
ESCROW FEE			363.50	
RECORDING FEES			40.00	
FIRST AMERICAN TITLE				
TRUST FEE			100.00	
SUB TOTALS:	225,000.00	225,000.00	225,503.50	225,000.00
FUNDS DUE FROM BUYER				503.50
TOTALS:	225,000.00	225,000.00	225,503.50	225,503.50

THIS STATEMENT COVERS MONEY SETTLEMENT THROUGH ESCROW ONLY - KEEP IT AS A REFERENCE FOR TAX PURPOSES

NO TITLE INSURANCE POLICY TO BE ISSUED

Escrow No. 278-031-73229

The undersigned parties acknowledge that **NO TITLE INSURANCE POLICY IS TO BE ISSUED** and that **THERE HAS BEEN NO EXAMINATION OF TITLE** under the above numbered transaction by First American Title. The escrow settlement and documentation has been assembled **BASED SOLELY UPON INFORMATION PROVIDED INTO ESCROW BY THE BUYER OR SELLER, BROKER, AGENT OR LENDER**, and First American Title assumes no responsibility for the accuracy and/or completeness thereof. The representations of the parties to the escrow transaction are hereby affirmed and the undersigned parties further acknowledge that should any discrepancy, disparity, omission or change arise subsequent to settlement, the undersigned parties will pursue the resolution and correction thereof direct and outside of escrow and hereby release First American Title from any liability therefor.

Dated: June 25, 1997

ACCEPTED AND APPROVED:

ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7 OF
APACHE COUNTY, ARIZONA

BY: Mary Phelan
MARY PHELAN, PRESIDENT OF THE SCHOOL BOARD

Linda Fite, Notary
6-27-97

OFFICIAL SEAL
LINDA FITE
Notary Public - State of Arizona
APACHE COUNTY
My Commission Expires Oct. 8, 1999

UNITED STATES OF AMERICA, DIRECTOR OF LANDS
AND MINERALS, REGION 3, FOREST SERVICE

BY:
H. WAYNE THORTON

FAT-AZ 6007 (Rev. 8/95)VLJ

When Recorded Mail to

EASEMENT

Whereas First American Title Insurance Company, a California Corporation, as Trustee under trust 8334 does hereby grant to LARRY WHITNER, a married man as his sole and separate property,his successors and assigns, a perminant Easement for a Water line over, accross and under ,the Four feet on both sides of the following described centerline ;

Starting at the C-E 1/16th Corner of Section 14, T.5 N.R.30 E. and running S 89 05'40"W along the property line a distance of 150.14 feet to the water line and the True Point of Beginning ; thence S 27 23'41" W a distance of 190.30 feet; thence S. 27 02' 42"" W a distance of 142.92 feet to Terminus.

Dated this __day of May 1997

First American Title Insurance Company
as Trustee Trust 8334

Roderick N Collier Trust officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged and executed before me this 6 day of June, 19[illegible] by Roderick N Collier who acknowledged to be the Trust Officer of First American Title Insurance Company, and that as such officer, being authorized so to do, signed the name of the corporation as such officer.

My Commission Expires:

OFFICIAL SEAL
SHIRLEY FYKE
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires Aug. 14, 1997

Notary Public

Description of COUNTY ROAD

The center line of a county road is described as follows:

Starting at the E 1/4 Corner of section 14, T.5 N.,R.30E. and running S 0°32'00"W a distance of 995.75 feet to the SNS 1/256, thence N88°53'23"W a distance of 589.18 feet to the point of beginning Thence N41°45'59'E a distance of 814.72 feet to a point, thence along a curve, concave to the northwest, which has a radius of 703.22 feet and the long cord of which bears N32°00'14"E a distance of 100.08 feet to a point on the section line.

Description of Power Line

The center line of a power line is described as follows:
Starting at the E 1/4 Corner of section 14, T.5 N.,R.30E. and running S 31°06'08"W a distance of 6.47 feet to the point of beginning. Thence S 87°13'54"W a distance of 976.82 feet to a point, thence S 46°57'48"W a distance of 283.08 feet to a point where two lines diverge. The northwest fork bears N 51° 51'00"W a distance of 190.33 feet to the property line. The southwest fork bears S 46°57'48"W a distance of 151.99 feet to a point, thence S4°03'48"E a distance of 133.93 feet to a point. Two lines diverge at this point, the southwest line bears S57°21'39" W a distance of 60.01 feet to the property boundary. The southeast fork bears S10°25'04"E a distance of 126.97 feet to a point, thence S14°34'35"E a distance of 451.07 feet to a point, thence N61°44'48"E a distance of 170.86 feet to a point, thence S16°09'13" E a distance of 13.31 feet to the property boundary.

The center line of a power line is described as follows:
Starting at the E1/4 corner of Section 14, T.5 N., R.30E. and running S31°06'08"W a distance of 6,47 feet to the point of beginning. Thence S0°32'00"W along the section line a distance of 563.67 feet to the end of the power line.

NO TITLE INSURANCE POLICY TO BE ISSUED

Escrow No. 278-031-73229

The undersigned parties acknowledge that **NO TITLE INSURANCE POLICY IS TO BE ISSUED** and that **THERE HAS BEEN NO EXAMINATION OF TITLE** under the above numbered transaction by First American Title. The escrow settlement and documentation has been assembled **BASED SOLELY UPON INFORMATION PROVIDED INTO ESCROW BY THE BUYER OR SELLER, BROKER, AGENT OR LENDER**, and First American Title assumes no responsibility for the accuracy and/or completeness thereof. The representations of the parties to the escrow transaction are hereby affirmed and the undersigned parties further acknowledge that should any discrepancy, disparity, omission or change arise subsequent to settlement, the undersigned parties will pursue the resolution and correction thereof direct and outside of escrow and hereby release First American Title from any liability therefor.

Dated: June 25, 1997

ACCEPTED AND APPROVED:

ALPINE ELEMENTARY SCHOOL DISTRICT NO: 7 OF
APACHE COUNTY, ARIZONA

BY: Mary Phelan
MARY PHELAN, PRESIDENT OF THE SCHOOL BOARD

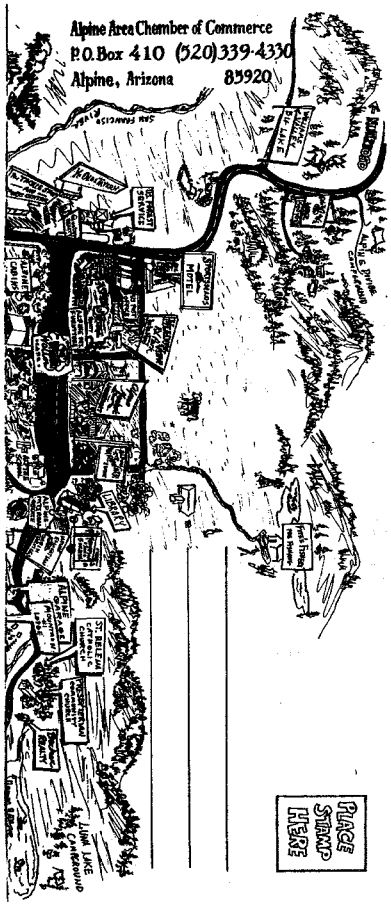
Linda Fite, Notary
6-27-97

OFFICIAL SEAL
LINDA FITE
Notary Public - State of Arizona
APACHE COUNTY
My Commission Expires Oct. 8, 1999

UNITED STATES OF AMERICA, DIRECTOR OF LANDS
AND MINERALS, REGION 3, FOREST SERVICE

BY:
H. WAYNE THORTON

FAT-AZ 6007 (Rev. 8/95)VLJ

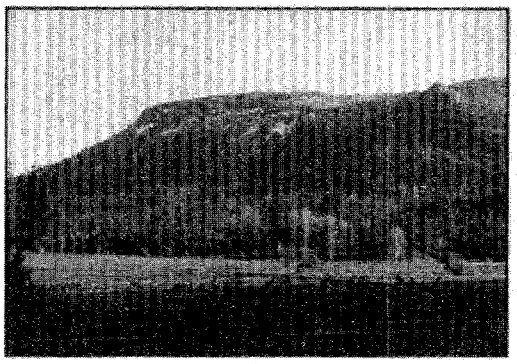


Attachment No. 4

ALPINE

Campbell Blue

THE "ALPS" OF ARIZONA



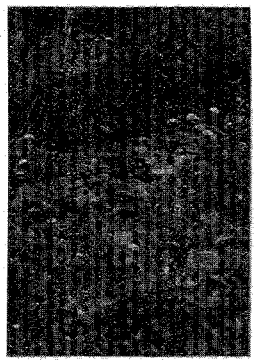


Photo by Jerri Coplan

South Mountain

...Are you sure we're in Arizona? Give us ten minutes to tell you about this quaint little village, surrounded by the huge Apache-Sitgreaves National Forest, with hundreds of thousands of acres to explore and enjoy. High country blue spruce and fir forests surround grassy meadows and springs where elk, bear, deer, and turkey are often found, even roaming through the village at times. Early mornings and late afternoons can be spent watching the herds of elk in the meadows.

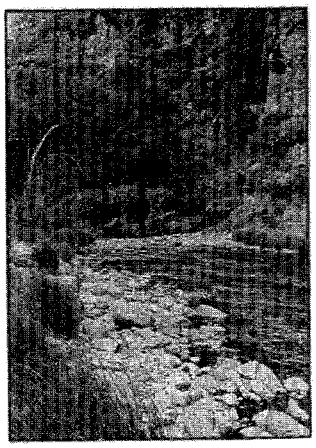
Truly a mountain paradise with 12 sparkling lakes and over 200 miles of fishable streams within 30 miles of Alpine, offers the avid fishermen hours of pursuit in their catch of the "rainbow". Photographers may capture the Canadian Geese nesting in nearby lakes. Try the fishing at Luna Lake just three miles from Alpine, and also at Fite's Fishery in town. Backpacking trips to the Black River, Bear Wallow Wilderness, Snake Creek, Bear Mountain, the Blue River Primitive Range, and Escudilla Wilderness are but a few of the places here, that you should see at least once. Drive the historic Coronado Trail, a scenic bypass now, and enjoy almost 120 miles of National Forest. The Nutrioso Area is just as scenic situated near the base of Escudilla and Terry Flats.

The hospitality of these small villages ranks as high as the beautiful forests surrounding them. There is always time to stop and visit, as care and curiosity mean more than the hustle and bustle of a hurried day. It is a place to relax and we hope you take some time. At 8,000' elevation, there are truly four seasons to enjoy. The summers bring emerald green meadows, pleasantly warm, but cool, sunny days, quiet, restful nights, and mountains full of aspen, oak and many different species of pine.

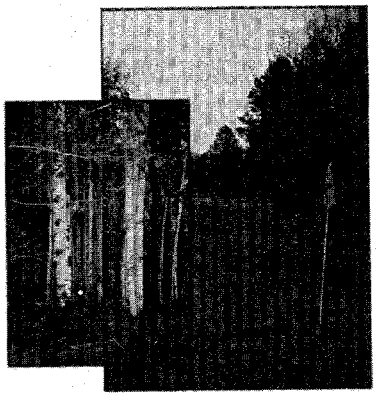
Fall brings a magnificent Indian summer, as the aspen begin to golden and we wait for the bugle of the elk. Winter blankets of snow quiet the world; a beautiful season. Downhill or cross country skiing in this dry climate promises to be an experience you won't forget. Spring brings the wildflowers and the hummingbirds scattering for their sweets, as well as the bull elk grazing in the meadows boasting their new growth of antlers, right along with our horses and cattle.

Located on the eastern edge of the White Mountains, Alpine is roughly 5 hours from Tucson and Phoenix, and about 4 1/2 hours to Albuquerque (NE to I-40 from Quemado). The Alpine merchants have tried to accommodate all possible services visitors might require. A map and list of each is included in this flyer.

Comfortable accommodations in motels, lodges, cabins and RV parks, as well as campgrounds and the Sprucedale Guest Ranch are available. Our restaurants take great pride in offering a variety of tasty, well-prepared and moderately priced meals, served with down home friendliness. Groceries, a laundromat, camping supplies, hardware and hunting supplies. Building contractors and cabin services, fishing and hunting supplies, as well as licenses, gasoline, clothing, and real estate services try to provide every need. An 18 hole public golf course is surrounded by aspen and pine. You can get spirits after hours here, at Ye Ole Tavern, at the the Tal Wi Wi Lodge, and at the Bear Wallow Cafe. Catholic, Baptist, and Presbyterian churches are here in Alpine, along with one of Arizona's oldest elementary schools, still in operation.



Caves on Black River



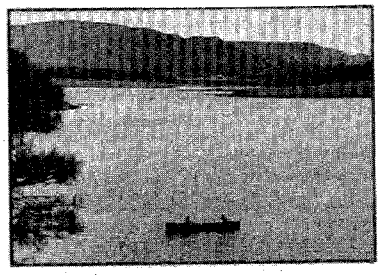
Alpine's 18 Hole Public Golf Course

Trout on Black River

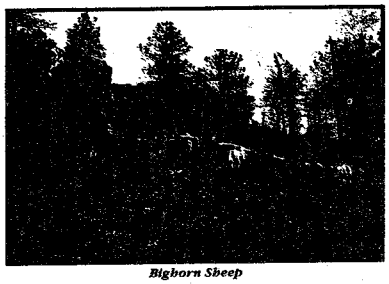
Sightseeing drives through endless miles of unspoiled and sometimes rugged mountain roads... Horseback riding through miles of Forest trails lead into a lot of truly beautiful country surrounding Alpine. Be sure to bring your camera. For more information on the area, please contact the Alpine Area Chamber of Commerce, (520) 339-4330. For Forest information, call the Alpine Ranger District at (520) 339-4384.

Hiking, camping, horseback riding, photography, hunting, fishing, downhill and cross country skiing, sled dog races, golfing, ice fishing, snowmobiling, rodeos, fairs, or just visiting and relaxing...

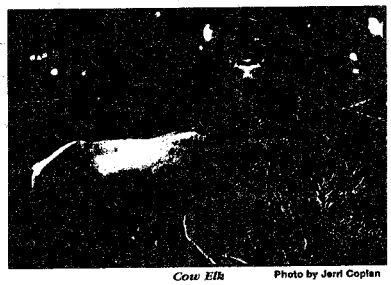
Step back in time, and discover beautiful Alpine;
the BEST KEPT SECRET IN ARIZONA!



Luna Lake, 80 acres



Bighorn Sheep



Cow Elk Photo by Jerri Coplan

Annual Sled Dog Races

ALPINE CABINS
P.O. Box 79
Alpine, AZ 85920
(520) 339-4440

ALPINE CABIN SERVICES
P.O. Box 753
Alpine, AZ 85920
(520) 339-1846

ALPINE COUNTRY CLUB
P.O. Box 526
Alpine, AZ 85920
(520) 339-4944

ALPINE EXCAVATION & CONSTRUCTION
P.O. Box 459
Alpine, AZ 85920
(520) 339-1946

ALPINE HARDWARE
P.O. Box 49
Alpine, AZ 85920
(520) 339-4711

ALPINE MARKET
P.O. Box 679
Alpine, AZ 85920
(520) 339-4914

ALPINE MT. FURNITURE
P.O. Box 564
Alpine, AZ 85920
(520) 339-4911

ALPINE MTS. REAL ESTATE
P.O. Box 787
Alpine, AZ 85920
(520) 339-4455

ALPINE VILLAGE RV PARK
P.O. Box 380
Alpine, AZ 85920
(520) 339-1841

ASPEN RIDGE REALTY
P.O. Box 283
Alpine, AZ 85920
(520) 339-4732

BEAR WALLOW CAFE
P.O. Box 777
Alpine, AZ 85920
(520) 339-4310

BECKER REALTY
P.O. Box 735
Alpine, AZ 85920
(520) 339-4847

FITE'S FISHERY
P.O. Box 156
Alpine, AZ 85920
(520) 339-4421

HUNTER REALTY & INV.
P.O. Box 918
Alpine, AZ 85920
(520) 339-4739

LUNA LAKE YACHT CLUB
P.O. Box 1246
Eagar, AZ 85925

MEADOW VIEW RV PARK
P.O. Box 437
Alpine, AZ 85920
(520) 339-1850

SPORTSMAN'S MOTEL
P.O. Box 778
Alpine, AZ 85920
(520) 339-4576

SPRUCEDALE GUEST RANCH
P.O. Box 880
Eagar, AZ 85925
(520) 333-4984

THE TACKLE SHOP
P.O. Box 125
Alpine, AZ 85920
(520) 339-4336

TAL WI WI LODGE
RESTAURANT & BAR
P.O. Box 169
Alpine, AZ 85920
(520) 339-4319

THOMPSON & SONS BUILDING
AND DEVELOPMENT, INC.
P.O. Box 159
Alpine, AZ 85920
(520) 339-4650

YE OLD TAVERN
P.O. Box 59
Alpine, AZ 85920
(520) 339-1837

STATEMENT OF VICTOR S. PERLMAN,
MANAGING DIRECTOR AND GENERAL COUNSEL OF
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS,
ON BEHALF OF
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS
AND NORTH AMERICAN NATURE PHOTOGRAPHY ASSOCIATION
IN CONNECTION WITH H.R. 154

I. Introduction.

Mr. Chairman, my name is Victor Perlman, and I am the Managing Director and General Counsel of the American Society of Media Photographers. The American Society of Media Photographers, or ASMP as it is known, was founded in 1944 as the Society of Magazine Photographers. ASMP is the largest organization in this country, or in the world, representing professional photographers who make photographs for publication in the various media. ASMP has approximately 6,000 members, most of whom are freelance photographers, who have been producing some of this country's best photography for publishers, advertising agencies and corporate clients for more than half a century. We estimate that there are over 100,000 freelance photographers with interests similar to those of our members in this country. I am submitting this statement on behalf of ASMP in support of the approach taken in the current draft of H.R. 154 concerning the granting of permits and charging of fees for making photographs on National Park System lands and requesting that its coverage be expanded to include other public lands without regard to which agency is charged with their management.

I am also submitting this statement on behalf of the North American Nature Photography Association. The North American Nature Photography Association, or NANPA, is a national association of approximately 2,000 members who are photographers (both professional and amateur), photo agents, editors, publishers, educators, biologists, students, manufacturers, and government workers, all of whom are drawn together by a common love of nature photography and the environment. NANPA's goals include promoting nature photography as an art form and as a medium of communication for the sciences, nature appreciation and environmental protection.

We support the goals of this bill, and our fundamental desire is for fairness in their terms and administration. We believe that activities and people who place unusual or substantial burdens or demands on our natural resources or on our government employees should pay for them in proportion to the burdens and demands that they impose. Similarly, we believe that people who do no more than what tourists typically do should be subject to no more restrictions or costs than tourists. This is the approach taken in H.R. 154, and we hope that this will continue unchanged as the Bill passes through the legislative process.

In order to understand our concerns about possible changes in this Bill, you must first know a few facts about the nature and finances of freelance photography in the publication field. Freelance photographers are self-employed. As such, they are not accorded employment benefits. They are not paid a regular salary, do not receive a paid vacation, and must purchase their own cameras and equipment. They are responsible for all of the overhead expenses associated with running a business, must pay for their own health, liability and disability insurance, and are not eligible for unemployment compensation. These hidden cost factors make the freelance photographer's financial investment in every photograph that he or she makes far higher than would appear at first glance.

There are two primary ways in which a photograph intended for publication comes to be made by a freelance photographer: either as part of an assignment from a client or as part of what is known in the trade as "stock." Stock photographs become part of a library or inventory of images that the photographer makes available for licensing to buyers who want to use those images for limited times and purposes. At the time a stock photograph is made, there is neither any client to pay the costs nor any certainty of there ever being one to whom a sale may be made. The majority of professional photographs that are available for publication are held in such stock libraries.

While the language of H.R. 154 treats still photography the same as motion pictures, television productions and similar projects, the practical effect of that language will be that most still photography will, quite correctly, be treated differently from the other categories covered by the Bill. It is absolutely critical that, no matter what changes may be made in H.R. 154, the majority of still photography must continue to be permitted on public lands without the need for permits and fees, which is the practical result under the current draft. Most motion picture and similar audio-visual productions require, at the least, multiple person crews, special and substantial equipment, and the disruption of normal operations in at least part of the location. Unlike motion pictures and audio-visual video productions, most outdoor still photographs are made by single, individual photographers working without crews, assistants, special effects or unusual equipment. What they do is essentially what tourists do, what you and I do, Mr. Chairman, when we are on vacation recording this country's natural wonders on film for future enjoyment. H.R. 154 wisely recognizes that as such, they should be treated the same as tourists, as long as they are placing only the same demands on our natural resources and civil servants as tourists and are not exploiting them to any greater extent than tourists.

II. Basing the requirement of permits and fees on the basis of advertising, the use of models or props, possible damage to the environment, and disruption of normal uses is the best and fairest approach.

Mr. Chairman, the clear need of the land, the people and the government is for this bill

to cover the burdens imposed by major productions that inflict substantial and/or unusual burdens on both our lands and our government officials, and situations where advertisers are deriving a clear commercial benefit from the use of our natural and human resources. That is precisely what the fees and permits required under the current version of H.R. 154 do. Those fees and permits are not appropriate, or needed, to tax and impede the average citizen in visiting our natural wonders and bringing home a photographic record of that visit. Wisely, H.R. 154 does not require fees or permits of average citizens, even when they are average citizens who happen to make their livings as freelance photographers.

Our concern is not with what this Bill currently provides, but with possible future changes that could take place as the Bill goes through the legislative process. Perhaps out of an overabundance of caution, it might be helpful for the Subcommittee to know more about the possible impact on still photographers that would take place if routine photography on public lands were to be subjected to a requirement of fees and permits. I have already described generally how the stock photography business operates. Now let me give you some statistics to help put some flesh on that skeleton. I mentioned earlier that freelance photographers must buy their own equipment. For a professional photographer, it is routine to have to spend thousands of dollars for a single lens. Even for a location photographer, who does not have the overhead of equipping, stocking and running a studio, the cost of equipment is typically in the range of $70,000. and often more. A photographer who does both location and studio work has an investment in property, plant and equipment of many multiples of that figure.

We all know what has happened to the costs of film and processing in recent years. At my local, snapshot quality, one-hour lab, it costs over $22., plus tax, to buy and process a single roll of Kodak 400 speed, 36 exposure print film. You can multiply our personal experiences to add at least 25% to reflect the fact that professional quality film and processing costs are substantially higher per photograph than what you and I pay, Mr. Chairman. Now, we can safely assume that a pro will shoot many hundreds of photographs during a good day's shoot. On these numbers, a dozen rolls will cost approximately $330., plus tax, and produce 432 photographs. Of those photographs, however, like fish eggs, only a small number will ever survive. Industry reports tell us that an average of 2% of the photographs made by professional photographers get through the editing process and make their way into stock libraries.

Of those images that are put in stock libraries, industry reports also tell us that only 2% will ever produce any revenues during the life of the photograph.

For that 2% of 2% that actually sell, our information is that the average price of a stock sale is approximately $220. Of that amount, the agencies selling the stock images take commissions that now exceed 50% on average and a number of the best known stock agencies are now starting to charge commissions of 70%, plus expenses.

Thus, for each of the few images that sell, photographers receive an average of $100. or less, from which they have to pay all of their direct and indirect costs of production. Mr. Chairman, many of us remember the 1966 Antonioni movie, Blow Up and recall David Hemmings pulling his Nikon out of the glove compartment of his Rolls Royce. For many of us, that was and is our image of professional photographers. Unfortunately for professional photographers, the facts are that the Rolls Royce is every bit as unrealistic as is a pro's storing his camera in a car's glove compartment. Most freelance photographers would probably make more money doing almost anything else, but they continue to make photographs, despite the economics, because they love what they do. However, if you consider the finances described above, you will see that imposing fees on photographers for access to national lands will turn what is already a marginal economic proposition into a losing one. While professional photographers may be willing to work for relatively little money, nobody can stay in a business in which he or she loses money. Again, our concerns lie not with the Bill as written, but with changes that might be suggested during the legislative process.

III. Aside from financial considerations, the requirement of a permit would prevent the vast majority of outdoor photographs from being made.

Again, the current version of H.R. 154 is to be applauded, and our concern is over the possibility of its being changed in any way that would require fees and permits for routine still photography. Even if no fees were imposed on still photographers, the simple need for permits for routine photography would eliminate most of those beautiful photographs of our natural vistas, and the animals that inhabit them, that we all want and have come to expect to see. Have you ever wondered why most amateur photographs almost never come close to rivaling professional photographs of the same scene? In addition to the skill and knowledge of the photographer, there is a crucial element in all photographs: light. Photography means, literally, "writing with light." To have a great outdoor photograph, you must have great light. Great light for photography is not the same as great light for anything else. The best light for photography is found at the ends of the day: a couple of hours before and after sunrise, and a couple of hours before and after sunset; and if you want a photograph of the incredible animals that live in our national parks, you have to photograph them when they are awake, outside their living quarters, and active. That is almost never during the mid-day. Great nature photographs are rarely if ever made during normal business hours.

Now, if you have to get a permit in order to photograph on national lands, that means that you have to be at an office, perhaps 50 miles away from where you want to photograph, no earlier than 8:30 in the morning when the office opens. By the time you get your permit, drive to your location, and are ready to start photographing, the light is gone, and you might as well pack up for the day. The mere requirement of permits for still photographers would mean that many of the photographs that beautify the offices of many members of the House could not have been made if the

photographer had been required to obtain a permit.

IV. H.R. 154 could be even more beneficial if it applied to all national lands, whether under the management of the National Park Service, the Bureau of Land Management, the National Forest Service or otherwise.

The approach of H.R. 154 is essentially the policy that was adopted by the National Park Service after many years of discussion between representatives of the Service and ASMP. Unfortunately, the other agencies managing public lands have a patchwork of varied policies, making it extremely difficult for photographers to know the permit requirements for photographing on each piece of public land. The answers will be different, and in some cases extremely unfair, depending on which specific agency is responsible for which particular parcel of land. Since most photographers and most civil servants working on public lands are not lawyers or judges, knowing and correctly interpreting the myriad of different regulations is somewhere between difficult and impossible. Uniformity of a photographic permit policy among the different government agencies managing public lands would make life for both civil servants and photographers far easier and more predictable. For example, perhaps some uniformity would correct the current situation where, on lands administered by the Bureau of Land Management in Utah, it costs more to make still photographs for a day than it costs to graze a herd of livestock on the same piece of land. Mr. Chairman, there is a great need for uniformity of regulation among the various government agencies involved in protecting and conserving our natural resources and among the lands and other resources that they manage and control, and the expansion of the coverage of H.R. 154 would be helpful beyond description.

V. Conclusion.

Mr. Chairman, on behalf of ASMP and NANPA, and on behalf of all the freelance photographers who make photographs on our national lands, I thank you and Representative Hefley for having the wisdom to use the approach currently embodied in H.R. 154, I urge you to do whatever you can to maintain that approach as the Bill progresses through Congress, and I respectfully request that the Bill be made even more beneficial by expanding its scope to cover all national lands, irrespective of the agency holding jurisdiction over them. I thank you and the Honorable members of the Subcommittee for their time and kind consideration.

Respectfully submitted,

Victor S. Perlman

Statement

by the
Association of National Advertisers

on
H.R. 154

Prepared for the hearing record of the
Subcommittee on National Parks and Public Lands
House of Representatives

February 4, 1999

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The Association of National Advertisers appreciates the opportunity to present our views on H.R. 154.

Our association exists, in large measure, to safeguard the ability of advertisers to produce and distribute truthful, non-deceptive advertisements about legal products. For products ranging from automobiles to a vast array of package goods, the national parks and public lands are a very attractive venue for commercials. ANA looks forward to working with the Subcommittee in developing regulations that enable commercial producers to have access to the national parks and public lands while protecting these major national assets from harm.

The Association of National Advertisers, Inc. (ANA) is dedicated exclusively to marketing and brand building. Representing more than 250 companies with 7,500 brands that collectively spend over $100 billion in marketing communications and advertising, the Association's members market products and services to consumers and businesses. ANA serves the needs of its members by providing marketing and advertising industry leadership, legislative leadership, information resources, professional development and industry-wide networking.

We believe that several key principles should govern any decisions on filming in the national parks and on the public lands.

1. Advertisers and commercial film producers are committed to respecting the national parks and the public lands and leaving them in their original condition, or in better condition than we found them before filming began.

2. We expect to pay reasonable cost recovery fees for added personnel hours, use of electricity, water, and other accommodations that are provided by government employees to film crews. Advertisers will continue to pay reasonable fees for the provision of services by park employees to filmmakers, and for mitigating the impact of filming on the public lands.

3. Whatever system of permitting and clearances is employed or proposed must be simple, consistent, uniform, timely, and reasonable.

4. Timeliness of administration of the approval process is essential, as is predictability. The most beautiful scenery or the most creative production ideas are useless to advertisers if they cannot be carried out in a timely manner.

5. In addition to the traditional cost recovery for contributions of personnel time and for the provision of other essential services, advertisers do not object to adding a reasonable, and we emphasize reasonable, fee which would be contributed to the national parks, or for the preservation of the public lands. We would prefer that funds collected from this source be used to benefit the national parks and public lands, but this decision ultimately is a policy matter that may be left to the government to decide. It should be noted that advertising in general spurs economic activity at virtually all levels; activity which is taxed and supports government operations.

In addition, it should be noted that advertising is one of the most flexible and mobile businesses. Commercial producers have numerous options, such as filming in Canada, Mexico, or other foreign locations, or using other creative approaches, rather than film on domestic public lands. If the process of approval and fee determination is not timely, predictable, and consistent, advertisers will avoid the public lands in the U.S. This result would be unfortunate for the creative process and for the parks and businesses surrounding them that would benefit from these activities.

Another key issue in determining the appropriate level of filming fees is that advertising promotes multiple levels of economic activity, including new product development, product sales, job creation and overall expansion of the economy. Taxes are paid to government by advertisers at all levels in the form of sales, income, and property tax levies. Placing major fees on advertising production would result in a form of double taxation. Therefore, ANA firmly believes that the government should not discourage the filming of the type of high-quality, effective commercials that help sell products in the American marketplace.

The lands that comprise the National Parks and the public lands have long inspired photographers, filmmakers, and artists in virtually all fields of endeavor. Filmmakers and photographers who produce commercial images are no exception to this tradition. While television commercials and photographs for the advertising of automobiles often come to mind as a leading category of advertising produced, at least in part, in the National Parks and on public lands, ads in virtually all product categories employ the scenic beauty of these national treasures. Thousands of commercials have been produced in the national parks and on public lands. This system has been working and working well for decades and we are unaware of any reason to allow policies to be adopted that would reduce or eliminate this type of commercial filming in the United States.

ANA believes that H.R. 154 represents an important initiative in updating procedures for permitting commercial filming in the National Parks and on public lands. We look forward to working with Representative Hefley and the Subcommmittee throughout the legislative process. We believe that the overall thrust of H.R. 154 is consistent with the five key principles we have stated.

We are concerned, however, with language contained in Section 1 (a) (1) that the "Secretary of the Interior may permit (filming)...if the Secretary determines that such use is appropriate and will not impair the values of resources of the lands and facilities." (emphasis added)

We believe this language is very broad and vague unless carefully constrained by further definition or report language. Judgments by government concerning "appropriateness" of commercial filming and the term "values of resources of the lands and facilities" must be confined to issues of physical protection, preservation, and the convenience of visitors and should not be concerned about the content of truthful, non-deceptive commercial messages.

As the Association of Independent Commercial Producers, whose members carry out the majority of all commercial filming on behalf of major national advertisers, can attest, the vast majority of commercial filmmakers are highly respectful of the public property used in their work. They know that if they do not treat the land with respect, they will be denied access to it in the future.

With regard to the development of a workable, equitable structure for the establishment of a timely, predictable, and consistent film production fee schedule, ANA believes that the Department of the Interior fee schedule in past years provided a workable template; the actual dollar amounts, of course, would have to be updated. This fee schedule is based on the number of personnel and the number of days they are on the land. What better, more predictable and equitable fee system could there be?

ANA hopes and believes that a reasonable, predictable permitting and fee system can be worked out. We stand ready to work with all members of the Subcommittee, the relevant Federal agencies, commercial producers, and others to develop a fair and efficient system.

THE WILDERNESS SOCIETY®

Statement of Frances A. Hunt, Director, BLM Programs of The Wilderness Society. Prepared for the written record of the House Resources Committee, Subcommittee on National Parks and Public Lands. February 4, 1999.

Mr. Chairman and Members of the Subcommittee, I am Frances A. Hunt, Director of the Bureau of Land Management Program for The Wilderness Society. I appreciate the opportunity to offer this statement for the written record of the Subcommittee's February 4, 1999 hearing regarding **H.R. 15,** the **"Otay Mountain Wilderness Act of 1999."**

The Wilderness Society firmly believes that the Otay Mountains contain important biological and scientific resources that deserve strong wilderness protection. We are pleased that Rep. Bilbray and Interior Secretary Babbitt have worked to promote protection of this special place. While we support wilderness protection for the Otay Mountains, we cannot unequivocally endorse H.R. 15 at this time. As drafted, H.R. 15 contains "special" language that is at best unnecessary and at worst potentially damaging. We strongly encourage this Subcommittee to amend H.R. 15 to remove Section 6(b) from the text of the bill and instead – if such language is deemed necessary -- place this language in the bill's legislative report.

Background

The Otay Mountain region in southwestern California is an extraordinary landscape with many diverse natural, scenic, and scientific values. With an exceptional intermixture of desert and coastal influences, this area possesses a great variety of plant species, many unique to this mountain range. The directory of Federal Natural Areas lists at least 15 plant species that are candidates for Federal listing as Threatened or Endangered Species, including the world's largest stand of Tecate Cypress, a species found only in small, isolated populations in California and Mexico but which is prevalent on the mountain. Also contained within this area are unusual vegetative associations, including true chaparral, coastal sage shrub, and oak woodlands. A portion of the mountain was designated an Area of Critical Environmental Concern to protect the only known population of Mexican flannel bush, as well as the area's pristine riparian woodlands and the Tecate Cypress stand.

Because of the area's special values it was designated as the Otay National Cooperative Land and

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Wildlife Management Area in 1962. In 1980, with strong public support, including that of the San Diego County Board of Supervisors, the Bureau of Land Management recognized this unusual habitat and the area's outstanding, miles-long vistas (along the Tijuana River and into the mountainous spine of northern Baja) by designating two Wilderness Study Areas in the area. More recently, local governments in the San Diego area and state and federal agencies have identified the Otay Mountains as an essential part of the Multiple Species Conservation Program, a comprehensive plan to protect sensitive plant and animal species in an interconnected habitat preserve.

H.R. 15 "The Otay Mountain Wilderness Act"

The Wilderness Society supports Congressional wilderness designation for the Otay Mountains under the terms of The Wilderness Act of 1964. We fully recognize the important, dangerous, and difficult job that the Border Patrol and California Department of Forestry (CDF) are doing in the Otay Mountains and we appreciate the need for adequate tools and resources to fulfill their duties. Roaded vehicular and helicopter access by these agencies to the Otay area has already been assured through the cooperative efforts of the BLM, the Border Patrol, and CDF. Based on our meetings with the Border Patrol agents in the region and discussions with the Bureau of Land Management, we believe these agencies can fulfill their obligations in a manner that is consistent with management of the Otay Mountains as wilderness.

We oppose Section 6(b) of Representative Bilbray's "Otay Mountain Wilderness Act" because of its unnecessary and potentially deleterious "special" language. This language at best, purports to restate the intent of The Wilderness Act and at worst, could lead to misinterpretation of the Otay legislation, which could establish a pattern for more restrictive "special" management language in future wilderness bills. If it is deemed that such language is necessary, we strongly believe that it should be included as report language accompanying the legislation and not part of legislation itself.

I thank you for the opportunity to comment on the need for protecting the Otay Mountains and on the legislation put forth to meet that need.

ENDANGERED HABITATS LEAGUE
Dedicated to Ecosystem Protection and Improved Land Use Planning

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February 1, 1999

Michael Beck
Endangered Habitats League
P.O. Box 1509
Julian, CA 92036

The Honorable Bruce Babbitt, Secretary
Department of Interior
1849 C Street, NW
Washington, DC 20240

Regarding: Otay Mountain Wilderness Bill HR-15 (Bilbray)

Dear Mr. Secretary:

In 1993, you came to San Diego and announced a dramatic change of policy for the Department of Interior. Your announcement that Bureau of Land Management holdings within the San Diego region would be managed for conservation consistent with the management directives of the Multiple Species Conservation Program (MSCP) was of fundamental importance. It underscored the fact that management of the biological systems that we are attempting to preserve and restore required regional consistency among agencies and jurisdictions responsible for land use and land management. At that time, however, we did not realize how difficult that would turn out to be on Otay Mountain, the heart of the largest biological core area in the MSCP.

When the combination of illegal immigration and interdiction began to destroy the resources on the mountain we met with you, Ed Hasty and others to consider possible solutions. After much discussion it was agreed that in exchange for our support in moving the interdiction skirmish line down to the border via the development of the spur roads, you would work for and support wilderness designation for the mountain. As we saw last month when we met with you on the site, the interdiction part of the strategy has worked better than any of us expected. The land is recovering, and the loss of human life on the mountain has been reduced dramatically. It is rare that a plan works out as well as this one has.

In our view, wilderness designation was the strongest assurance that the invaluable biological resources of Otay Mountain would be protected in perpetuity. Your handshake

agreement with us has been good, and despite concern with section 6(b) of HR-15, we have an acceptable wilderness bill in front of us. We are very appreciative of your leadership on this issue.

The point of contention in section 6(b) has been the special language regarding border interdiction. As you know, the Endangered Habitats League and the Sierra Club have been working with the Wilderness Society and the Natural Resources Defense Council on this important issue. While the special circumstances of this particular border area are acknowledged, there remain concerns about the possibility of weakening The Wilderness Act by establishing a precedent that could be misused elsewhere in the future.

In our judgment, the language in section 6(b) is acceptable for our circumstance in San Diego. While we feel that the appropriate place for this language is in the report accompanying the bill, we are willing to accept its placement in the body of the bill based on our understanding of the last sentence of the section which reads: *"This Act recognizes the need to continue such management actions so long as such management actions are conducted in accordance with The Wilderness Act (16 U.S.C. 1131 et seq.) and are subject to such conditions as the Secretary considers appropriate."* We read this to mean that consistency with The Wilderness Act, as written, is mandatory.

We look forward to working with the wildlife agencies, BLM, and border and fire protection agencies on the development of the critically important biological management plan for Otay Mountain. Both the County and City of San Diego have species covered under their subarea plans that are dependent upon that management plan. It is my hope that we can begin the process this year.

The progress that has been made in the last six years for conservation in the South-County has been truly remarkable. The Otay Mountain Wilderness will be the heart of this conservation area and the bedrock of the MSCP. Speaking for myself and the Endangered Habitats League, and, if I can presume to speak for the resources, you have our deep appreciation.

Sincerely,

Michael Beck

Michael Beck,
San Diego Director

cc: Senator Barbara Boxer
Senator Dianne Feinstein
Congressman Brian Bilbray
Congressman Bob Filner
Supervior Dianne Jacob
Ed Hastey, Jan Bedrosian

THE SECRETARY OF THE INTERIOR

WASHINGTON

FEB 3 1999

Honorable Brian P. Bilbray
House of Representatives
Washington, D.C. 20515

Dear Mr. Bilbray:

Thank you for your letter of December 14, 1998, regarding the proposal to designate Otay Mountain in San Diego County as wilderness.

I regret that you were unable to join me on the Otay Mountain tour. I was pleased to meet the many individuals and local officials committed to preserving the special resources on Otay Mountain.

The conclusion of the group present was that the time was appropriate to designate Otay Mountain as part of the National Wilderness Preservation System. Bureau of Land Management Acting Director Tom Fry will be testifying on February 4, 1999, before the House Resources Subcommittee on National Parks and Public Lands on behalf of the Administration in strong support of H.R. 15.

I look forward to working with you to preserve the unique resources of this area as the legislation makes its way through Congress.

Sincerely,