S. HRG. 108–748

CONVEYANCE OF LAND IN CLARK COUNTY, NV; WILDLAND FIRE SAFETY; EXCHANGE OF LAND WITHIN SIERRA NATIONAL FOREST; AMEND THE ORGANIC ACT OF GUAM; AND FEDERAL LANDS IN RIVERSIDE COUNTY, CA

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

S. 2378	**S. 2410**
H.R. 1651	**H.R. 3874**
H.R. 4170	**S. RES. 387**

SEPTEMBER 29, 2004

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

97–902 PDF WASHINGTON : 2005

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WEDNESDAY, SEPTEMBER 29, 2004

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:55 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. The Subcommittee on Public Lands and Forests will convene. I apologize for running late. We had a couple of extended votes on the floor.

In bringing this hearing to order, I want to especially thank Congresswoman Bordallo who represents the island of Guam and is here to offer a statement on H.R. 2400, a bill to amend the Organic Act of Guam for purposes of clarifying the local judicial structure of Guam. I see she is joined by Governor Moylan, or Lieutenant Governor Moylan. Welcome. We appreciate you being here also.

I would also like to welcome Christopher Pyron, Deputy Chief of Business Operations, the U.S. Forest Service, and Scott Cameron, Deputy Assistant Secretary for Performance and Management at the Department of the Interior. Welcome, both of you. They are here to testify on the following legislation:

Senator Harry Reid and Senator Ensign's S. 2378, which is a bill to provide for the conveyance of certain public lands in Clark County, Nevada, to be used for a heliport;

Senator Cantwell's bill, S. 2410, a bill to promote wildland firefighter safety;

Representative Radanovich's bill, H.R. 1651, which provides for a land exchange within the Sierra National Forest of California and allows a long-time Boy Scout camp to continue to operate;

The Congresswoman's bill, H.R. 2400, which I have already mentioned;

Representative Bono's H.R. 3874, which is a bill to convey for public purposes certain BLM lands in Riverside County, California;

Representative Pombo's H.R. 4170, which is a bill to authorize the Secretary of Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior;

Senator Feingold's Senate Resolution 387, which commemorates the 40th anniversary of the Wilderness Act.

Given the very limited time for this hearing, I would ask that all subcommittee members and witnesses adhere to the 5-minute rule. We will accept all additional testimony or statements until 10 days after the close of the hearing if you feel the need for additional comment.

Senator Wyden is not with us at this moment, but Senator Cantwell is, so let me turn to her for any opening statement she would like to make, and welcome.

[The prepared statement of Senator Reid follows:]

PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA, ON S. 2378

Mr. Chairman, thank you for the opportunity to appear before you today to testify on S. 2378, a bill that Senator Ensign and I introduced that addresses a controversial issue in the Las Vegas area.

The number of helicopter tours departing from the Las Vegas area has increased by 50 percent in the last three years, accounting for almost 65,000 flights a year. This has resulted in a conflict with local residents that live near the current heliport at McCarran Airport. Also in the area are the Sloan Canyon National Conservation Area and North McCullough Wilderness Area that have the potential to be impacted by helicopter operators. In developing this bill, we have worked with many stakeholders to arrive at a compromise that resolves the conflicts and manages the land and airspace in the public interest.

S. 2378 would convey 229 acres of public land managed by the Bureau of Land Management (BLM) to Clark County, Nevada, for its use as a heliport. It would also impose fees on operators for all helicopter flights that occur over the Sloan Canyon National Conservation Area (NCA) with the proceeds used for the management of cultural, wildlife, and wilderness resources on public lands in the State of Nevada. Finally, this bill would restrict helicopter operators to a detailed flightpath, with appropriate elevations, that will ensure the protection of the values found in the Sloan Canyon National Conservation Area and the sanity of residents who have been subject to the noise of the helicopters.

There have been a few other sites proposed that I would also, provided Clark County maintains final authority over the site selection.

This solution is only possible if the land is provided at no cost to the County. With the soaring land values in the Las Vegas area, there would be no way to develop a heliport in any proximity to the city. In addition, Nevada is in the unique position of being a state where 87% of the land is managed by the Federal government, leaving opportunities for public services on non-federal land severely limited.

The solution crafted in this legislation gives the aerial tourism industry a way to continue providing to the public the scenic and recreational opportunities it demands while resolving the potential conflicts helicopters may have. I thank the Chairman and the Committee for their consideration of this important piece of legislation to the Las Vegas area.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for holding this hearing.

Mr. Chairman, I appreciate the opportunity to talk about the Wildland Firefighting Safety Act, which is S. 2410 on today's agenda. Many of my colleagues on this committee are from the West and are probably aware of the fact that every summer we send thousands of our constituents, many of them brave men and

women, college students on summer break, into harm's way to protect our Nation's rural communities and public lands. These men and women serve our Nation bravely.

Since 1910 more than 900 wildland firefighters have lost their lives in the line of duty. According to the U.S. Forest Service, a total of 30 firefighters across this Nation perished in the line of duty last year. These firefighters represented a mix of Federal and State employees, volunteers, and independent contractors, and they lost their lives for an array of reasons.

We all realize that fighting fires on our Nation's public land is inherently dangerous business. What we cannot and must not abide are the preventable deaths; losing firefighters because rules were broken, policies were ignored, and no one was held accountable. A number of my colleagues will recall that in 2001, this issue was pushed to the forefront in the State of Washington because of a horrible tragedy. On July 10, 2001, near Winthrop in Okanogan County, in the midst of the second worse drought in the history of our State, the Thirtymile Fire burned out of control. Four courageous young firefighters were killed: Tom Craven, 30; Karen FitzPatrick, 18; Jessica Johnson, 19; and Devin Weaver, 21.

Sadly, a subsequent investigation revealed these young men and women did not have to die. In the words of the Forest Service's own report on the Thirtymile Fire, the tragedy, quote, "could have been prevented."

Since then, I do believe the courage of the Thirtymile families to stand up and demand change has had a positive impact on the safety of young men and women who are preparing to battle blazes as wildland firefighters. Yet, I am deeply saddened by the fact that it is clear we have not done enough.

In July 2003, 2 years after Thirtymile, two more firefighters perished under similar circumstances, this time in the Cramer Fire in Idaho's national forest. The findings associated with the Cramer Fire really are simply mindboggling. After Thirtymile, the Occupational Safety and Health Administration, OSHA, conducted an investigation and levied against the Forest Service five citations for serious and willful violation of safety rules. Then, just this March, OSHA concluded its investigation of the Cramer Fire. The results: another five OSHA citations for serious and willful and repeat violations.

Reading through the list of casual and contributing factors for Cramer and putting them next to those associated with the Thirtymile Fire, my colleagues would be struck by the disturbing similarities. Even more haunting are the parallels between this list, this particular list, and the factors cited in the investigation of the 1994 South Canyon Fire on Storm King Mountain in Colorado. So basically it has been 10 years since these 14 firefighters lost their lives on Storm King Mountain, and yet the same mistakes are being made over and over again.

Mr. Chairman, these facts have also been documented by an audit and memorandum just issued yesterday by the Department of Agriculture's Inspector General. The IG found that accidents on South Canyon, Thirtymile, and Cramer, all of which involved fatalities, could have been avoided if certain individuals had followed standard safety practices and procedures in place at the time. The

IG also noted that the Forest Service has not timely implemented actions to improve its safety programs. Some 27 of the 81 action items identified as a result of Storm King and Thirtymile, or roughly a third, have not been implemented years later.

I do not believe that is acceptable, Mr. Chairman. I know that the IG's report is just being issued and people are just reading it, but I hope my colleagues will look seriously at the Wildland Firefighter Safety Act and its modest proposal. It has already passed the Senate once as an amendment to the healthy forests legislation and I hope that we can pass it again and that we will give serious attention to the issue.

Thank you, Mr. Chairman.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON, ON S. 2410

Mr. Chairman, thank you for holding this important hearing today on my legislation, the Wildland Firefighter Safety Act (S. 2410).

Many of my colleagues on this Committee are from the West and are probably aware of the fact that every summer, we send thousands of our constituents—many of them brave young men and women, college students on summer break—into harm's way to protect our nation's rural communities and public lands. These men and women serve our nation bravely. Since 1910, more than 900 wildland firefighters have lost their lives in the line of duty.

According to the U.S. Forest Service, a total of 30 firefighters across this nation perished in the line of duty last year.

These firefighters represented a mix of federal and state employees, volunteers and independent contractors. And they lost their lives for an array of reasons. We all realize that fighting fires on our nation's public lands is an inherently dangerous business. But what we cannot and must not abide are the preventable deaths—losing firefighters because rules were broken, policies ignored and no one was held accountable.

A number of my colleagues will recall that, in 2001, this issue was pushed to the fore in the State of Washington, because of a horrible tragedy. On July 10, 2001, near Winthrop in Okanogan County, in the midst of the second worst drought in the history of our state, the Thirtymile fire burned out of control.

Four courageous young firefighters were killed. Their names:

- Tom Craven, 30 years old;
- Karen FitzPatrick, 18;
- Jessica Johnson, 19; and
- Devin Weaver, 21.

Sadly, as subsequent investigations revealed, these young men and women did not have to die. In the words of the Forest Service's own report on the Thirtymile fire, the tragedy "could have been prevented." At that time, I said that I believe we in Congress and management within the firefighting agencies have a responsibility to ensure that no preventable tragedy like Thirtymile fire ever happened again.

I'd like to thank my colleague Sen. Bingaman, the distinguished Ranking Member of the Senate Energy Committee, as well as Sen. Wyden, who was then chair of the Subcommittee on Public Lands and Forests. In the wake of the Thirtymile Fire, they agreed to convene hearings on precisely what went wrong that tragic day. We heard from the grief-stricken families.

In particular, the powerful testimony of Ken Weaver—the father of one of the lost firefighters—put into focus precisely what's at stake when we send these men and women into harm's way.

Mr. Chairman, I can think of no worse tragedy that a parent to confronting the loss of a child, especially when that loss could have been prevented by better practices on the part of federal agencies.

At the Senate Energy Committee hearing, we also discussed with experts and the Forest Service itself ways in which we could improve the agency's safety performance. And almost a year to the day after those young people lost their lives, we passed a bill—ensuring an independent review of tragic incidents such as Thirtymile that lead to unnecessary fatalities.

Based on subsequent briefings by the Forest Service, revisions to the agency's training and safety protocols, and what I've heard when I have visited with firefighters over the past two years, I do believe the courage of the Thirtymile families to stand up and demand change has had a positive impact on the safety of the young men and women who are preparing to battle blazes as wildland firefighters.

Yet, I'm deeply saddened by the fact that it's clear we haven't done enough.

In July 2003—two years after Thirtymile—two more firefighters perished, this time at the Cramer Fire within Idaho's Salmon-Challis National Forest. Jeff Allen and Shane Heath were killed when the fire burned over an area where they were attempting to construct a landing spot for firefighting helicopters. Certainly some 28 others lost their lives fighting wildfires last year, and we must recognize the sacrifice and grief befalling their families.

After the Thirtymile Fire, however, I told the Weavers and the Cravens, the families of Karen FitzPatrick and Jessica Johnson that I believed we owed it to their children to identify the causes and learn from the mistakes that were made in the Okanogan, to make wildland firefighting safer for those who would follow. That is why the findings associated with the Cramer Fire simply boggle my mind.

We learned at Thirtymile that all ten of the agencies' Standing Fire Orders and many of the 18 Watch Out Situations—the most basic safety rules—were violated or disregarded. The same thing happened at Cramer, where Heath and Allen lost their lives two years later.

After the Thirtymile Fire, the Occupational Safety and Health Administration (OSHA) conducted an investigation and levied against the Forest Service five citations for Serious and Willful violations of safety rules. It was eerie, then, when just this March OSHA concluded its investigation of Cramer. The result: another five OSHA citations, for Serious, Willful and Repeat violations. Reading through the list of causal and contributing factors for Cramer and putting them next to those associated with the Thirtymile fire, my colleagues would be struck by the many disturbing similarities. Even more haunting are the parallels between these lists and the factors cited in the investigation of 1994's South Canyon Fire on Storm King Mountain in Colorado. It's been ten years since those 14 firefighters lost their lives on Storm King Mountain—and yet, the same mistakes are being made over and over again.

Mr. Chairman, these facts have also been documented by an audit and memorandum issued just yesterday by the Department of Agriculture's Inspector General. The IG found that "while there were many factors common to all three fires, the most important was a failure by [Forest Service] fire suppression personnel to establish fire safety rules and guidelines and to exercise acceptable supervision and judgment." The audit also stated "accidents on the South Canyon, Thirtymile, and Cramer Fires, all of which involved fatalities, could have been avoided if certain individuals had followed standard safety practices and procedures in place at the time." Lastly, the IG noted that the Forest Service "has not timely implemented actions to improve its safety programs." Some 27 of 81 action items identified as a result of the South Canyon/Storm King, Thirtymile and Cramer fires—or roughly a third—have not been fully implemented years later.

I don't believe that's acceptable. The firefighters we send into harm's way every year—and the ones we've already lost—deserve better. And in view of the Inspector General's report, issued just yesterday, I find it positively astounding that the Forest Service still finds my bill "not necessary."

Training, leadership and management problems have been cited in all of the incidents I've discussed. What can we do, from the legislative branch, to provide our firefighting agencies with enough motivation to change? I believe the first step we can take is to equip ourselves with improved oversight tools, so these agencies know that Congress is paying attention. That is why I introduced the Wildland Firefighter Safety Act.

If my colleagues take the time to review the Inspector General's audit, they will find important recommendations for improving the safety of our wildland firefighters. The provisions included in my bill will ensure we have the tools at our disposal to make sure these recommendations are being implemented.

The Wildland Firefighter Safety Act of 2004 is a modest yet important proposal. It was already passed once by the Senate, as an amendment to last year's Healthy Forests legislation. However, I was disappointed that it was not included in the conference version of the bill.

But it is absolutely clear to me—particularly in light of OSHA's review of the Cramer Fire, as well as the IG's audit released yesterday—that these provisions are needed now more than ever.

First, the Wildland Firefighter Safety Act of 2004 will require the Secretaries of Agriculture and Interior to track the funds the agencies expend for firefighter safety and training.

Today, these sums are lumped into the agencies' "wildfire preparedness" account. But as I have discussed with various officials in hearings before the Senate Energy and Natural Resources Committee, it is difficult for Congress to play its rightful oversight role—ensuring that these programs are funded in times of wildfire emergency, and measuring the agencies' commitment to these programs over time—without a separate break-down of these funds.

I understand the Forest Service objects to this measure because it will somehow "undermine" agency-wide safety initiatives. Particularly given the well-known practice in which the agencies are forced to borrow from other accounts to pay for emergency fire suppression, Congress and taxpayers deserve to know how and whether federal funds are being spent to ensure the safety of these firefighters. It defies common sense to suggest that a level of greater level of accountability would actually undermine safety. In fact, I think it's just the opposite.

Second, it will require the Secretaries to report to Congress annually on the implementation and effectiveness of its safety and training programs.

Congress has the responsibility to ensure needed reforms are implemented. The IG's recent audit has given us the beginnings of a roadmap. We need to make sure it is followed. As such, I believe that Congress and the agencies alike would benefit from an annual check-in on safety programs. I would also hope that this would serve as a vehicle for an ongoing and healthy dialogue between the Senate and agencies on these issues.

Third, my bill would stipulate that federal contracts with private firefighting crews require training consistent with the training of federal wildland firefighters. It would also direct those agencies to monitor compliance with this requirement.

This is important not just for the private contractor employees' themselves—but for the federal, state and tribal employees who stand shoulder-to-shoulder with them on the fire line. States have been making strides toward improving their oversight of these contract crews, but federal agencies should be their willing partners in this endeavor. It appears from the witnesses' testimony today that the federal agencies have begun to take steps to address some of the problems we have seen in the field. But I think requiring this monitoring and enforcement by law will ensure that we see sufficient attention devoted to this matter.

Congress owes it to the families of those brave firefighters we send into harm's way to provide oversight of these safety and training programs. And so, Mr. Chairman, I hope my colleagues on this Committee will support this simple legislation. As the Inspector General's audit and the OSHA investigations over the past few years make clear, Congressional oversight of federal firefighter safety programs is far from unnecessary.

We owe it to our federal wildland firefighters, their families and their state partners—and to future wildland firefighters.

My bill will provide this body with the additional tools it needs to do the job. Despite the Administration's opposition to the Wildland Firefighter Safety Act, I hope that we can come together to pass this legislation, and I remain open to working with these agencies. I thank the Chairman, and look forward to the testimony of today's witnesses.

Senator CRAIG. Senator, thank you very much for that opening comment on S. 2410.

Now let us turn to the Congresswoman. Thank you again, Congresswoman Bordallo, for joining us. We look forward to your testimony. Please proceed.

STATEMENT OF HON. MADELEINE Z. BORDALLO, DELEGATE FROM GUAM IN THE U.S. HOUSE OF REPRESENTATIVES, ACCOMPANIED BY KALEO MOYLAN, LIEUTENANT GOVERNOR, TERRITORY OF GUAM

Ms. BORDALLO. Good afternoon, Chairman Craig and members of the subcommittee, Senator Cantwell. Thank you, Mr. Chairman, very much for inviting me to testify in support of H.R. 2400, a bill I introduced last year at the request of local leaders in Guam to clarify the structure of Guam's judicial branch of government.

Mr. Chairman, I know you did introduce him, but I would like to thank our Lieutenant Governor of Guam, Mr. Kaleo Moylan, for joining me in Washington during this testimony.

With your permission, Mr. Chairman, I would like to enter into the record my full statement in support of H.R. 2400, as well as statements in support from: the Governor of Guam, the Honorable Felix Camacho; the Lieutenant Governor of Guam, Kaleo Moylan; the Chief Justice of the Supreme Court of Guam, the Honorable Philip Carbullido; and a resolution of support from the Guam legislature; as well as a resolution from the Judicial Council. I think we have already turned over these statements.

Senator CRAIG. Sure. Without objection, they will all become a part of our record. Thank you.

Ms. BORDALLO. Thank you.

In 1984, Mr. Chairman, Congress amended the Organic Act of Guam to allow the Guam legislature to create an appellate court under local law, and in doing so Congress inadvertently left the Guam Supreme Court inferior to the other two branches of local government. H.R. 2400 would place the Supreme Court where it should be, a co-equal branch of government, independent of the Guam legislature and executive branches.

The Organic Act of Guam is much like a State constitution in that it defines our territorial government structure. It is, however, Federal law and only Congress can amend it. Amending the Organic Act to clarify the authority of the Supreme Court would enshrine an independent and free judicial branch for Guam. As Alexander Hamilton wrote in "The Federalist No. 78," quote: "There is no liberty if the power of judging be not separated from the legislation and the executive powers."

This good governance measure has received strong support, as I mentioned earlier, from the local leadership in Guam. The Guam Bar Association, the Judicial Council, the Guam Legislature, each passed resolutions urging Congress to enact H.R. 2400, and the Governor of Guam, Felix Camacho, and the Lieutenant Governor have also expressed and written their support for the bill.

I would like to thank each of you for the expeditious manner in which you have considered this legislation. Given the daily work of the Supreme Court, I hope that this legislation can be passed by the 108th Congress as soon as possible. I look forward to being able to tell the people of Guam that the lack of clarity inadvertently created by Congress 20 years ago has finally been corrected. With your help, Mr. Chairman, the people of Guam will share in the same protection of their legal system as enjoyed by every other citizen of the United States.

That concludes my statement and I would be happy to answer any questions.

[The prepared statement of Ms. Bordallo follows:]

PREPARED STATEMENT OF HON. MADELEINE Z. BORDALLO, DELEGATE FROM GUAM TO THE U.S. CONGRESS, ON H.R. 2400

Good afternoon Chairman Craig, Ranking Member Wyden, and Members of the Subcommittee. Thank you for inviting me to testify on H.R. 2400, a bill I introduced last year at the request of local leaders in Guam to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

Under the Omnibus Territories Act of 1984, Congress amended the Organic Act of Guam to allow the Guam Legislature to create an appellate court under local law for Guam. Pursuant to this authority the Guam Legislature established the Guam Supreme Court in 1992 under Guam Public Law 21-27, the Frank G. Lujan Memorial Court Reorganization Act.

However, the 1984 amendment to the Organic Act unintentionally left the Guam Supreme Court inferior to the other two branches of government, leaving the Court vulnerable to shifts in power within the legislative and executive branches. H.R. 2400 would make the Guam Supreme Court an "Organic" court equal in stature to the Guam legislative and executive branches and provide the Guam Judiciary the same protections afforded the other branches under the Organic Act of Guam. Just as the Governor cannot disband the Legislature, and the Legislature cannot abolish the executive, so too should the Judiciary be free from the threat of abolishment by the legislative or executive branches if their judicial decisions come under political fire. The Guam Judiciary needs to be insulated from the possibility of political interference by the legislative and executive branches, and the balance of power among these branches needs to be protected.

H.R. 2400 would also clarify that the Supreme Court of Guam is an appellate court with administrative authority over the Superior Court of Guam and any other local courts that have been and may be established by Guam law. The need for clarification is evidenced by previous attempts by the Guam Legislature to restructure the judiciary. In one instance the Guam Legislature passed a law placing the Guam Supreme Court, the appellate court, under the administrative authority of the Guam Superior Court, the trial court. Although this law was eventually invalidated by the Ninth Circuit of Appeals, this highlights the weakness of the Court's current status.

I would like to note that the leaders of the Guam Legislature, the executive branch and the Judiciary of the Government of Guam believe the structure of the Guam Judiciary should be set forth in the Organic Act absent a Guam Constitution. The people of Guam have not adopted a Constitution, largely due to concerns about the preemption of the exercise of the right of self-determination. An amendment to the Organic Act of Guam, as proposed in H.R. 2400, is the only recourse available to Congress to meet this objective.

The leadership of the three branches of the Government of Guam have signaled strong support for an "Organic" judiciary in the absence of a Guam Constitution. On April 23, 2004, all 15 members of the Guam Legislature sponsored and passed a resolution supporting H.R. 2400 and requesting expeditious passage by the Congress. The Guam Judicial Council also passed a resolution on May 6, 2004 which reiterates their support for H.R. 2400. In a letter dated May 7, 2004, the Honorable Felix P. Camacho, Governor of Guam, also expressed his support for H.R. 2400.

The framers of the United States Constitution recognized that an effective and independent judiciary could only be realized if judges were free from political interference in their decision-making. Alexander Hamilton wrote in The Federalist No. 78, "there is no liberty if the power of judging be not separated from the legislative and the executive powers." H.R. 2400 seeks to realize this goal by establishing the Guam Judiciary as a separate and co-equal branch of government consistent with the principles espoused by our founding fathers.

I would like to thank each of you for the expeditious manner in which you have considered this legislation. Given the daily work of the Supreme Court, I hope this legislation can be passed by the 108th Congress as soon as possible. I look forward to being able to tell the people of Guam that the ambiguity inadvertently created by Congress twenty years ago has finally been corrected. With your help, the people of Guam will share in the same protection of their legal system as enjoyed by every other citizen of the United States.

Senator CRAIG. Well, thank you very much. I have no questions. I do appreciate this effort and think it is an important one and I support it, and we will see if we cannot effectively move it through the Congress this year.

Ms. BORDALLO. Thank you so very much, Mr. Chairman.

Senator CRAIG. Senator.

Senator CANTWELL. No questions, Mr. Chairman. Thank you.

Senator CRAIG. Well, again we thank you. Lieutenant Governor, thank you for being with us. We appreciate it.

Now we will ask the administration witnesses to come forward on the balance of the legislation: Chris Pyron, Deputy Chief of Business Operations, U.S. Forest Service; and Scott Cameron, Deputy Assistant Secretary for Performance and Management, Department of the Interior. Welcome both before the committee.

Chris, we will allow you to start if you wish. Please proceed with the testimony you would want to give on all of the underlying legislation.

STATEMENT OF CHRISTOPHER PYRON, DEPUTY CHIEF FOR BUSINESS OPERATIONS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY THOMAS HARBOUR, DEPUTY DIRECTOR FOR FIRE AND AVIATION MANAGEMENT

Mr. PYRON. Thank you, Mr. Chairman. I will try to be brief.

Today I am joined by Tom Harbour. He is our Deputy Director for Fire and Aviation Management.

Senator CRAIG. Check and see if that mike is on, would you, please.

Mr. PYRON. Can you hear me now?

Senator CRAIG. Ah, we can hear you now.

Mr. PYRON. Just give me 30 seconds. I cannot help myself, but I was a legislative affairs specialist for 5 years from 1992 to 1997. I have prepped a lot of witnesses, wrote a lot of testimony. This is the first time I have ever done this and I am much more nervous than I thought I would be sitting out there for all those years watching other people do this. So it is a real pleasure to be here today.

Senator CRAIG. First of all, you put both feet flat on the floor. [Laughter.]

Senator CRAIG. You pull your chair up a little bit.

Mr. PYRON. You are helping me; I appreciate that.

Senator CRAIG. You take a very deep breath.

Mr. PYRON. How about a drink of water?

Senator CRAIG. Get your water close at hand, take a swallow of water.

Mr. PYRON. Thank you.

Senator CRAIG. Please proceed.

Mr. PYRON. Most of my 5 minutes are already up.

Senator CRAIG. All right. Well, we will give you a little more, then.

Mr. PYRON. Thank you.

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to present the Department's views on three measures: S. Res. 387, commemorating the 40th anniversary of the signing of the Wilderness Act; H.R. 1651, the Sierra National Forest Land Exchange Act; and S. 2410, the Wildland Fire Safety Act.

The Department supports S. Res. 387. The Forest Service has played a large and significant role in forging a wilderness philosophy and bringing into existence the wilderness preservation system. Early leaders of the wilderness movement, Aldo Leopold, Bob Marshall, Arthur Carhart, were Forest Service employees. In 1924, at Leopold's insistence, the Gila Wilderness, part of the Gila National Forest, became the first designated wilderness area in the entire world. Commemorating the signing of the Wilderness Act appropriately honors the effort of these and other wilderness visionaries.

For H.R. 1651, which authorizes the exchange of 160 acres of Federal land on the Sierra National Forest in California for 80 acres of non-Federal land, the Federal land would in turn be con-

veyed to the Sequoia Council of the Boy Scouts of America. The Department supports the bill, but would like to work with the subcommittee on amendments and report language to clarify the Secretary's authority regarding the easement associated with the subject lands.

I would like to begin my remarks on S. 2410, the Wildland Firefighter Safety Act, by thanking the bill's sponsor, Senator Cantwell, for her untiring efforts to help us improve safety and increase safety awareness. Her continuing efforts have led to an increased emphasis on safety issues within the Department of Agriculture and the Department of the Interior, particularly as it relates to firefighting, and we appreciate that contribution.

The Department of Agriculture and the Interior recognizes the importance of firefighting training for all wildland firefighters and have taken significant steps to improve training and ensure our existing systems document performance regarding safety. However, the Departments believe the bill is not necessary. If the committee ultimately disagrees, we would like to work with you to address concerns with the current version of the bill.

The Departments are concerned that the inclusion of a budget line item within the proposed legislation may not achieve the oversight desired and may undermine the benefits of agency-wide safety efforts. These efforts occur across multiple budget activities and will not be visible at the budget line item level. Virtually every firefighting training course that is offered today includes some element of fire safety training.

The safety of our firefighters rests not just on the quantity of the training we provide, but also on its quality and how each firefighter uses that training in performing his or her job. Quality assurance is an important component of any safety effort.

Rather than focus on budget structure, the Department suggests that the establishment, use, and reporting of firefighter safety performance measures and practices would better serve the goals of improved safety performance.

A recent review of the Forest Service firefighter safety program completed by the USDA Office of Inspector General identifies four areas in which the agency can strengthen efforts to promote firefighter safety. These are: One, monitoring the agency's response to fire safety recommendations; two, maintaining centralized records to support firefighting qualifications; three, conducting administrative investigations on serious fire accidents; and four, incorporating firefighting safety standards as critical elements in firefighter performance evaluations. We concur with these findings and are working with the Office of Inspector General on its list of recommended actions.

In reviewing the similarities among the incidents that led to the fatalities over the last 10 years, we realized the need for Type 3 incident commanders to be capable of performing at a higher level of competency to oversee and manage transition fire operations. We now require Type 3 ICs to undergo a simulation to test their decision-making skills when faced with the kinds of conditions that led to the tragedies at Storm King, Thirtymile, and Cramer. Every Type 3 incident commander was tested for sufficient leadership and decision-making skills prior to the 2004 fire season.

It is important to note that most of our efforts in firefighting are done safely and well. Of the 10,000 plus fires that the Forest Service fights on an average year, 98 to 99 percent of those are controlled through initial attack, and our safety record in this phase of firefighting is good. When faced with megafires, such as the Rodeo-Chediski Fire, the Biscuit Fire, or the Hayman Fire, we do that well and safely, too, and in fact our safety record is even better.

But on some transition fires, as evidenced by our experience at Storm King, Thirtymile, and Cramer, agency performance has been lacking, contributing to the loss of life. We are working diligently to improve our performance and we believe we are working on the right things.

Mr. Chairman and members of the subcommittee, it grieves us terribly to lose any firefighter. We have made many changes to respond to the gaps in our programs. We believe that thinking of firefighter preparedness as a whole, rather than the specific training courses, helps us in assessing quality and effectiveness. We welcome the oversight from Congress to help us make further progress in this area.

Thank you, Mr. Chairman and members of the subcommittee. I would be happy to answer your questions at this time. Thank you.

[The prepared statement of Mr. Pyron follows:]

PREPARED STATEMENT OF CHRISTOPHER PYRON, DEPUTY CHIEF FOR BUSINESS OPERATIONS, FOREST SERVICE, ON S. RES. 387, H.R. 1651, AND S. 2410

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to discuss with you these measures.

SENATE RESOLUTION 387 COMMEMORATING THE 40TH ANNIVERSARY OF THE SIGNING OF THE WILDERNESS ACT

The Department supports Senate Resolution 387 commemorating the 40th anniversary of the Wilderness Act.

With the signing of the Wilderness Act by President Lyndon B. Johnson on September 3, 1964, the National Wilderness Preservation System was established to ". . . *secure for the American people of present and future generations the benefits of an enduring resource of wilderness*."

The Forest Service has played a large and significant role in forging a wilderness philosophy and bringing about the Wilderness Preservation System that we see today. The early supporters of wilderness in America, Aldo Leopold, Bob Marshall and Arthur Carhart were all Forest Service employees who had a vision of preserving portions of the American continent to retain its primeval character and influence, without permanent improvement or human habitation. They saw the increasing encroachment of civilization onto the American landscape and realized the value of setting aside tracts of land where man is but a visitor and natural processes are allowed to occur.

In 1924, at Aldo Leopold's insistence, the Forest Service designated the Gila Wilderness located on the Gila National Forest in southern New Mexico, as the world's first designated wilderness area. Today the Forest Service oversees nearly 35 million acres of wilderness which represents 32% of the National Wilderness Preservation System.

H.R. 1651 SIERRA NATIONAL FOREST LAND EXCHANGE

H.R. 1651 authorizes the exchange of 160 acres of Federal land on the Sierra National Forest in California for 80 acres of non-Federal land within one year. The bill would provide for the exchange of a private in-holding in two isolated parcels of federal land, this improving management efficiency for the Sierra National Forest. A portion of the federal parcel us subject to an existing federal hydropower license.

The Department supports the bill but would like to work with the Subcommittee on amendments or report language to clarify the Secretary's authority regarding the easement associated with the subject lands.

H.R. 1651 specifies the value of the Federal land to be $250,000 and the value of the non-Federal land to be $200,000. The bill gives the Secretary the authority to accept a cash equalization payment of 20 percent of the value of the Federal land or 25 percent of the value of the non-federal land. The conveyance would be subject to a condition that the recipient of the Federal land would agree to convey the land, within four months to the Sequoia Council of the Boy Scouts of America. The conveyance would also be made subject to valid existing rights including the easement required under 4(c).

S. 2410 WILDLAND FIREFIGHTER SAFETY ACT

S. 2410, the Wildland Firefighter Safety Act of 2004, would require the Secretary of Agriculture and the Secretary of the Interior to track funds expended for firefighter safety and training programs and activities and to include a line item for such expenditures in annual budget requests. This bill would also require the Secretaries to jointly submit a report on the implementation and efficacy of wildland firefighter safety and training programs and activities to Congress each year. In addition, the bill would direct the Secretaries to ensure that any Federal contract or agreement with private entities for firefighting services requires the entity to provide firefighting training consistent with qualification standards set by the National Wildfire Coordinating Group. The Secretaries would be further directed to develop a program to monitor and enforce compliance with this contracting requirement.

Both Departments recognize the importance of firefighting training for all wildland firefighters and have taken significant steps to improve training and ensure that our existing systems document performance regarding safety. However, for reasons I'll explain shortly, the Departments believe the bill is not necessary. If the Committee ultimately decides S. 2410 is necessary, the Departments of Agriculture and the Interior would like to work with the Committee to address our concerns with the current version of the bill.

Safety and training are the major part of firefighter preparedness. Formal classroom training, on-the-job training, drills, discussions, and reviews are part of an extensive training program. Firefighters must complete both coursework and multiple training assignments before they are certified for positions.

The Departments are concerned that the inclusion of a budget line item within the proposed legislation may not achieve the oversight desired and may undermine the benefits of agency-wide safety efforts. These efforts occur across multiple budget activities and would not be visible at the budget line item level. Virtually every firefighting training course that is offered today includes some element of fire safety training. It is difficult to assess the entire cost of firefighter safety because it is not just the quantity of training but also the quality of the training and the performance of each firefighter. Quality assurance is an important component of any safety effort.

Rather than focus upon budget structure, the Departments suggest that the establishment, use, and reporting of firefighter safety performance measures and practices would provide improved safety accountability and assist with our efforts to improve safety performance, assure quality, and implement lessons learned and best practices in an open and transparent manner.

With regard to contracts and agreements for contract firefighters, our Forest Service and Department of the Interior contracts require firefighting training and experience as prescribed by the qualification standards established by the National Wildfire Coordinating Group. We agree that a program to monitor and enforce compliance with these standards is essential. This has been a challenge due to the explosive growth in the number of contract resources available. However, positive steps are underway to address this concern:

- The Pacific Northwest region has the bulk of contract fire fighting resources. A task group has been formed to design effective business processes for managing a contracted resource program and these "best practices" will be considered for adoption in other parts of the country.
- This past summer, a contract was issued to perform pre-season inspections of fire crews, engines and water tenders. This effort is promising and will be continued.
- Additional training for agency personnel to act as inspectors and contract administrators for contract resources on assignment is on going.

Recently, the USDA Office of Inspector General (OIG) completed a review of the Forest Service Firefighting Safety Program. That report identified four areas in which the agency can strengthen efforts to promote firefighter safety. The report noted that the Forest Service has made significant improvements in the safety of its firefighting operations. The report also noted that the Occupational Safety and

Health Administration (OSHA) investigative report for the Thirtymile Fire identified weaknesses in the enforcement of safety standards but acknowledged that the Forest Service had excellent written firefighting safety policies and procedures. Units visited by OIG during their audit conducted regular fire safety training. Those firefighting personnel interviewed as part of the audit gave positive reviews of the manner in which the agency emphasized and incorporated safety into training operations. Finally, OIG found that the Forest Service continues to improve its coordination with other wildland firefighting organizations and has required additional courses for its own firefighting personnel.

The four areas that the OIG identified as needing greater attention were: (1) monitoring the agency's response to fire safety recommendations, (2) maintaining centralized records to support firefighting qualifications, (3) conducting administrative investigations on serious fire accidents, and (4) incorporating firefighting safety standards as critical elements in firefighter performance evaluations. We concur with these findings and their associated recommendations. We are working with OIG on its list of recommended actions.

In reviewing the similarities among the incidents that led to fatalities over the last ten years, we realized the need for Type 3 Incident Commanders (ICs) to be capable of performing at a higher level of competency to oversee and manage transition fire operations. We now require Type 3 ICs to undergo a simulation to test their decision making skills when faced with the kinds of conditions that lead to the tragedies at Storm King, Thirtymile and Cramer. Every Type 3 incident commander was required to be tested for sufficient leadership and decision making skills for the 2004 fire season. One thousand sixty eight people completed simulation; 64 retook the simulation; in all, 30 did not pass the assessment. We are working with the National Wildfire Coordinating group for protocols to test other types of firefighting positions.

We continually evaluate our firefighter safety programs. As this Subcommittee is aware, after the investigations of fatal fires in the last 10 years, we reexamined our programs in depth and implemented numerous, significant changes. These changes were developed in cooperation with the Occupational Safety and Health Administration, the Department of the Interior and other interagency partners through the National Wildfire Coordinating Group. For example, we improved our fire complexity analysis; enhanced the training and accountability of agency administrators involved in fire suppression; clarified and emphasized fatigue awareness; and improved work/rest guidelines. We also modified driving guidelines for our employees and our contractors. We recently began the use of the Incident Qualifications Certification System. The new certification system enhances our ability to track the formal training and on-the-job training of each federal firefighter. With this system, managers and supervisors can better measure previous training and determine future training needs.

Beyond procedural steps and guidelines, we are concentrating on human factors such as experience, leadership, and performance. One of the major initiatives in this realm is the interagency Wildland Fire Leadership Development Program. The program is comprised of three major components. The first is a set of leadership values and principles that define good leadership and provide a framework for evaluating the performance of firefighters in leadership roles. The second component is a curriculum of formal leadership development courses that are designed to span the career of wildland firefighters from entry levels to management levels. The third component is an on-line resource (www.fireleadership.gov) that assists individual firefighters seeking to improve their leadership skills through self-directed continuing education efforts. Emphasis is placed on preparing leaders for the decision-making demands of firefighting.

The OIG audit examined the performance of some of our contract crews and concluded there is no indication the recently implemented control improvements would not be effective in improving contract crew quality. Contracted firefighting resources are an important capability for the agencies. We recognize our responsibilities for these resources, and we are striving to improve our management oversight of these resources to ensure safe, reliable performance.

Mr. Chairman and members of the Subcommittee, it grieves us terribly to lose any firefighter. We have made many changes to respond to gaps in our programs. We believe that thinking of firefighter preparedness as a whole, rather than specific training courses, helps us in assessing quality and effectiveness. We welcome continuing oversight from Congress to help us make further progress in area.

SUMMARY

Thank you, Mr. Chairman and members of the Subcommittee. I would be happy to answer your questions.

Senator CRAIG. Well, thank you very much, Chris.

Now let us turn to you, Scott, for your testimony, and then we will ask questions of both of you. Thank you.

STATEMENT OF SCOTT CAMERON, DEPUTY ASSISTANT SECRETARY FOR PERFORMANCE AND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. CAMERON. Thank you very much, Mr. Chairman, Senator Cantwell.

I also cannot resist making a personal observation. Back in the 1980's I was a legislative assistant for a Senator on this very committee, and it is good to be back here, although I am a little bit more nervous to be on this side of the dais than it was to be on that side. But I am glad to be with you today to testify on a number of bills.

S. 2378 would convey without consideration 229 acres of BLM-managed public lands to Clark County, Nevada, for its use as a heliport. The Department supports the goals of this legislation, but cannot support a conveyance of public lands that does not involve payment to the Treasury for the value of those lands. The BLM as a matter of both policy and practice receives market value for public lands transferred out of Federal ownership. Therefore we strongly recommend that the bill be modified to require the receipt of fair market value for the lands to be conveyed.

Alternatively, and absent legislation, I should point out that BLM could convey or lease appropriate lands to Clark County under existing authorities under the Federal Land Policy Management Act and other statutes.

The Department also has concerns regarding the designated flight paths over Sloan Canyon National Conservation Area, which is home to a large population of desert bighorn sheep.

H.R. 3874 would transfer approximately 44 acres of land managed by the Bureau of Land Management to the city of Palm Springs, California, actually in the city of Palm Springs, to the SVDP Management, Inc., again at no charge, for purposes of providing a homeless shelter, a training center, and affordable housing on those lands. The Department genuinely applauds the goals of this organization and its record of service to the people of the area. Under the Recreation and Public Purposes Act, the BLM can administratively transfer lands at reduced price to nonprofit organizations.

While we understand that there is urgency in completing the transfer proposed under this legislation and the sponsor may not wish to pursue an administrative transfer under the Recreation and Public Purposes Act, we nevertheless believe that the pricing regime under that act should apply in this instance.

H.R. 4170 is a bill to authorize the Secretary of the Interior to recruit volunteers to assist with the activities of various bureaus and offices of the Department. The Department strongly supports this bill and urges that it be enacted. It is consistent with the administration's program.

The bill would fill several statutory gaps, providing authority for the Bureau of Indian Affairs and the Office of the Secretary to work with volunteers and perfecting the existing volunteer authority of the U.S. Geological Survey and the Bureau of Reclamation. The bill is entirely consistent with existing volunteer authorities that Interior has. For instance, our Fish and Wildlife Service, the Park Service, and Bureau of Land Management have used volunteers very successfully for many, many years.

The bill does not disturb the current volunteer authority of those bureaus that presently have sufficient authority and it does not disrupt the existing programs of any of our bureaus. It is also important to note, I think, that providing this additional volunteer authority would not have any negative impact at all on Interior employees. There have certainly been no Interior employees displaced as a result of having enhanced volunteer authority at Interior.

Finally, I will address H.R. 2400 that we heard about at the very beginning of the hearing, to amend the Organic Act of Guam to clarify Guam's local judicial structure. H.R. 2400 would establish the local court system of Guam as a third, co-equal, and unified branch of government alongside the legislative and executive branches of the government of Guam. The administration has no objection to passage of the bill.

In 1994, the legislature of Guam established the Supreme Court of Guam, but 2 years later the legislature removed from the Supreme Court its administrative authority over the Superior Court of Guam. Since then Guam has had a bifurcated local court system, at a time where virtually every other entity, every other state, every other territory in the United States, has had a unified court system.

H.R. 2400 would amend the judicial provisions of the Organic Act of Guam to specifically name the Supreme Court as Guam's appellate court and outline the powers of the court, including full administrative authority for the Supreme Court over the local court system.

So again, I appreciate the opportunity to testify and my full statement on all these bills is inserted for the record, and I look forward to any questions you might have, Mr. Chairman or Senator Cantwell.

[The prepared statements of Mr. Cameron follow:]

PREPARED STATEMENT OF SCOTT CAMERON, DEPUTY ASSISTANT SECRETARY, PERFORMANCE AND MANAGEMENT, DEPARTMENT OF THE INTERIOR

ON S. 2378

Mr. Chairman, thank you for the opportunity to appear before you today to testify on S. 2378, a bill that would convey 229 acres of public lands managed by the Bureau of Land Management (BLM) to Clark County, Nevada, for its use as a heliport. S. 2378 would also impose fees on operators for all helicopter flights that occur over the Sloan Canyon National Conservation Area (NCA) with the proceeds used for the management of cultural, wildlife, and wilderness resources on public lands in the State of Nevada. The Department supports the goals of S. 2378, but cannot support a conveyance of public lands that does not ensure a fair return to the public for the use of those lands.

The BLM recognizes the massive growth occurring in Clark County and understands the need to accommodate local interests and tourism in a way that balances local needs with important environmental considerations. Congress chose to address

these concerns through the Southern Nevada Public Lands Management Act (SNPLMA) and subsequent amendments that have established a sale boundary within which BLM has worked to provide public lands to accommodate the growth in and around Las Vegas.

The public lands proposed for conveyance in S. 2378 consist of 229 acres that lie immediately west of the Sloan Canyon National Conservation Area, which includes the North McCullough Wilderness Area, and are bordered on the west by Interstate 15. These lands are adjacent to, but fall just outside of, the SNPLMA disposal boundary. The legislation directs the BLM to convey these lands to Clark County for no consideration subject to valid existing rights. The BLM, as a matter of both policy and practice, and in accordance with the Federal Land Policy and Management Act (FLPMA), generally requires receipt of fair market value for public lands transferred out of public ownership. This serves to ensure that taxpayers are fairly compensated for the removal of public lands from federal ownership.

Given the high market value of these lands, we strongly recommend that the bill be modified to require the receipt of a fair market value payment for the lands to be conveyed. Alternatively and absent legislation, the BLM could lease these lands to Clark County under the existing authority of Section 302 of FLPMA. Under this scenario, the Department would grant a lease to Clark County and would charge an annual rental that reflects the market value of the land.

S. 2378 also imposes a $3 conservation fee for each passenger on a helicopter tour if any portion of the helicopter tour occurs over the Sloan Canyon National Conservation Area. The bill directs the Clark County Department of Aviation to collect these fees and deposit them in a special account in the United States Treasury to be used by the Secretary of the Interior for the management of cultural, wildlife, and wilderness resources on public land in the State of Nevada. The BLM supports the concept of this provision but recommends that the fees be adjusted for inflation and be deposited in SNPLMA's Special Account. This would preclude the BLM from having to establish another permanent operating fund with essentially the same function as SNPLMA's Special Account. It would also give the Secretary additional flexibilities, as provided for in SNPLMA, in addressing environmental needs in Nevada in addition to those defined in the bill.

While the Department defers to the Federal Aviation Administration (FAA) regarding safety and other airspace issues, we note that the FAA generally opposes legislative mandates for specific flight paths. The Department of the Interior also has concerns about the flight path identified in this legislation. The flight path as identified in the bill, and the anticipated frequency of flights, would greatly impact the very wilderness characteristics and visitor use values that the Congress sought to protect and preserve when it established the Sloan Canyon National Conservation Area and the North McCullough Wilderness Area in the Clark County Conservation of Public Land and Natural Resources Act of 2002. These areas contain sites frequently used by Native Americans and others for religious ceremonial purposes. They also provide important migration corridors and resting, breeding, and feeding grounds for desert bighorn sheep, which are a special status species in Nevada. Moreover, visitor solitude and quality recreation experiences would be diminished.

The Department of Justice advises that it has concerns regarding inconsistencies in the bill which we would like to work with the Committee to address.

Thank you for the opportunity to testify on this bill. We look forward to working with the Committee to resolve the issues discussed above and address the needs of local communities and critical environmental issues in the State of Nevada. I will be happy to answer any questions.

H.R. 3874

Thank you for the opportunity to present testimony on H.R. 3874, introduced by Representative Mary Bono and which passed the House of Representatives on July 19, 2004. H.R. 3874 would transfer approximately 44 acres of land managed by the Bureau of Land Management (BLM) in the City of Palm Springs, California, to S.V.D.P. Management, Inc., for the purposes of providing a homeless shelter, training center, and affordable housing on the lands. The Department supports the goals of this legislation, but recommends some modifications.

The proposed transferee under the bill, S.V.D.P. Management, Inc., transacts business as Father Joe's Villages. Father Joe's Villages is a nonprofit organization operating in the southwest United States offering education, job training, child care, health care and substance abuse counseling to thousands of families and individuals. Helping the homeless has been a major focus of the organization and the proposed facility in Palm Springs seeks to further that goal.

The lands proposed for transfer under the bill lie on the northern outskirts of Palm Springs, near an Army Corps of Engineers flood control dike and a parcel of land previously conveyed by the BLM to the City of Palm Springs for a park. The legislation directs the Secretary of the Interior to transfer the lands without consideration to Father Joe's Villages. While the Department applauds the outstanding goals of this organization, we typically require that the government receive fair market value for lands transferred outside the Federal government.

Under the Recreation & Public Purposes (R&PP) Act, the BLM can administratively transfer lands at a reduced price to nonprofit organizations for certain purposes. Specifically, nonprofit organizations may be required to pay only 50% of fair market value if the lands are to be used for such things as public recreation, museums and social services that are open to the public. While we understand that there is urgency in completing the transfer proposed under this legislation, and the sponsor may not wish to pursue an administrative transfer under the R&PP, we nevertheless believe, at a minimum, that the R&PP pricing guidelines should be applied.

Section 1(b) of H.R. 3874 states that the lands conveyed are to provide a homeless shelter, a training center and affordable housing. While a homeless shelter may well qualify for a reduced R&PP rate, affordable housing is not an allowed use under the R&PP, and it is unclear whether or not the training center would qualify. We would like the opportunity to work with the Committee to clarify the legislative language to specify exactly which lands are proposed for which specific uses and the appropriate compensation to the Federal government.

We should note that because these lands are within the City of Palm Springs, their full development value is significant. The value of these lands would normally be determined through an objective appraisal conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). However, we are mindful that legislated land transfers often promote varied public interest considerations that may not lend themselves readily to the standard appraisal process or to equal value exchanges in all cases. In these instances, the balancing of important public policy considerations against the financial implications of proposed transfers are ultimately a question that rests with Congress. In balancing these considerations, Congress may wish to seek more detailed information concerning the proposed uses of the lands sought for transfer.

Section 1(c) of the bill, as passed the House, provides for the discretionary reversion of these lands to the Secretary of the Interior if they are not used for the purposes specified in the legislation. We recommend a further modification of the reverter clause to provide that such a reversion is subject to the transferee's cleanup of any hazardous materials at the site. This would ensure that the Federal government is not forced to assume potential liabilities that may arise.

Thank you for the opportunity to testify. Again, we look forward to working with the Committee to help achieve a positive result. I will be happy to answer any questions from the Committee.

ON H.R. 4170 AND H.R. 2400

Mr. Chairman and members of the Committee, it is a pleasure for me to appear before you today to discuss the Administration's views on a number of bills of concern to the Department of the Interior.

First, I would like to speak about H.R. 4170, a bill to authorize the Secretary of the Interior to recruit volunteers to assist with the activities of various agencies and offices of the Department of the Interior. The Department of the Interior strongly supports this bill and urges that it be enacted. It is consistent with the Administration's program. Through our Take Pride in America program, the Department of the Interior recruits, supports, and recognizes volunteers who work to improve our public lands and cultural and historic sites. Volunteers across America help public land managers fix fences and trails, stabilize soils, replant stream banks devastated by forest fires, restore historic buildings, teach kids to fish, collect data and monitor bird populations. They direct their energy to serving the American public and building a culture of responsibility.

Currently, just five of the Interior Department's eight bureaus have authority to accept volunteers, and two of these have only limited authority to use volunteers. Statutory provisions regarding the proper limitations on using volunteers are inconsistent or nonexistent. H.R. 4170 would provide clear authority to pay for incidental services or costs associated with volunteers, such as providing supplies or transportation to a work site, and for training and supervision of volunteers. This bill would fill many statutory gaps, providing authority for the Bureau of Indian Affairs and the Office of the Secretary to work with volunteers to support the renewal of the Take Pride in America program, and perfecting the existing volunteer authority of

the United States Geological Survey and the Bureau of Reclamation. The Department of the Interior is therefore pleased to support the passage of this legislation.

The bill is entirely consistent with existing authorities. It does not disturb the current statutory volunteer authority of the three bureaus that presently have sufficient authority and avoids disruption of existing programs to the maximum extent possible. This bill would not displace employees.

The Department of the Interior is a leader in the federal government in providing opportunities for volunteer service. Because of our unique mission in support of the Nation's natural and cultural heritage, we believe that expanding volunteer authority makes eminent good sense and that this bill is suitably drafted for that purpose. If this bill is enacted, Americans will have opportunities, for example, to volunteer as tutors in BIA schools. Nineteenth century French writer Alexis de Tocqueville observed that the United States was a nation of voluntary associations. H.R. 4170 will help to make sure our 21st century laws keep this spirit of volunteerism alive.

Next, I will address H.R. 2400—a bill to amend the Organic Act of Guam to clarify Guam's local judicial structure. H.R. 2400 would establish the local court system of Guam as a third co-equal, and unified branch of government, alongside the legislative and executive branches of the Government of Guam. The Administration has no objection to the passage of this bill.

Enacted by the Congress, the Organic Act of Guam sets out the structure of the government of Guam. Amendments over time have continually added to self-government in the territory. The Organic Act established a legislature. It was later amended to change the executive from an appointed Governor to an elected Governor, and in 1984, to authorize the Legislature to establish a local appeals court. In 1994, under the authority granted in the Organic Act, the Legislature of Guam established the Supreme Court of Guam. But, two years later, the Legislature removed from the Supreme Court its administrative authority over the Superior Court of Guam. Since then Guam has had a bifurcated local court system at a time when virtually all states have unified court systems.

H.R. 2400 would amend the judicial provisions of the Organic Act of Guam to specifically name the Supreme Court of Guam as Guam's appellate court, and outline the powers of the Supreme Court, including full administrative authority for the Supreme court over the local court system.

It is argued that only an act of Congress can bring unity and dignity to Guam's local courts. Proponents of H.R. 2400 suggest that if the Legislature retains control, the court system is subject to influence by the Legislature. Only by placing local court authority in the Organic Act of Guam can the judiciary of Guam be a co-equal and independent branch of the Government of Guam. Opponents suggest that the system is working fine, and that an administrative function divided between the Supreme Court and Superior Court is healthy for judicial system.

The structure of Guam's local judiciary is largely a self-government issue for Guam. As such, opinion from Guam should be given great consideration, as long as issues of overriding Federal interest are not involved. In 1997, the Executive branch examined an earlier version of the bill under consideration today. A number of suggestions were made for improving the bill and harmonizing it with the Federal court system. H.R. 2400 includes the suggested modifications in language. The Administration, therefore, has no objection to the enactment of H.R. 2400 in its present form.

Senator CRAIG. Scott, thank you very much.

Let us start right with you, and let me ask one question about the legislation for Guam. Is it the Department of the Interior's position that a Federal amendment to Guam's Organic Act is necessary to solidify the independent judicial structure in Guam?

Mr. CAMERON. Yes, sir, it is.

Senator CRAIG. Let me ask about S. 2378, the Clark County, Nevada, conveyance bill. What is the estimated value of the land to be conveyed in this bill?

Mr. CAMERON. Approximately $57 million.

Senator CRAIG. In your testimony you indicate that there is an administrative process for authorizing a heliport. What is involved in the process and what would the rental cost of this be?

Mr. CAMERON. Under the Recreation and Public Purposes Act, the local government, Clark County in this instance, would apply

to the Bureau of Land Management office and, depending upon the particulars, land would be made available at roughly 50 percent of fair market value. There is an option for conveying the land in fee title. There is also an option under a 1928 statute and I believe a 1982 statute for potentially leasing the land, again at 50 percent of fair market value.

So I could not give you an exact figure on what the rental rate might be at this point, but there are opportunities for significant discounts, if you will, compared to the fair market value, whether you are talking a lease arrangement or conveying fee title.

Senator CRAIG. Do you know if there are alternative sites available for this heliport?

Mr. CAMERON. My understanding is that the county and the congressional delegation have had a number of conversations and that they are thinking of some alternative sites. BLM has not been a party to those discussions, so I could not tell you specifically what those might be.

Senator CRAIG. Thank you.

Chris, I noted—and I am talking about the Northern Sierra Forest California conveyance bill, H.R. 1651. I note that the bill established the values for both the lands that the Boy Scouts will be eventually receiving as well as lands that the Forest Service will be receiving, rather than the normal requirement of an equal value exchange after the normal prescribed appraisal.

How comfortable is the Forest Service that these legislated values are fair to the American taxpayer?

Mr. PYRON. We believe it is a good exchange, in the sense that we are giving up a parcel that is outside the forest boundaries. It is 160 acres, but it is mostly under water. There is only about 15 acres that is actually outside of the FERC license for Southern California Edison. We had significant conversations as we went through this and, given the condition of our land, of which we also do not have dedicated access, it seemed to our folks that it made sense and it was reasonable and we were comfortable with the valuations contained in the bill.

Senator CRAIG. Now, the legislation does deal with an easement across private property.

Mr. PYRON. That is correct.

Senator CRAIG. Do you know if the current private property holders accept that?

Mr. PYRON. The easement would be established by the Forest Service granting the easement to Southern California Edison before the conveyance took place to the other party. So the easement does not currently exist. It is a condition of the bill.

Senator CRAIG. I see, okay.

Mr. PYRON. It is something it is my understanding Southern California Edison asked for.

Senator CRAIG. I see that by the bill the Federal land is deemed to be worth about $1,560 an acre and it is lakefront property. Can you give us any comparable land sales, suggest comparables that would be lakefront land in California?

Mr. PYRON. Actually, again if you look at the condition of the land, the fact that most of it is inundated, most of the 160 acres is inundated because of the FERC license that covers all but about

15 acres of the land, the lack of access, we did not have any real comparables that I am aware of, but that all detracts from what would otherwise seem to be a very low price for the value of the land.

Senator CRAIG. I see that we have a value of non-Federal land, whether it is a comparable or not I am not sure, at around $2,500 an acre. So if those conditions exist and there is no access currently, then I can appreciate the difference in value.

Mr. PYRON. And my understanding is the other land was compared—we had other land to compare it to to make that determination, so we are comfortable with that valuation.

Senator CRAIG. Well, my time in this round is up, so let me turn to Senator Cantwell for questions of the administration.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Pyron, you were right in your testimony that this body or no member can manage the Forest Service. We cannot. But we can have oversight, and I would like to know, in regards to the Senate bill and your testimony, which provisions do you specifically object to? Do you object to the specific calling out of how much money the Department would spend on training so that Members of Congress would know exactly how much money that is? Does the agency specifically object to that section?

Mr. PYRON. We have concerns about the difficulty that we would have in collecting, defining what constitutes training and then going out and collecting that information across the wide variety of activities. As I said before, training is an integral part of almost everything we do, safety training and the safety aspects of training. To separate that all out would be very, very difficult for us.

We could come up with a lot of different numbers that would satisfy various definitions, but would not tell us a lot. That is more what we are concerned of, is the value of the number——

Senator CANTWELL. Wouldn't a specific amount of money tell you at least some goal and focus and convince people that you were not constantly raiding those dollars to be used for emergency firefighting instead of training people in advance? I mean, we have a system today which basically said there was an identified item in 417, a suspicious substance. That was part of our preparedness efforts here in the Capitol to make these buildings safe. I do not know that anybody would have put that communication and that particular incident down as part of the cost. So we are not looking for every detail.

But right now the public is left without any information about what we are spending on training within the Forest Service, an agency that employs lots of people who go out and fight these fires. And as OSHA and the Inspector General are now saying, you are still, after 10 years, making the same mistakes and it is costing lives.

Mr. PYRON. Well, one of the things that the OIG audit did laud us for is our safety programs. It said some good things about the way we do safety training in the OIG report. And we are not raiding our safety training dollars. In fact, we have safety training standards in the Forest Service that exceed those imposed by the National Wildfire Coordinating Committee. We hold ourselves to a

higher standard than other folks. We are very much committed to doing that.

Senator CANTWELL. So you think the IG report and previous OSHA reports give you a good report card?

Mr. PYRON. I did not say that. I said the IG report—let me just see if I can find it very quickly—said that the safety training aspect of it, in interviewing 80 different folks, that they lauded us on the quality of the training and generally said it was well done, this on safety training.

It had the four areas that I mentioned before where we need to do better work on. We accept that and we are working to improve those areas. But a broad-based safety program is not focused on what is causing us the most trouble, and it is fighting fires, those transition fires that you had at Cramer, that you had at Thirtymile, and that you had at Storm King, where you have a Type 3 incident commander who is suddenly faced with a blowup in the fire and these folks are not adequately—we as an organization, not just the ICs, are not adequately responding to those changed conditions.

We need to be focused on how we handle those situations, because that is where we are having our fatalities. It is not in fighting the Hayman Fire, the Biscuit Fire, huge fires. The Rodeo-Chediski Fire, my parents were evacuated because of that fire for a week and a half. It burned over 400,000 acres and we had no accidents.

Senator CANTWELL. I see we are on yellow here and my time may be expiring, but I am trying to understand. Now I get it, because we have asked Mr. Rey for these numbers before and he promised to get them to us and now we hear the agency is not going to get them to us or does not want to tell the public.

If I could, because I do not have a lot of time, I want to follow up a question, which I am still amazed that the agency will not come up with the number that they spend generally on training.

But according to a *Seattle Times* article on this investigation and a memo written by Joseph Ferguson, a deputy incident commander for the Forest Service, quote: "If we do not improve the quality and the accountability of this program, we are going to kill a bunch of firefighters. Although there were two to three good to excellent crews on each fire, that was offset by 20 to 30 that were hardly worth having." Ferguson added, quote: "It was apparent that training for most of these crews had been done poorly or not at all."

So we want to get this right. I guarantee you that me sitting up here, hearing after hearing, is not going to get it right, because I cannot create a culture. But we can track budgets and we can hold people accountable. Now we are hearing that the agency does not want to be held accountable to the amount of investment it is making within its agency, which I find amazing.

Mr. PYRON. In the first place, we did come up with the figure of $30 million for the cost of the safety training. We are very uncomfortable with that number, but we worked really hard to come up with it. It has got a large variability.

We do not have a problem with reporting what we spend on things if in fact we do not get distracted from what is really causing people to be at risk, which is the way we fight these transition

fires. The part that I am trying to express is training folks to fight large fires or training folks for initial attack is not relevant to what is getting people in trouble. It is these transition fires.

Senator CANTWELL. I think it is very clear what is getting people in trouble, is that you have young crews who are not taught the discipline of issues such as making sure there are escape routes. That is exactly what happened in Thirtymile Fire and that is exactly what happened in Cramer. There were no identified escape routes for these individuals. So yes, that is the kind of training I am talking about, so that you do not have some really qualified crews and young kids who are 18, 19 years old who are doing this because this is the way that they are going to make money and they are sure, they think that they are well trained, and then go out and find out that they are put in harm's way without these identifying factors that were the same factors identified in Colorado, in Washington, and now are happening in Idaho about not knowing the basics of escape routes and whether a situation is too dangerous to be in.

Mr. PYRON. In the reality—I do not want to be argumentative, but the reality of the Colorado fire, Storm King, those were smokejumpers there. They were very, very well trained folks that got themselves in trouble. So it is something beyond simply saying that we have not trained people to properly identify escape routes. There is an issue there that we need to deal with and we are trying very diligently to do that.

We are working—as I said before, the simulation exercise we are doing for Type 3 incident commanders to make sure that they have the decision-making skills to confront these changing environments is a huge step forward for the organization that came out of the Cramer Fire and our evaluation of where we were really falling down on the job.

So I think we are in the same place, that we have got to make changes in the way we do it. We are just saying that measuring the amount of safety training across the entire firefighting organization is not going to produce the kind of results that you are seeking and we are seeking, which is to deal with these certain incidents or instances that are producing the fatalities we are facing.

Senator CANTWELL. I see my time has expired in this round, Mr. Chairman.

Senator CRAIG. Well, thank you.

Let me continue this line of questioning. I think it is important with the legislation at hand and with the issue and the Inspector General's report now out. Obviously we are greatly concerned about this, as our fire seasons become even more catastrophic. What is your explanation for 27 of the 81 recommendations not being implemented yet? The Senator had mentioned that earlier. I note that was a last January effort. Could you tell us how many recommendations of the 27 outstanding recommendations have been addressed since January?

Mr. PYRON. I am going to turn to Tom. He has the specifics on that.

Senator CRAIG. All right, please, Tom. Pull that forward, turn it out. Thank you.

Mr. HARBOUR. Sir, 12 of those 27 have since been implemented and we have made substantial progress on the remaining 15.

Senator CRAIG. When you say progress, what kind? What are you doing out there? Give the committee an example of the work at hand that is going to bring you in general compliance with that study.

Mr. HARBOUR. Yes, sir. We went to each national forest through the regional offices of the Forest Service and asked each national forest to certify compliance with those outstanding items that had not been completed, and then aggregated those items back up to the national level.

Senator CRAIG. With this report being done, with the concern Congress expressed and the obvious concern that I think is now beginning to be demonstrated by the Forest Service, we have just completed a fire season—well, I guess in parts of the country we are still in it, California and others. While most of those acreages that burned were in Canada—excuse me—in Alaska, obviously we still had some critical fires in the lower 48.

Based on what you know now and the work at hand and the training being done, what is your assessment of the 2004 fire season?

Mr. PYRON. From the position that I serve in, I get confronted with mostly the things that go really wrong. This year we have not had those kinds of things like we had with Cramer, that were such a tragedy back in 2003. This year has been a year that has been remarkably free of those incidents for us. But it has also been a very much smaller fire year, too.

We would like to attribute that success to some of the things we have done with the Type 3 incident commanders, but time will tell whether that has produced the outcomes that we are seeing.

Senator CRAIG. In the Senator's legislation we are talking about accountability and being able to determine money spent. Give us an example of why you see that would be a problem? I mean, administrative problem, okay; what would it cost? What are we talking about here? Why can we not establish an ongoing figure as it relates to the kind of training being done so Congress can get some level of assessment from a dollars and cents standpoint?

Mr. PYRON. I think we could work together if we were careful to define what we were costing out and that we reported those costs. I do not see us having a problem with that. What is difficult is just to have a blanket statement saying that, report the cost of safety training, when it is so, as I said before, so integrally involved in so much of the things that we do, and coming up with a number that is consistently aggregated that we can stand behind, that everybody does it the same way. It is one of the biggest problems we have in trying to cost out things across the organization, and we are working on some of that.

The other problem we have with having the budget line item is our training costs change from year to year, and trying to predict them 2 years out is pretty difficult. One thing we would not want to have happen is having a training budget that we could not exceed when we do more in the area of training, just as we would not want to spend money on training folks when it was not really necessary just to hit a budgetary target.

The reporting back is not as onerous, again if we define it appropriately, as it is just having this target in and of itself for how much training we are going to do.

Senator CRAIG. I have been associated with firefighting and observed it, been around it, for a good number of years, and I have seen a significant improvement in training and talent and expertise. You still cannot forgive incidents of the kind that the Senator and I are concerned about.

But I am also willing to accept the character of the fires you are talking about, phenomenally explosive under certain circumstances and nearly impossible to predict or to make determinations on.

Give us a little more detail about the certification of a Type 3 incident commander? How did we assess those skills? What are we doing out there now to really bring a level of experience and professionalism into, if you will, the front line of these catastrophic environments?

Mr. PYRON. I am going to turn to Tom on that.

Mr. HARBOUR. Yes, sir. The recertification for our Type 3 incident commanders consisted of bringing a cadre of skilled professionals at much higher technical levels together with a group of students and then putting them through a combination of either computerized training or what we have adapted from the Marine Corps, the sand table exercise, where we present the student with a situation and then assess their capability to respond.

These simulations involve simulated radio traffic, situations that they were presented with as they would be presented on the ground, assessment by the cadre over a 6 to 8-hour period, and then finally a face to face assessment with the student by the cadre of how they had done.

Not everyone succeeded in becoming recertified and those that were most concerned about the lack of skills did not even attend the recertification.

Senator CRAIG. I see my time is about up, but let me ask one more question, and I think you are the one that would need to respond to it. When will the Forest Service have completed its response to the recommendations of the IG report? What is your time line on that?

Mr. HARBOUR. We believe, sir, that by the end of October we will have the bulk of these items completed, and certainly we will be working closely with the IG in the mean time.

Senator CRAIG. "The bulk of them" meaning all 81?

Mr. HARBOUR. Yes, sir.

Senator CRAIG. Senator.

Senator CANTWELL. Thank you, Mr. Chairman.

I would like to talk about the training in general, because I am assuming that you also object to reporting on the effectiveness of training, which is the second provision of the bill. But if you do not, if that is not your major objection, you can say so in the answer to this question.

I am concerned about the Inspector General's report, where they found, quote, "documentation missing to support firefighters' qualifications." In particular for 65 of the 80 sample firefighters, which was about 81 percent, the IG was unable to locate sufficient documentation to support their position and qualifications. Quote:

"Without supporting documentation, we cannot provide adequate assurance that all firefighters have required training, skills and experience to perform the jobs which they have been issued credentials for."

What is your comment about that Inspector General criticism of the number of people that were missing credentials and what skill level they had actually been—they have been able to achieve?

Mr. PYRON. From my perspective, I am reasonably confident that most of those folks had the skills that we thought they had. But what we obviously have learned from this is we are doing a pretty bad job of documenting that, and without the documentation it does not matter whether they have done that or not. So we are working very diligently to acquire that documentation and only let those folks serve in those red-carded positions that can demonstrate that they have the documentation to support their qualifications.

Mr. HARBOUR. Senator, if I may, using myself as an example: nine different moves in my Forest Service career over 34 years, moving from a firefighter on the ground to a Type 1 incident commander and area commander. I have gone through an iteration of not only the naming and numbering of these courses, but an iteration of the location at various district and administrative offices of the records of the training that I have kept.

So in some cases it is simply a lack of the documentation or the lack of ability as we have gone through four different systems in the 34 years I have been acquainted with firefighting to move those records from one system and one location to another. We are attempting, based on the IG report, to go back and make certain that the documentation standards are met as per the IG's advice.

Mr. PYRON. We have committed ourselves to having this done by May 2005.

Senator CANTWELL. So you think there is no issue where individual firefighters were not adequately trained; they just did not have credentials?

Mr. PYRON. There may be instances of where that happened. But as a systemic problem, I do not think that is the case. But there may be an isolated instance somewhere.

But by complying with the OIG recommendation here, we are going to go back for every single firefighter and make sure that that documentation is available so we do not have that problem at all.

Senator CANTWELL. The IG report was also very big on performance standards, basically that the Forest Service did not have a performance standard for firefighting safety, specifically the fire safety performance, underscore, what are called individual responsibilities and accountability for the firefighting practices. What is your understanding about what the agency is doing to improve those standards?

I think what we have seen from Storm King, Thirtymile, and now Cramer is a list of things that people do not—every hearing is the same: We are working on them, we are improving. And then we come back to the same, the recommendations, which I could have here, are very similar. So I think what the Forest Service, Thirtymile on one side and Cramer on the other, same rec-

ommendations. So years pass, then you see the same recommendations.

I think what the IG report is saying is that you have to have performance standards so that you know exactly what these requirements mean and when they are being violated. Otherwise you do not really know whether someone is able to achieve those goals. We always hear that, we are working on it, but we still come back to incidents involving escape routes.

Mr. PYRON. Let me return to your basic question, but I want to respond to the second part of that first. We are doing things differently than we have in the past. The sandbox exercise and the simulation is a totally new approach to try to deal with something that we think has real promise for increasing the capability and the competency of our Type 3 incident commanders. And we have done that. We did it for 1,068 ICs. So that is not saying we are working on it. It is something we have done.

Senator CANTWELL. An "IC" is?

Mr. PYRON. Incident commander, on a Type 3 fire, which was the kind of fire that we had at Storm King or at Thirtymile or Cramer.

My point is this is not all prospective. We are doing things now. But we are also trying to work outside of the box for the first time and look to organizations like the JFK School of Government to help us think about the way we are thinking about these things. We have gone to the military, the Marines, to look at how they deal with these kind of situations, to make sure that we are not missing something because we are locked in our view of how the world should work.

We are doing those things. But as it relates to the first part of your question, the answer is the Forest Service has issued performance standards that were responsive to the recommendation for forest supervisors, district rangers, and fire program managers and supervisors, and the OIG position has been to accept the Forest Service management decision on this point. So I think we have completed that.

Senator CANTWELL. You think performance standards now are in place?

Mr. PYRON. They are.

Senator CANTWELL. What are they?

Mr. HARBOUR. Senator, in late May we issued performance standards. Chris and the Chief issued those performance standards, and the regions certified by the end of June that in fact those performance standards for fire program managers, line officers, are in place. We can provide a copy of those.

Senator CANTWELL. That would be great. So the IG report that was issued basically saying they need performance standards for firefighter safety, you think that they somehow missed those or the timing did not correspond?

Mr. PYRON. I think when they issued the report we had not completely fulfilled that obligation in every circumstance. There was some percentage that we had not done it yet. What we have done since then is gone back and made sure we had compliance for 100 percent.

Senator CANTWELL. I see my time is up again, Mr. Chairman.

Senator CRAIG. If you have some more questions, please continue for a few moments.

Senator CANTWELL. Thank you, Mr. Chairman.

Well, we certainly would like a copy of the performance standards.

Mr. PYRON. We will provide that.

Senator CANTWELL. Then the third issue of the legislation that we have been proposing is basically taking the private contractors and treating them with the same kind of training as the Federal wildland firefighters. What is your objection to that?

Mr. PYRON. I think right now—well, in the first place, the bill requires that we do that. We do that as a matter of course now. It is a requirement of the contracts that they meet the training standards contained in the National Wildland Fire Coordinating Committee.

Senator CANTWELL. The private contractors do?

Mr. PYRON. The private contractors do, correct.

Senator CANTWELL. They receive the same amount of training?

Mr. PYRON. That they have to have the same qualifications, which requires the training, that we require of our firefighters across the board.

Senator CANTWELL. But are we not talking about the difference between somebody being trained for a couple of weeks versus a long period of time?

Mr. PYRON. Which all depends on which job you are fulfilling in the fire organization. I mean, our entry level firefighters have less training than somebody who is a crew boss or a squad boss or that kind of stuff. It depends on the position that you are in, and they have to meet the qualifications to hold those positions.

Now, what we are working on is we have a requirement, but our contract administration has got to be beefed up to make sure that they are living up to those requirements. We have been working very closely with the Oregon Department of Forestry, which is actually the contractor for most of these crews, to help us to ensure that they are meeting the qualification standards that we are contracting for, that they have the training that we are contracting for, they have the experience that we are contracting for.

One of the things that the audit report found is that we are making good strides in that area and they found no reason to believe that we were not going to be successful in doing that. That was a finding in the audit report.

Senator CANTWELL. So what do you object to then in that last section of the bill?

Mr. PYRON. The way the bill is written—and explain to me if I have got it wrong—you are saying that—the bill says that the contractors should live up to the standards. We agree with that. And you are saying that we should have a system in place to ensure that that happens. We agree with that.

I think that is good common sense. There is no reporting requirements that I am aware of in there. So as that is written we would not object to that part of the bill, unless I am missing something.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator CRAIG. Any further questions?

Senator CANTWELL. No. Thank you, Mr. Chairman.

Senator CRAIG. Well, let me thank both agencies for being here today. I am pleased to hear that there is substantial progress in firefighter training. Obviously it is of great concern, and we in the lower 48 lucked out this year with a wetter season than planned or we would have been plunged into another catastrophic fire scenario that, unless we have highly skilled and trained people on the ground, is going to put people at risk in these environments.

At the same time, it is a close call—I think we all understand that—between putting people at risk and when you have a human structure in the path of a fire, attempting to get in there and save that structure versus backing crews out and saying, no, that is a place no one should go. That is a constant balance of force, but it is also a constant reminder that you are going to have to have quality, skilled people on the ground making those kinds of judgments as it relates to putting firefighters in harm's way versus doing what they are trained effectively to do.

That is why I think you are seeing this concern expressed, this legislation being offered, as we adapt to and bring the level of quality and training and experience up and the procedural mechanisms necessary to ensure it as these fire scenarios have significantly changed.

We thank you all for being with us and I have already mentioned we will leave the record open for a period of time. The subcommittee will stand adjourned.

[Whereupon, at 3:54 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, November 10, 2004.

Hon. LARRY E. CRAIG,
Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses to questions submitted following the September 29, 2004, hearing on S. 2378, H.R. 2400, H.R. 3874, H.R. 4170 and S. Res. 387.

Thank you for the opportunity to provide this material for the record.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosures.]

QUESTIONS FROM SENATOR CRAIG

H.R. 2400, TO AMEND THE ORGANIC ACT OF GUAM FOR THE PURPOSES OF CLARIFYING THE LOCAL JUDICIAL STRUCTURE OF GUAM

Question 1. Locally, Guam has enacted a law that already designates the Supreme Court as the highest court in the territory. Is it the Department of the Interior's position that a federal amendment to Guam's Organic Act is necessary to solidify an independent judicial structure in Guam?

Answer. Given the history of the Supreme Court of Guam, the short answer is "Yes."

In 1984, the Congress authorized the Legislature of Guam to establish an appellate court for Guam's local judiciary. Each of the fifty state court systems in the United States is structured with a unified hierarchy. Consistent with the authority granted by the Congress, the Legislature of Guam established a Supreme Court. Shortly thereafter, the Legislature shifted authority from the Supreme Count to the Superior Court of Guam, creating a bifurcated system.

At the time the Congress granted appellate court authority to the Legislature of Guam, no one contemplated that the Legislature of Guam would tinker with the jurisdiction of the appellate court (i.e., Supreme Court of Guam) in order to satisfy political ends. Politics, however, has played a major role in the shifting of responsibilities within the judiciary of Guam.

Traditionally, the tripartite structure of government is established in the foundation document of that government. For the United States and the fifty states, all three branches of government, including the courts, are found in their respective constitutions. The foundation document for Guam is the Organic Act of Guam. The Organic Act makes provision for the legislative and executive branches, but only contains *authority* for establishing an appellate court. The Organic Act does not establish the appellate court or Supreme Court, *per se*. H.R. 2400 would accomplish the task by placing the structure of the judiciary of Guam in the Organic Act of Guam, i.e., on a par with the legislative and executive branches of Guam

Question 2. Why are all the parties—the Governor, the Legislature, and the Judicial Council of Guam—now supportive of this legislation? I believe this was not always the case.

Answer. In previous years, political divisions on Guam pitted various Guam institutions against each other on the issue of Supreme Court authority. These differences now appear to have been resolved. Direct communication with the Governor, Legislature and Judicial Council would be the best way to elicit specific reasons for changes in their positions on the issue.

S. 2378, TO PROVIDE FOR THE CONVEYANCE OF CERTAIN PUBLIC LANDS IN CLARK COUNTY, NEVADA, FOR USE AS A HELIPORT

Question 1. What is the estimated value of the land to be conveyed in this bill?

Answer. These lands have not been appraised, but based on comparable land sales in the area from June 2, 2004, land sales receipts, the lands could sell for approximately $248,000/acre. The value of the 229 acres proposed for conveyance is estimated at approximately $56 million.

Question 2. In your testimony, you indicated that there is an administrative process for authorizing a heliport. What is involved in this process? What would the rental cost be?

Answer. The BLM could enter into a long-term lease with the County through authority provided in Section 302 of the Federal Land Policy and Management Act. This section allows the Secretary to authorize a lease to entities for the use and development of public lands for commercial purposes. It also requires the entity to pay a rental fee based on the market value of the lands. The application and approval procedures are outlined in 43 CFR Part 2920.[1]

An individual or entity wishing to lease BLM land for a commercial purpose is required to submit an application and an application fee to the BLM. If the purpose of the lease complies with BLM land use plans as determined by a BLM review, the application is processed and NEPA and other resource clearances are initiated. An appraisal on the land is done to determine the rental fee, which is based on fair market value. A Notice of Realty Action is published for public comment in the "Federal Register" and a publication of local interest. Final decisions to issue a permit are subject to protest and appeal.

Question 3. Are there alternative sites available for a heliport?

Answer. We are aware of ongoing discussions with the sponsors of the legislation and various interests in Nevada to resolve this issue. We have not been directly involved with these discussions but we are always happy to work with the sponsors and the Committee to determine alternative locations.

H.R. 3874, TO CONVEY FOR PURPOSES CERTAIN FEDERAL LANDS IN RIVERSIDE COUNTY, CALIFORNIA, THAT HAVE BEEN IDENTIFIED FOR DISPOSAL

Question 1. What is the estimated value of the land to be conveyed in this bill?

Answer. We have not completed an appraisal for this property. However, based on preliminary estimates and comparable values we can give a general estimate for the 44 acre parcel of $1.3 million.

Question 2. What values or uses are these lands currently being managed?

Answer. These lands are currently being used for the placement of two water wells and an electrical power line under BLM rights-of-way grants. These lands are also used as open space by residents in the area.

H.R. 4170, TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO RECRUIT VOLUNTEERS TO ASSIST WITH, OR FACILITATE, THE ACTIVITIES OF VARIOUS AGENCIES AND OFFICES OF THE DEPARTMENT OF THE INTERIOR

Question 1. I am told that this is a priority for Secretary Norton. From the looks of it, it make sense to provide all agencies in the Department of the Interior with similar authority to utilize volunteers.

Question 2. Can you help us understand why, if this is a priority, it has not been introduced in the Senate and why it was only introduced in the House of Representatives on July 20th of this year?

Answer. As noted in our testimony, the Department of the Interior is a leader in the federal government in providing opportunities for volunteer service. While we have been aware of deficiencies in volunteer authorities for some of our bureaus for some time, developing appropriate language that would ensure against any disruption of existing volunteer programs and would satisfy the concerns of other agencies of the Federal government was not an easy task. The Department of the Interior has been working with other Federal agencies since the beginning of this Administration to develop language that satisfies the Administration's concerns and ensures

[1] A copy of the regulation has been retained in subcommittee files.

an appropriate legal framework for our volunteers. The provisions in the current bill reflect the consensus that was reached.

The bill was introduced in the House on April 20th of 2004. Secretary Norton and Congressman Richard Pombo co-authored an op-ed that appeared in the San Diego Union-Tribune on April 9th of 2004 explaining the goal of the legislation to secure the place that volunteers have in helping the Department of the Interior serve Americans. When the bill passed the House Committee on Resources, the Secretary issued a press release expressing her support for the bill and reiterating that "Volunteers are highly valued and are very important to our ability to do more in our service to the American people."[2] H.R. 4170 passed the House on July 19th. As the Senate Committee on Energy and Natural Resources considers this bill, the Department of the Interior would like to reiterate our support. We hope that it will garner the same enthusiasm from the Senate that it has received from the House.

SENATE RESOLUTION 387, COMMEMORATING THE 40TH ANNIVERSARY OF THE WILDERNESS ACT

The Department of the Interior did not testify on Senate Resolution 387.

QUESTIONS FROM SENATOR BINGAMAN

REGARDING S. 2410

Question. For each of the last ten years, how many Department of the Interior employees were formally qualified to fill wildland fire positions?

TOTAL EXPENDITURES

[Millions of dollars]

	BLM	BIA	NPS	FWS	DOI Total
1996	3,535	708	3,105	599	7,947
1997	3,671	674	2,604	615	7,564
1998	3,989	943	3,284	810	9,026
1999	4,088	1,623	3,686	982	10,379
2000	3,832	2,372	2,721	824	9,909
2001	4,352	3,416	3,007	984	11,759
2002	5,219	5,506	3,253	1,144	15,122
2003	5,453	5,973	3,470	1,221	16,117

Note: Due to system and data-tracking changes, data responding to this request only dates back to 1996. These numbers also include some Emergency Firefighters and others "red carded" and hired on an incident basis, but not carried on the rolls as DOI employees. For 2004, all DOI agencies are in the process of converting fire qualifications data to the new Incident Qualifications and Certification System (IQCS), which was deployed in July 2004. Until the data is fully converted and updated, we are unable to ascertain the exact number of employees who currently hold red cards for fire duty.

REGARDING S. 2378

Question 1. What is BLM's estimate of the increase in frequency of flights over the North McCullough Wilderness Area and Sloan Canyon National Conservation Area that would result from implementation of this bill?

Answer. There are no scheduled tourist helicopter flights over Sloan Canyon NCA at this time. Air traffic over the NCA consists of higher elevation jet traffic on approach to or take-off from McCarran International Airport and intermittent small, fixed-wing aircraft flying in and out of the Henderson Executive Airport, which is just north of Sloan Canyon NCA. If the proposed heliport is built, it is estimated that there would be 180 helicopter overflights, or 90 round-trips per day over the NCA.

Question 2. Your testimony refers to the "high market value" of the lands to be conveyed. What is the estimated value of the land?

Answer. These lands have not been appraised, but based on comparable land sales in the area from June 2, 2004, land sales receipts, the lands could sell for approximately $248,000/acre. The value of the 229 acres proposed for conveyance is estimated at more than $56 million.

[2] The op-ed and press release have been retained in subcommittee files.

REGARDING H.R. 3874

Question 1. Does the bill preclude for-profit use of the property to be conveyed?

Answer. H.R. 3874 states that the lands conveyed under this bill are to be used "to provide a homeless shelter, a training center, and affordable housing." Section 1(c) of H.R. 3874 states that if the lands are not used for the purposes set forth in the bill, then the lands revert to the United States. The legislation does not directly address nonprofit versus for-profit enterprises.

Question 2. What is the estimated value of the property?

Answer. We have not completed an appraisal for this property. However, based on preliminary estimates and comparable values we can give general estimate for the 44 acre parcel of $1.3 million.

QUESTIONS FOR THE RECORD FOR DELEGATE BORDALLO REGARDING H.R. 2400

QUESTIONS FROM SENATOR BINGAMAN

Question 1. During the 107th Congress, the House and Senate considered H.R. 521 and S. 2823, the precursors to H.R. 2400. However, final action was blocked by opposition from Guam. Please explain what factors were behind that opposition and why they are not factors this year.

Answer. I believe this question as well as others that relate to consideration of H.R. 521 during the 107th Congress can best be answered by my predecessor, Congressman Robert A. Underwood. I understand, as you have noted, that in 2002 some unfavorable views on H.R. 521 were received and entertained by the House Committee on Resources as well as possibly by the Senate Committee on Energy and Natural Resources. The House Committee on Resources held a legislative hearing on H.R. 521 in Washington, D.C. on May 8, 2002, during which the Honorable F. Philip Carbullido, the Acting Chief Justice of the Supreme Court of Guam, and the Honorable Alberto C. Lamorena, III, the Presiding Judge of the Superior Court of Guam, testified. Statements from several other leaders in Guam were received by the House Committee on Resources. This testimony is a part of the hearing transcript. Some of the testimony received indicated that opponents would prefer that this issue be addressed in a Guam Constitution. However, advocates point out that the process to draft and ratify a Constitution would be lengthy and that the need to address this issue is immediate and significant. I believe earlier stated opposition to the legislation became moot and concerns assuaged when the Guam Legislature amended the Guam Code on October 31, 2003, to unify and reorganize the judiciary of Guam (Guam Public Law 27-31). This Act of the 27th Guam Legislature reorganized the judiciary in a manner consistent with H.R. 2400. Guam Public Law 27-31 recognizes and empowers the Supreme Court of Guam as the highest court of Guam. H.R. 2400 ensures that the Supreme Court of Guam and a unified judiciary is not subject to future adverse actions of the legislature. H.R. 2400 would solidify the changes made by Guam Public Law 27-31 in the Organic Act of Guam to ensure the continued, uninterrupted functioning of an efficient, unified, and independent judicial branch of local government for the people of Guam.

Question 2. It is unusual for territorial governments to petition Congress to limit their scope of self-government, as H.R. 2400 would do. What is the reason that the Government of Guam requests this limitation?

Answer. In his June 5, 2003, letter requesting the re-introduction of H.R. 521, the Honorable F. Randall Cunliffe, Chairman of the 27th Guam Legislature's Committee on Judiciary and Transportation, states that the legislation "is necessary to protect Guam's local judiciary from infringement from the other branches of our government." Without the Organic Act amendment the judiciary in Guam will be left vulnerable to local politics and undue political interference. Recent developments in Guam have emphasized the need for H.R. 2400 inasmuch as the Supreme Court of Guam has rendered judgments on local disputes between different branches and elected officials of the Government of Guam. H.R. 2400 is a practical solution until Guam embarks on a process to draft and ratify a Constitution. H.R. 2400 empowers the judiciary by establishing separation of powers for the three branches of government in the Organic Act of Guam, and by correcting the oversight of the 1984 Omnibus Territories Act (Public Law 98-454) H.R. 2400 strengthens Guam's self-government. H.R. 2400 firmly establishes a unified judiciary in Guam with a Supreme Court equivalent in authority to Supreme Courts established in the 50 States. I do not view H.R. 2400 as a limitation on self-government. The Organic Act of Guam is the de facto constitution of Guam. This amendment to the Organic Act, while setting limitations, is a limitation within a constitutional framework on the powers of the other branches of government, just as the United States Constitution, in estab-

lishing a tripartite form of government limits, through checks and balances, the powers of each branch of government.

Question 3. Can you can assure the Committee that enactment of H.R. 2400 is supported by a consensus of the government, courts, and legislature of Guam?

Answer. I can assure the Committee that favorable views on H.R. 2400 have been expressed and received from leaders in every branch of the Government of Guam. Many of these views have been transmitted to Congress. I have submitted several documents that testify to the unified support for the principles of this legislation for the Committee's record.

It is important to note that the 27th Guam Legislature took action on October 31, 2003, with the enactment of Guam Public Law 27-31, to establish the Supreme Court of Guam as the highest court with administrative control over the judiciary in the territory. Additionally, on April 23, 2004, the 27th Guam Legislature adopted a resolution (Resolution No. 139), sponsored by all 15 of its members, that requests Congress to "expeditiously and favorably pass H.R. 2400" to amend the Organic Act to reflect the changes made by Guam Public Law 27-31.

Furthermore, on May 6, 2004, the Judicial Council of Guam, comprised of the justices and judges of the Supreme Court of Guam and the Superior Court of Guam, adopted a resolution that also requests Congress to pass H.R. 2400.

Moreover, the Honorable Felix P. Camacho, the Governor of Guam, has written to me in support of H.R. 2400. In his letter of May 7, 2004, he states that it is his "personal preference" for a "tripartite structure of government to be established in a Guam Constitution." However, he states that until Guam adopts its own constitution, he supports the efforts to establish Guam's judicial branch in the Organic Act.

The support for H.R. 2400 from local government leaders in Guam is further evidenced by the presence of the Honorable Kaleo S. Moylan, the Lieutenant Governor of Guam, at this hearing and in his statement for the record.

All of these actions and communications testify to the broad support H.R. 2400 has received among stakeholders and local leaders in Guam. In addition to government leaders, the Guam Bar Association has been firm in its support for the legislation.

Question 4. Are you aware of any significant opposition to H.R. 2400, and if so, by whom and for what reasons?

Answer. I introduced H.R. 2400 at the request of the Honorable F. Randall Cunliffe, Chairman of the 27th Guam Legislature's Committee on Judiciary and Transportation, on June 10, 2003. I have not received any opposing views relating to H.R. 2400. Again, I would reiterate that the local dispute regarding the authority of the Supreme Court over the Superior Court and the entire judicial branch of the Government of Guam has been settled by local law. Opponents to H.R. 521 in the 107th Congress have accepted and come to recognize that the Guam Legislature has taken the view that a unified judiciary is in Guam's best interest. H.R. 2400 enjoys bipartisan support in Guam. The Republican Governor and Lieutenant Governor, and the Democrat-controlled 27th Guam Legislature are all in support of this legislation.

Questiion 5. I understand that Mr. Jack Abramoff was the lobbyist hired to block enactment of this bill in the last Congress. As you may know, he is now under investigation by the Senate Committee on Indian Affairs and by the Justice Department for possible illegal activity. Is there any reason to believe that his activities in Guam may have involved any illegal activity that should also be investigated?

Answer. I do not have first-hand knowledge of Mr. Abramoff's activities with regard to this issue. It is accurate that both the Supreme Court of Guam and the Superior Court of Guam retained the services of consultants on this issue. Mr. Abramoff signed a lobbying registration form that was filed with the Secretary of the Senate on June 20, 2002, and that lists an attorney contracted by the Superior Court of Guam as his client. This registration on file with the Senate's Office of Public Records indicates Mr. Abramoff was retained to lobby on "public policies related to issues of judicial and legal structures for states and possessions." He also signed a mid-year report that was filed on August 14, 2002, and a year-end termination report that was filed on February 3, 2003, for this client. Both of these reports identify H.R. 521 by bill number as the specific lobbying issue and specify both the House and the Senate as contacts. Together these reports indicate $540,000.00 was received by Mr. Abramoff's firm to lobby on this issue in 2002. Local media in Guam have reported on the manner of payments made to consultants and lobbyists on this issue. These reports also indicate that the Supreme Court of Guam paid its consultant $80,000.00 from its budget for contractual services.

APPENDIX II

Additional Material Submitted for the Record

OFFICE OF THE GOVERNOR OF GUAM,
Hagåtña, Guam, May 7, 2004.

Hon. MADELEINE Z. BORDALLO,
Congresswoman, U.S. House of Representatives, Washington, DC.

DEAR MADELEINE: This letter is written in reference to H.R. 2400, a bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

As I stated in previous testimony in reference to a similar bill introduced by your predecessor in the 107th Congress, "I certainly support the independence of all branches of government, inclusive of the judicial branch of Guam." As the Chief Executive of our Territory, I certainly appreciate our tripartite form of government which was crafted by the founders of our great nation and unanimously adopted by the states of our union. I fully recognize that the effectiveness of our system of government, both on the federal and local level, rests in checks and balances. To this end, I recognize that the judicial branch of our Territory, like our executive and legislative branches, must be "constitutionally" established or in our case, have an "Organic" existence with similar powers to govern, reorganize, manage and account for its branch with judicial independence founded under our U.S. Constitution. To the extent H.R. 2400 furthers this principle, I am supportive of your efforts and the assistance of your colleagues.

My personal preference is for our tripartite structure of government to be established in a Guam Constitution. Further, the specifics of the internal operation of our judicial branch should be established locally. However, I am cognizant that since I submitted my previous testimony to Congress on this issue, local law affecting the Guam judiciary has changed. In addition, until Guam adopts its own constitution, the Organic Act functions as Guam's de facto constitution. For these reasons, I support your efforts to establish Guam's judicial branch in our Organic Act.

With Warm Personal Regards,

FELIX P. CAMACHO,
Governor of Guam.

OFFICE OF THE LIEUTENANT GOVERNOR OF GUAM,
Hagåtña, Guam, September 29, 2004.

Hon. PETER V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: H.R. 2400: To amend the Organic Act of Guam for the purpose of clarifying the local judicial structure of Guam.

DEAR MR. CHAIRMAN AND MEMBERS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES: For the Committee record I am Kaleo S. Moylan, Lieutenant Governor of Guam. At the onset, let me offer a sincere appreciation for this opportunity to express our support for H.R. 2400. The purpose of H.R. 2400 is to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure in Guam.

Mr. Chairman, H.R. 2400 amends the Organic Act of Guam to establish the Supreme Court of Guam as the highest local court in Guam. Furthermore, it also amends the Organic Act to require a unified judicial system composed of:

- An appellate court designated as the 'Supreme Court of Guam';
- A trial court designated as the 'Superior Court of Guam'; and

- Other lower local courts as may have been or may hereafter be established by the laws of Guam.

Originally, appellate cases in Guam that fell under territorial jurisdiction were reviewed by the U.S. Court of Appeals for the Ninth Circuit. In 1973, the 12th Guam Legislature established the first Supreme Court of Guam to hear these appealed cases. The establishment of the court was ruled to be unauthorized by the U.S. Supreme Court in *Territory of Guam* v. *Olsen*, 431 U.S. 195 (1977). Congress, in response to the Olsen case, amended the Organic Act of Guam (1984) authorizing the Guam Legislature to create an appellate court to hear all cases in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

In 1992 when the Guam Legislature passed legislation to create the Supreme Court of Guam, it intended to make this entity the highest local court and vest it with those powers traditionally held and exercised by the highest court of a State or territory.

In authorizing the creation of an appellate court for Guam, the Congress left the newly created court subordinate to Guam's other two branches of government. Because the judiciary was established under Guam law, it can be subject to changes based upon shifts in control of Guam's executive and legislative branches. Establishing the Supreme Court of Guam within Guam's Organic Act will make the judiciary a coequal branch of government. H.R. 2400 corrects the unintended oversight of the Omnibus Territories Act of 1984 (Public Law 98-454) and insulate the judiciary in Guam from local politics and undue political interference. More importantly, it removes any uncertainty regarding future actions that threaten to undo the clarity of roles established by local statute.

Recent developments in Guam have emphasized the need for H.R. 2400 in as much as the Supreme Court of Guam has rendered judgments on local disputes between different branches for the Government of Guam and between elected officials in the territory. In the 107th Congress, there was local opposition; however, the Guam Legislature subsequently took action with the enactment of Public Law 27-31, which established the Supreme Court of Guam as the highest court with administrative control over the judiciary in the territory.

In closing, let me just reiterate that the 27th Guam Legislature, has adopted Resolution No. 139, sponsored by all 15 of its members, expressing their support of H.R. 2400. Also, the Governor of Guam in a letter to Congresswoman Bordallo has expressed his support to.

Thank You and "*Dangkulo na Si Yu'us Ma'ase para todus hamyu!*"

KALEO S. MOYLAN,
Lieutenant Governor of Guam.

NATIONAL LANDSCAPE CONSERVATION SYSTEM COALITION,
C/O THE WILDERNESS SOCIETY,
Washington, DC, September 29, 2004.

Hon. LARRY E. CRAIG,
Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR CRAIG: As members of a coalition that seeks to protect and enhance the National Landscape Conservation System (NLCS), we urge you to amend S. 2378, legislation which would subject Sloan Canyon National Conservation Area to frequent helicopter overflights. We would like to submit the following comments regarding S. 2378 to the Senate Subcommittee on Public Lands and Forests as part of the official record of the hearing scheduled for 29 September 2004.

When designated a National Conservation Area in 2002, Sloan Canyon became the newest addition to the National Landscape Conservation System (NLCS). The NLCS is comprised of 26 million acres of spectacular Western landscapes managed under the auspices of the Bureau of Land Management. NLCS National Monuments and Conservation Areas harbor irreplaceable natural, cultural, and scientific treasures, like Sloan Canyon's 1,700-plus petroglyphs and its bighorn sheep.

In addition to protecting the physical resources of these large western landscapes, the National Landscape Conservation System is intended to help safeguard the remote, wild character of Sloan Canyon, and of other sites ranging from to Arizona's Grand Canyon-Parashant National Monument, to California's King Range. In the face of increasing urbanization, the NLCS and wild, quiet places like Sloan are tremendously important to Americans nationwide. Solace and solitude are rapidly dwindling commodities, even within many of our public lands.

Accordingly, legislation that would route helicopter overflights at intervals of 1-10 minutes every day over Sloan Canyon fundamentally undermines the concept of the National Landscape Conservation System. Such legislation would destroy the special quiet character of this National Conservation Area and the 17,000 acres of wilderness it contains—quiet that is a treasure, given the area's proximity to Las Vegas. Helicopter overflights could also increase stress on the local bighorn sheep population. Modifying S. 2378 to utilize the Sunrise Landfill site for the heliport, and directing flights away from Sloan Canyon, would be a far better choice—one that minimizes conflicts with residents, conservationists, historic preservation advocates, wildlife, hikers, and others.

Sloan Canyon is a national treasure, of concern to our wide array of organizations from across the country and our millions of members who believe in protecting America's ecological, cultural, and historic heritage in the National Landscape Conservation System. Like all the lands in the NLCS, Sloan Canyon should remain a place where Americans can enjoy peace, quiet, wildlife, and cultural history without the visual or aural intrusion of helicopter noise.

Sincerely,

Kelly Burke, Executive Director, Grand Canyons Wildlands Council; Amber Clark, Public Lands Coordinator San Juan Citizens Alliance; Larry Copenhaver, Conservation Director, Montana Wildlife Federation; Jim DiPeso, Policy Director, Republicans for Environmental Protection; Gerry Jennings, President, Montana Wilderness Association; Don Hoffman, Director, Arizona Wilderness Coalition; Emily Kaplan, Public Lands Advocate, U.S. Public Interest Research Group; Bill Martlett, Executive Director, Oregon Natural Desert Association; Chuck McAfee, Founder, Friends of the Monument (Canyons of the Ancients); Sean McMahon, Senior Policy Specialist for Land Stewardship, National Wildlife Federation; Maribeth Oakes, Director, Lands Protection Program Sierra Club; Bill Patterson, Western Colorado Congress; Tom Robinson, Director of Government Affairs, Grand Canyon Trust; Wendy Van Asselt, NLCS Project Director, The Wilderness Society; and Dave Willis, Chair, Soda Mountain Wilderness Council.

INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION,
Boulder, CO, October 1, 2004.

Hon. LARRY CRAIG,
Chair, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Hon. RON WYDEN,
Ranking Member, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIR CRAIG AND RANKING MEMBER WYDEN: Thank you for your letter of September 20, 2004, regarding the Lewis and Clark Mount Hood Wilderness Act. I appreciate the opportunity to respond to questions from Senator Gordon Smith, on behalf of the International Mountain Bicycling Association.

1. There is document published by your association (IMBA) entitled "Natural Resource Impacts of Mountain Biking. " I'd like to read a quote from that document:

> *"A body of empirical, scientific studies now indicates that mountain biking is no more damaging than other forms of recreation, including hiking . . . The wisdom of prohibiting particular user groups in order to satisfy the desires of other groups is a matter for politics rather than science."*

With this in mind, do you believe that mountain bikers are more harmful to Mt. Hood than hikers or horseback riders who would still be allowed access to Wilderness Areas?

No, IMBA is not aware of any evidence that would indicate that mountain bike access to trails in the Mount Hood region is more harmful than the impact of hiking or equestrian use. To the contrary, IMBA believes there is strong evidence to show that mountain bike impacts to trails and wildlife are similar to hiking and less than equestrian impacts. As Senator Smith correctly points out, IMBA's document "Natural Resource Impacts of Mountain Biking" demonstrates that mountain biking is no more damaging than other forms of recreation, including hiking. While there are no specific studies for the Mount Hood region, studies of mountain bike impact in other areas are persuasive.

Science demonstrates that all forms of outdoor recreation—including bicycling, hiking, running, horseback riding, fishing, hunting, bird watching, and off-highway-vehicle travel—cause impacts to the environment. Trails deteriorate over time. Yet, to date, no scientific studies show that mountain bikers cause more wear to trails than other users.

To the contrary, in 1994, John Wilson and Joseph Seney of Montana State University published "Erosional Impacts of Hikers, Horses, Motorcycles and Off-Road Bicycles on Mountain Trails in Montana." Wilson and Seney found no statistically significant difference between measured bicycling and hiking effects. They did find that horses caused the most erosion of the trails, and that motorcycles traveling up wetted trails caused significant impact. Wilson and Seney suggested that precipitation will cause erosion even without human travel and this factor may significantly outweigh the effects of travel. Trail design, construction, and maintenance may be much more important factors in controlling erosion.

In 1986 the Santa Clara County Parks and Recreation Department of northern California studied the erosional effects of bicycling on the Edwards Field Trail. The researcher, Christopher S. Crockett, observed minimal change in the visual trail characteristics in most cases. The data led the county parks department to open trails to mountain biking.

In addition, no scientific studies indicate that bicycling causes more degradation of plants than hiking. Trails are places primarily devoid of vegetation, so for trail use in the center of existing paths, impacts to vegetation are not a concern. This issue is relevant with regard to widening of trails and travel off established trails.

One study concluded that hiking and bicycling trample vegetation at equal rates. Eden Thurston and Richard Reader of the University of Guelph, Ontario, published "Impacts of Experimentally Applied Mountain Biking and Hiking on Vegetation and Soil of a Deciduous Forest" in 2001, with three principal findings. First, impacts on vegetation and soil increased with biking and hiking activity. Second, the impacts of biking and hiking measured were not significantly different. Third, impacts did not extend beyond 30cm of the trail centerline.

Based on these studies, IMBA believes that mountain biking is no more damaging than other forms of recreation, including hiking. Furthermore, we are confident that the study called for by the Mount Hood Pedalers Demonstration Experiment Area (HoodPDX) will show similar results to the studies mentioned above.

2. IMBA 's official position on wilderness designations says that prohibition of mountain bikes in Wilderness Areas "is not based on valid resource protection concerns. Under current regulations, IMBA cannot support the designation of additional Wilderness Areas where significant biking opportunities would be eliminated. "

How many miles of trail closure on Mount Hood would IMBA and its members tolerate before opposing this legislation?

IMBA is unable to quantify this issue at this time. The true extent of the closures is not fully presented in the legislation or its supporting maps and background materials. We believe that the Forest Service is not aware of many trails in the Mount Hood National Forest. Furthermore, the maps accompanying this bill are inadequate for clear public analysis. Drawn in black and white and scaled too small, the maps obscure or do not depict critical topographic features and many of the trails at issue. The committee and the public need to have maps that clearly display relevant geographic features and impacted trails. While IMBA believes that the bill affects more than 200 miles of trails, we cannot say how many of those miles the mountain bike community would accept losing, or alternatively, tolerate before opposing the legislation. In addition, there are other issues to consider, not only the number or mileage of closed trails but their location, type, usage.

Generally, IMBA believes that mountain bikers should have access to all trail miles because we reject the notion that trails need to be closed to bikes in order to protect lands. As I discussed in response to the previous question, mountain bike impacts on land and wildlife are very similar to hiking and equestrian impacts. Therefore, IMBA believes that mountain bikes should have access to the same areas as hikers and equestrians, subject to the discretion of local land managers to regulate the carrying capacity of any particular trail or trail system. Ideally, legislation passed by Congress would establish that trails are open to bikes unless closed, and the decision is left to the discretion of the relevant land manager based on an impact analysis and subject to adequate notice and opportunity to comment by interested stakeholders.

3. Backpackers cite the need for solitude in their support for additional wilderness areas. Do mountain bikers also enjoy solitude in nature? And is solitude likely if current mountain biking use is concentrated in the mountain biking demonstration area ("Hood-PDX")?

Yes, mountain bikers value and enjoy solitude. As I mentioned in my testimony, all experienced trail users prefer narrower, singletrack trails that provide the most opportunity for solitude. Cyclists are no different. Most trail users want to experience a close connection to Nature. Singletrack provides this better than roads because it blends into the surrounding environment, disturbs much less ground, and is easier to maintain. The experience just isn't the same when you are walking or pedaling on an open, wide road. When one is moving slowly on singletrack, you feel connected to the natural world.

Solitude will be the typical experience provided that access is not denied to the more than 200 miles of trail identified by IMBA. It is not clear that mountain biking will be concentrated or limited to the Mount Hood Pedalers Demonstration Experiment Area (HoodPDX), so I cannot say whether solitude will be diminished. This uncertainty is a product of the mapping and designation problems I identified in the previous question. Without clear maps we are unable to determine at this time, how many trail miles will be lost. We have been assured by the bill's proponents that a significant number of the trails on Mount Hood are not within the proposed Wilderness areas in the bill. If this is so, then concentration of mountain biking becomes less likely and the experience of solitude on the mountain is not likely to be diminished. It is absolutely critical however that most, if not all, of the more than 200 trail miles remain open in order to preserve this experience.

4. What would be the impact of significant trail closures on local small businesses that rely on mountain bikers?

The impact of trail closures on local small business that rely on mountain bikers is likely to be negative. Closure of trails to bicycling affects a significant number of local companies including manufacturers, distributors, bicycle dealers, and tourism-related businesses. A good example is Chris King Precision Components, which produces high performance mountain bike components with more than 60 employees and $5 million in annual revenues. Chris King recently relocated its corporate headquarters and operations from California to Portland, Oregon because of the strong mountain bike community, local support for the sport, availability of local trails, and incredible natural environment.

In Oregon, mountain biking is a popular sport with close to 400,000 people participating last year (Outdoor Industry Foundation). The July 2004 edition of Bike Magazine justly highlighted the fact that "some of the finest singletrack in the mountain bike universe lie within an 80-mile radius of Hood River, Oregon," as it noted that that "tourist economy in Oregon and Washington depends heavily on the states' magnificent old-growth forests." A 1994 study of the economic impact of mountain biking conducted by Colorado State University at the premiere mountain biking destination, Moab, Utah, concluded that the bike trails in the Moab area produce approximately $200 in consumer spending per person, per trip. A recent study by the North Carolina Department of Transportation found that mountain biking brings at least $60 million a year to the Outer Banks of North Carolina; and more than 1,400 jobs have been created to support the more than 40,000 people who bicycle in the region. A similar study found that bicycling contributes more than $1 billion annually to Colorado's economy. As another popular mountain bike destination, it seems reasonable to conclude that Mt. Hood and Oregon will enjoy a similar experience and positive economic impact.

Since your hearing on September 14, I have spoken again with numerous cyclists and shop owners in Hood River and Portland, and with others on Mt. Hood, who have confirmed that Mt. Hood is increasingly becoming a popular destination location for mountain biking. Hundreds of visitors each year bring new money into the Oregon economy in a clean, environmentally friendly and sustainable industry. If the trails on Mount Hood are closed, these mountain bike visitors have told me they will not find other trails in the Mt. Hood area, but simply will not come to the area. Consequently, I am even more convinced now than when I sat before your committee, that the potential loss of more than 200 miles of nationally recognized mountain bike trails will have a negative impact on the local Oregon economy.

Thank you once again for the opportunity to offer comments on the Lewis and Clark Mount Hood Wilderness Act. I hope this information proves helpful to you.

Respectfully,

CHRIS DISTEFANO,
MBA Board of Directors.

STATEMENT OF HON. F. PHILIP CARBULLIDO, CHIEF JUSTICE, SUPREME COURT OF GUAM, ON H.R. 2400

Mr. Chairman, for the record, my name is F. Philip Carbullido, and I am the Chief Justice of the Supreme Court of Guam. It is an honor to submit testimony to this distinguished Committee on a Bill that will have a profound impact on the advancement of the Territory of Guam.

As Chief Justice of Guam, I have reflected upon the history of our nation's judiciary, and its role in the overall governmental structure. A basic and constant principle underlying the development of our system of government is a constitutionally created, co-equal and independent judiciary, something which we are lacking in the Territory of Guam. H.R. 2400 was conceived in response to the infirmities of the present language of the Organic Act.

The Organic Act of Guam functions as Guam's constitution. While the Organic Act establishes the executive and legislative branches of the Government of Guam, the Act does not establish a judicial branch. Instead, in 1984, the United States Congress passed the Omnibus Territories Act, amending the Organic Act and giving the Guam legislature the authority to create the courts of Guam, including an appellate court. Under the present language of the Organic Act, the existence of Guam's judicial branch, the scope of its powers, and its organizational structure, have been subject to, and remains subject to persistent uncertainty and frequent legislative manipulation. Nowhere else in this nation does this occur. The present state of the law has fostered a peculiar and unprecedented system wherein our island's judicial branch is marked not by independence, but rather, by political influence.

I offer several examples to illuminate the problems created under the present language of the Organic Act. In 1993, pursuant to language in the Organic Act granting the Guam Legislature the power to create an appellate court, local legislation was passed creating the Supreme Court of Guam and establishing that Court as the administrative head of all local courts ("1993 Law"). In 1998, another bill, re-structuring the judiciary, was passed by the Guam legislature. This 1998 Bill contained a rider which stripped the Supreme Court of its administrative [and supervisory] authority, which was previously granted by the 1993 Law. The 1998 Law remained in effect, until it was invalidated by

the Ninth Circuit in 2001. The effect of the Ninth Circuit's decision was to revive the 1993 Law, once again completely restructuring the judiciary. Two years later, in 2003, the Legislature passed yet another law, again re-structuring the judicial branch of Guam. This 2003 legislation currently governs the judiciary of Guam.

As is evident by the legislative actions over the past ten years, the simple fact is that under the present language of the Organic Act, the local legislature retains the power to control the internal structure of the judicial branch or even abolish the branch in its entirety.

It is this condition that has necessitated the introduction of H.R. 2400. The measure would firmly establish, within the Organic Act, Guam's judicial branch as a co-equal, independent branch, alongside the executive and legislative branches.

I, with the concurrence of Guam's Judicial Council and other members of Guam's judiciary, recognize the clear need for judicial independence. We understand this need from a practical standpoint by virtue of our experience. From a more fundamental standpoint, we appreciate the role of the judicial branch in the American, tripartite system of government.

Importantly, the judiciary of Guam is not alone in its conviction. All three branches of Guam's local government are unanimous in their support of the principle of an independent and co-equal judiciary.

The Governor of Guam, Felix P. Camacho, recently sent a letter to our Delegate Madeleine Bordallo, stating his support for an amendment to the Organic Act as set forth in H.R. 2400. Governor Camacho stated: "I fully recognize that the effectiveness of our system of government both on the federal and local level, rests in checks and balances. To this end, I recognize that the judicial branch of our Territory, like our executive and legislative branches, must be, "constitutionally" established, or in our case, have an "Organic" existence with similar powers to govern, reorganize, and manage its branch with judicial independence founded upon our U.S. Constitution.[1]

In a similar vein, the Guam Legislature has passed a resolution, wherein it recognized that under the current language of the Organic Act, the local law creating the Supreme Court of Guam and organizing the judiciary of Guam can be amended by local legislation at any time. The Legislature further stated its belief, that "absent

[1] A copy of Governor Camacho's Letter dated May 7, 2004 has been retained in subcommittee records.

a Guam constitution, an amendment to the Organic Act is needed to firmly establish the judicial branch of Guam, with the Supreme Court of Guam at its head, as a separate co-equal, and independent branch within the government of Guam."[2]

The unanimous endorsement by Guam's local leaders of a "constitutionally" established independent judiciary finds support in national precedence spanning over 200 years. It is clear that the judicial branch of our Territory can neither effectively operate as a necessary check on the other two branches, nor properly fulfill its obligation to interpret the law, without a "constitutional," or in this case, an "Organic" existence.

The judiciary of Guam, with the support of the People of Guam, through their elected leaders in the executive and legislative branches of the government of Guam, come before you to advocate an amendment to what is, essentially, our constitution, to finally and permanently provide for an independent and co-equal judicial branch within the government of Guam.

We respectfully request that you act in furtherance of this significant legislation, and that you act expeditiously. H.R. 2400 is important, and indeed vital, to the people of our Territory.

Thank You Mr. Chairman. It has been a privilege to offer this testimony for your consideration.

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[2] A copy of the Guam Legislature's Resolution (LR 139) has been retained in subcommittee records.