

# MISCELLANEOUS PUBLIC LANDS AND FORESTS BILLS

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED TENTH CONGRESS  
FIRST SESSION  
ON

<b>S. 205</b>	<b>H.R. 276</b>
<b>S. 390</b>	<b>H.R. 356</b>
<b>S. 647</b>	<b>H.R. 865</b>
<b>S. 1139</b>	

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MAY 3, 2007



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## MISCELLANEOUS PUBLIC LANDS AND FORESTS BILLS

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THURSDAY, MAY 3, 2007

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

The subcommittee met, pursuant to notice, at 2:40 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

### OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. The subcommittee will come to order.

The purpose of today's hearing is to receive testimony on several land use bills. These include S. 205 and H.R. 865, to grant rights-of-way for electric transmission lines over certain Native allotments in the State of Alaska; S. 390, to direct the exchange of certain lands in Utah; S. 1139, to establish the National Landscape Conservation System; H.R. 276, to designate the Piedras Blancas Light Station and the surrounding public land as an outstanding natural area to be administered as part of the National Landscape Conservation System; H.R. 356, to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; and S. 647, the Lewis and Clark Mount Hood Wilderness Act, a bill that Senator Smith and I introduced, to increase the existing Wilderness Act on the most visited forest in Oregon.

I'm going to have an opening statement in a little bit, but first I see that our good friend, Senator Bennett has arrived, and Senator Smith has arrived. I think with Senator Smith's indulgence, what I'd like to do is let Senator Bennett make his presentation and then I would make a statement about the Mount Hood Wilderness legislation. I know my good friend wants to as well.

Senator Bennett, we welcome you and know that you have a great interest in S. 390, and please proceed in any way that you choose.

[The prepared statements of Senators Salazar and Stevens follow:]

### PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Mr. Chairman, thank you for holding this hearing today and for including S. 1139, a bill to establish the National Landscape Conservation System, on today's agenda. I was pleased to work with Chairman Bingaman on this bill. I welcome Richard

Moe, President of the National Trust for Historic Preservation, and thank him for testifying.

The National Landscape Conservation System was created administratively in 2000 to guide the management of the national monuments, national conservation areas, national wild and scenic rivers, wilderness areas, wilderness study areas, and national historic and scenic trails that are under the BLM's authority. The NLCS, as it is called, encompasses the 26 million most spectacular acres of the 260 million acres that the Bureau of Land Management oversees.

Many of these lands are on par with our national parks in their beauty and value to the American people. Unfortunately, the National Landscape Conservation System has taken a back seat in our country's land conservation efforts. We are hearing a growing number of reports that natural, cultural, and archaeological sites on NLCS lands are being overrun or destroyed.

At Colorado's Canyons of the Ancients National Monument, home to the highest density of cultural sites in America, 47 ancestral Puebloan sites were looted in the first half of 2006. With only one law enforcement officer for the entire monument, it is almost impossible to prevent this type of vandalism.

At McInnis Canyon National Conservation Area, also in Colorado, one archaeologist splits time with the rest of the 1.3 million acres managed out of the BLM field office. How is one individual to complete the archaeological surveys under way in the area's booming oil and gas fields while still ensuring that the conservation area's petroglyphs, fossils, and archaeological treasures are documented and protected?

The Secretary of the Interior took a good step in 2000 when he established the National Landscape Conservation System. The BLM should have additional resources and tools for the management of lands that the American people have determined to be of exceptional natural, cultural, recreational, scenic, or historic value.

S. 1139 would strengthen the NLCS system by writing it into statute, ensuring its permanence. The NLCS Act gives Congressional support and direction to the system, without changing how any unit is managed. The bill has no effect on water rights, grazing rights, or any existing law directing management.

In Director Hughes' written testimony expressing the Administration's support for this bill, he writes that S. 1139 "will assure that these landscapes of the American spirit would be conserved, protected, and restored for the benefit of current and future generations."

I fully agree. It is time for our laws to reflect the fact that the lands in the NLCS are of immense and growing value to the American people. I hope that we can move this bill through the Committee as soon as possible.

Thank you, Mr. Chairman.

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PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Chairman Bingaman, Ranking Member Domenici, distinguished Members of the Committee, thank you for holding this hearing. I am grateful for the opportunity to speak in support of S. 205, the Copper Valley Native Allotment Resolution Act.

This Act is intended to resolve a long-standing dispute unwittingly put in motion by Congress and the Federal government. This disagreement now threatens relations in the Copper Valley and jeopardizes future infrastructure development for those who live in this region.

The Constitution and a number of federal laws establish our nation's policy towards Native Americans. From 1906 through 1970, Alaska Natives were granted the authority to claim up to 160 acres of land. This framework proved unworkable, prompting Congress to undertake a new path to settle unresolved land claims—first with the passage of the Alaska Native Claims Settlement Act in 1971, and then with the passage of the Alaska National Interest Lands Conservation Act in 1980.

As part of an effort to ensure basic services were available to Alaskans, the Federal government also began granting rights of way for transportation and utility corridors during this time. In most cases, these rights were conveyed before Alaska Native allotment claims had been filed and processed.

In an attempt to settle the outstanding land claims of Alaska Natives and provide for the welfare of all Alaskans, Congress unintentionally created a conflict between Native allottees and utility right-of-way holders. Several allottees received land also designated for use by rural energy providers. Today, compensation for these rights of way is the subject of several lawsuits.

The swift resolution of this matter is vitally important to Alaskans in the Copper Valley region. The Copper Valley Electric Association (CVEA), which is at the center of this dispute, is a rural electric cooperative founded in 1954 pursuant to terms in

the Rural Electrification Act. This is not a multi-state, multi-million dollar energy company, but instead a nonprofit run by members of local communities. In fact, the CVEA serves only 3,600 customers. Forcing it to compensate Native allottee owners for its transmission lines would compel the CVEA to increase its rates and place an undue burden on its consumers. I remind the members of this Committee—this dispute was brought on by the actions of our Federal government.

At my request, the Government Accountability Office (GAO) reviewed this situation and issued a report with recommended solutions. The GAO found that existing remedies will not resolve these conflicts.

S. 205 incorporates one of the GAO's recommended solutions—the establishment of a federal fund. It would compensate the owners of the Native allotments and ensure local utility companies remain able to provide residents with the infrastructure and services they need. I believe this is the most equitable solution available. This was the Federal government's mistake; it should be our obligation to pay for its remedy.

I look forward to working with the Committee to ensure the Copper Valley Native Allotment Resolution Act accomplishes its goals—to adequately compensate Native allottees and allow the CVEA to continue operating without undue burdens on its customers.

#### **STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH**

Senator BENNETT. Thank you very much for your courtesy, Mr. Chairman. I will ask that my entire written statement be imprinted in the record.

Senator WYDEN. Without objection, so ordered.

Senator BENNETT. As you may know, when Utah was made a State in 1896, the Statehood Act created, roughly, 3.5 million acres of lands that are called School Trust lands. These are parcels that are scattered across the State in checkerboard fashion. If you look at a map of the State, you almost think that the State has chicken pox, with little pieces of land here, there, and everywhere.

At the time, of course, no one knew where the development was going to take place in the State and so the Statehood Act said, "We'll put School Trust lands virtually everywhere and that way, when the land gets developed, the proceeds off the land will go to help pay for education for Utah's school children."

Well, now you have State Trust lands inside of wilderness study areas, you have State Trust lands in areas that we know are environmentally sensitive, and they get in the way of the Bureau of Land Management's management of land, because they constitute in-holdings that are put there virtually arbitrarily and at random.

The logical thing to do is to take these lands and swap them for lands that are outside of sensitive areas, lands that the BLM has that would make sense to develop, but for one reason or another, the Federal Government doesn't want to be involved in the development.

It's such a logical idea, that it's very hard to get done. My father tried to do this when he was a U.S. Senator. Governor Mathison, the Democratic Governor of Utah tried to do this when he was Governor. We kept working on it, we've worked on it all the way through. We've now made some progress and there have been some land swaps. All I want to do is build on that progress and move this bill forward.

It exchanges 40,000 acres of School Trust land for 40,000 acres of public land, sets up an appraisal process that is a common-sense approach to this, and makes sure that neither side takes advantage

of the other. So, the lands will be swapped on an equal-value basis and it will allow money to come into Utah School's Trust and it will allow BLM managers to have more control over lands that they want.

That's the sum and substance of where we are. We were very close to getting this passed in the last Congress, and to my knowledge, there was no particular opposition to it, but it simply got caught up in the frantic nature of the lame-duck session as transitions took place and people decided they wanted to go home and get out of Congress. This was one of the casualties of that last minute crunch, which is why I'm grateful to you for considering it this early in the session and hope it will receive favorable consideration from this subcommittee.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Chairman Wyden, and members of the subcommittee, thank you for taking the time to hold this hearing on S. 390, the Utah Recreational Land Exchange Act of 2007. This bill should look familiar to the committee; it was very close to becoming the Utah Recreational Land Exchange Act of 2006, but was held up on the floor during the waning days of the 109th Congress. I appreciate this opportunity to update the legislative record, and am hopeful that this legislation can move quickly this session.

Utah has approximately 3.5 million acres of school trust lands. When Utah was admitted to the Union in 1896, these lands were set aside to support public education. The School and Institutional Trust Lands Administration, known as SITLA, manages these lands.

Revenue derived from state lands goes into the State School Fund—a permanent, income-producing endowment that Congress created for Utah's school children. This revenue includes dollars from oil and gas leasing, mining, land sales, recreation, timber, grazing, and other natural resource development. I often hear from our rural schools about the importance of state trust land funds. For example, Koosharem Elementary—a school with 52 enrolled students—recently used funds from the school trust lands to purchase science, math, and social studies textbooks. These funds are critical for our schools, both rural and urban.

Unfortunately, managing the trust lands is not an easy task. If you look at a map of Utah where land ownership is defined, you will see a checkerboard pattern throughout most of the state. The pattern is caused by isolated sections of state trust lands that are surrounded by public lands. State trust lands that are found within federal wilderness study areas, for example, will probably never create revenue for the State School Fund, and make managing a unified area of land for wilderness characteristics impossible for the Bureau of Land Management.

There is only one solution to this problem—we must consolidate land ownership. Consolidation makes sense for both sides: the federal government will acquire state lands that require special management or otherwise make management difficult for the agency, and the state acquires public land in blocks, making it possible to send more revenue to our school children. That is what this bill does.

This bill exchanges approximately 40,000 acres on both sides, giving the taxpayers and Utah's school children a fair deal. It also establishes a common-sense valuation process for resources that are often either overlooked or overvalued because of their highly-speculative nature. It exchanges critical and sensitive areas along the Colorado River Corridor to the federal government for lands that are difficult for the federal agencies to manage. It is the result of collaboration and compromise that has included local governments, the state, the recreation and environmental communities, and concerned citizens. We look forward to working with this committee toward a successful resolution of this proposed exchange during this Congress.

Again, I thank the chairman for the opportunity to support our efforts to fund the education of our children in Utah and to protect some of this nation's truly great land. I urge support of the Utah Recreational Land Exchange Act of 2007.

Senator WYDEN. My good friend and co-sponsor of the Healthy Americans Act, does outstanding work as usual. I've directed the



staff, and I know Senator Bingaman will be involved, as well, to work very closely with you and to get this processed as quickly as possible. We really appreciate your coming, and I look forward to talking to you later today about other matters, as well. I thank you.

Senator BENNETT. Thank you.

Senator WYDEN. Do any of the other Senators have questions for Senator Bennett?

Senator BENNETT. Thank you very much, Mr. Chairman. I appreciate your courtesy.

Senator WYDEN. Thank you, and we'll move this legislation quickly. I am certain of it.

Let us begin. I was going to make a short statement on the legislation that Senator Smith and I have, and then we welcome all of our colleagues who've come, who have bills as well.

First up, the Oregon Senators: I'd especially like to thank the witnesses that have come from our State—Martha Schrader, Clackamas County Commissioner; Chairman Ron Suppah of the Confederated Tribes of the Warm Springs Reservation; and John Sterling, Executive Director of the Outdoor Industry Conservation Alliance. We greatly appreciate your helping us to bring an improved version of the legislation that Senator Smith and I pushed in the last session. Last year's bill stems from an awful lot of input we got from the people of Oregon, and we are going to try to move this bipartisan legislation as quickly as possible.

Our Mount Hood is a special State treasure. It is a wild place, often photographed and visited and enjoyed by scores of citizens. What we have tried to do in this legislation is to build on the existing Mount Hood Wilderness Area, adding more wild and scenic rivers, and also providing opportunities for a diverse set of recreational activities.

We protect the lower elevation forests surrounding Mount Hood and the Columbia River Gorge. The protected areas include vistas as Lewis and Clark would have seen them. More than 128,000 acres of wilderness and the addition of nine free-flowing stretches of river to the National Wild and Scenic river system.

From what the two of us have heard, our legislation, and the places that we have proposed, are the right choices for wilderness protection in 2007. In the 22 years that have elapsed since there's been any new wilderness designated on Mount Hood, the population of the local counties has increased dramatically, 25 percent in Multnomah County, 24 percent in Hood River County, and 28 percent in Clackamas County.

Our forest is now the seventh most-visited forest in the country. The increased visitation and population growth have raised a number of issues that I and Senator Smith have been working on, with a number of organizations, to address. We did this by adding the most desired areas for protection, while providing for increased resources in order to make sure that recreation and recreational opportunities would be afforded to the many who have talked specifically to us about that.

Overall, we've heard the desire for more wilderness and more recreation opportunities. There are currently 189,000 acres of designated wilderness on the Mount Hood National Forest. S. 647

would increase that amount by designating approximately 128,600 new acres of wilderness.

In response to the concerns that the two of us heard from mountain bikers, and to ensure that their use of the mountain not be unfairly curtailed, Senator Smith and I have proposed a National Recreation Area. This area was so popular the last time we discussed it, that we have decided to expand it to include 34,640 acres, an increase of over 16,000 acres. It's going to offer greater permanent environmental protection to those beautiful areas, while providing mountain bikers and other recreational users an opportunity to continue to recreate in these areas.

The proposal seeks to protect more than 79 miles of wild and scenic rivers and some of the most pristine rivers in our State. Protection for the undeveloped North side of the mountain has also been a very important part of our legislation. We sought to honor the community-driven solution to development challenges by providing for essential land exchanges that have adequate safeguards.

To address concerns on forest health, the bill provides protections for healthy older trees that are the most resistant to fire and disease, while directing that thinning and restoration work be done on the huge backlog of overcrowded plantation second-growth.

We've also incorporated provisions of local and tribal relationships, emphasizing the rich history of the Mount Hood region and affirming the right of Native peoples to access the mountain resources as they have for generations.

I want to assure all my colleagues on the subcommittee that this will be the longest opening statement I will make during the course of the year, but the people of our State do feel strongly about Mount Hood.

Let me recognize now, Senator Smith, and then both of our colleagues who've also come.

Senator Smith.

[The prepared statement of Senator Wyden follows:]

PREPARED STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

The Subcommittee will come to order. The purpose of today's hearing is to receive testimony on several land use bills. These include:

- S. 205 and H.R. 865, to grant rights-of-way for electric transmission lines over certain Native allotments in the State of Alaska;
- S. 390, to direct the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah;
- S. 1139, to establish the National Landscape Conservation System;
- H.R. 276, to designate the Piedras Blancas Light Station and the surrounding public land as an Outstanding Natural Area to be administered as a part of the National Landscape Conservation System; and
- H.R. 356, to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States.
- And S. 647 the Lewis and Clark Mount Hood Wilderness Act a bill Senator Smith and I introduced to increase the existing wilderness on the most visited forest in Oregon, the Mount Hood National Forest, by almost 70%.

Before we begin, I would like to say a few words about this important legislation. I would also like to thank the witnesses that have come all the way from Oregon: Martha Schrader, Clackamas County Commissioner, Chairman Ron Suppah of the Confederated Tribes of the Warm Springs Reservation of Oregon, and John Sterling, Executive Director of The Outdoor Industry Conservation Alliance. Thank you for being here. I am confident that your testimony will help my colleagues on this Sub-

committee understand what Mount Hood means to those of us in the State of Oregon. I would also like to welcome all the other witnesses here today.

The Mount Hood wilderness legislation before us is an improved version of the bill that Senator Smith and I introduced in the last Congress. It builds on last year's legislation as a result of broad-based feedback from our constituents. The bill also includes input from the Energy and Natural Resources Committee, which we hope will help speed the bill's passage.

Oregon's Mount Hood is a cherished state treasure. This wild place is often photographed, visited and enjoyed by scores of Oregonians and non-Oregonians.

Our legislation builds on the existing Mount Hood wilderness, adds more wild and scenic rivers, and provides a recreation area to allow diverse recreational opportunities.

Our bill protects the lower elevation forests surrounding Mount Hood and the Columbia River Gorge. The protected areas include vistas as Lewis and Clark would have seen them—more than 128,000 acres of wilderness and the addition of nine free-flowing stretches of rivers to the National Wild and Scenic River System.

From what I and Senator Smith have been hearing about our legislation and the places that we have proposed for wilderness protection, I think we've gotten it right.

In the 22 years that have elapsed since any new wilderness has been designated in the Mount Hood area, the population in local counties has increased significantly—25% in Multnomah County, 24% in Hood River County, and 28% in Clackamas County. The Mount Hood National Forest is the seventh most visited National Forest in the United States.

The increased visitation and population growth raise a number of important issues that we have tried to address in this bill. We did this by adding the most desired areas for protection while providing for increased resources and opportunities to maximize recreational opportunities.

This legislation responds to the thousands of comments I received on both of my previous bills.

Overall we heard the desire for MORE wilderness and more recreation opportunities: There are currently 189,200 acres of designated wilderness on the Mount Hood National Forest. S. 647 would increase that amount by designating approximately 128,600 new acres of wilderness.

In response to the valid concerns raised by mountain bikers that their use of the mountain not be unfairly curtailed, we proposed the National Recreation Area. This area was so popular in our last bill, that Senator Smith and I decide to greatly expand it to include 34,640 acres—an increase of over 16,700 acres. It will offer greater, permanent environmental protections to those beautiful areas, while providing mountain bikers, and other recreational users, an opportunity to continue to recreate in these areas.

Our proposal seeks to protect over 79 miles of wild and scenic rivers on nine free flowing rivers. This includes some of the most pristine and beautiful rivers in Oregon.

Protection for the undeveloped North side of the mountain is also a key aspect of our legislation—Senator Smith and I sought to honor the community-driven solution to development challenges by providing for key land exchanges, with adequate safeguards.

To address concerns on forest health our bill offers protections for healthy, older trees that are the most resistant to fire and disease while directing thinning and restoration work on the enormous backlog of over-crowded, plantation, second-growth. My bill includes provisions that would give the Forest Service a mandate to prepare an assessment for promoting forests resilient to fire, insects and disease. This also includes provisions to study and encourage the development of biomass in conjunction with forest health work.

I have also incorporated provisions on local and tribal relationships emphasizing the rich history of the Mount Hood region and affirming the rights of Native peoples to access the mountains resources, as they have for generations.

I look forward to passing this legislation through committee and by the full Senate, and seeing its swift adoption by Congress thereafter. Then the grandeur of Mount Hood and other Oregon treasures can be assured for future generations.

#### **STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Senator Wyden. I am so grateful for your undaunted commitment of finding a workable solution to pro-

tecting Mount Hood for current and future generations of Oregonians.

This is the third hearing on Mount Hood wilderness, and we've come a long way towards reaching a legislative solution that takes into consideration the many users of the Mountain.

Mount Hood is an icon of our State. As such, it is also emblematic of the conflict between various uses of, and visions for, public land. Oregon is at a significant crossroads. Our counties face an uncertain future with respect to safety net payments for timber receipt sharing. Implementation of the Northwest Forest Plan is now 10 years late, is now only beginning to fully materialize, and a recovery plan for the threatened Spotted Owl is 17 years late, but it is in its draft phase.

All of these challenges require a balanced and long-term vision and I believe this Mount Hood legislation achieves both. I'm sensitive to the need for more sustainable and predictable levels of timber harvest from the Mount Hood National Forest. Last year the forest harvested less than 6 percent of what it did in 1984.

In this bill we work to protect areas with high recreational and scenic value without impacting the need to treat areas at high risk of wild fire and areas allocated for timber use under the Northwest Forest Plan. Since last year's bill, we have removed numerous areas from both wilderness and national recreation areas that posed conflict between management and protection. We've also expanded the National Recreation Areas. I believe this could be a unique tool to protect land for recreation without protecting it from recreationists. This means that mountain biker and snowmobilers will be able to enjoy the vast tracks of protected landscape.

The last thing I want to mention is the tribal components of this legislation. I understand that there are some technical changes, and perhaps others, for other interests to ensure—in this case, that of the Warm Springs tribe—that this bill will be helpful and not harmful to their interests on the mountain, in terms of huckleberry gathering, spiritual use, and transportation planning. I want the tribe to know that I agree with their suggestions and will work to clear them on both sides of the aisle.

I also want to credit members of the Oregon House Delegation for their work that they have done on this issue. It has been considerable and it is admirable. I regret that we were not able to reach final agreement last Congress, but the work goes on and I think we will finish this time. We have to legislate the possible not the perfect. My door and my mind are open to any and all possibilities of reaching unanimous support from the entire Oregon congressional delegation.

With that, Mr. Chairman, I thank you.

Senator WYDEN. I thank my colleague and look forward to getting this legislation passed.

Senator Thomas.

Senator THOMAS. I gave you my time.

Senator WYDEN. Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate you hearing today two bills that relate to a rural electric cooperative in the Eastern part of the State of Alaska.

This is the Copper Valley Electric Association, or CVEA; they had constructed their power lines across rights-of-way from the Federal Government that at the time they believed to be valid. Today, they've been led to believe, that the Government's rights-of-way are invalid, and they are liable to Native allottees for damages in trespass.

CVEA is a rural electric co-op that began in 1952, prior to Statehood. It's been delivering electricity to its customers since 1959, and it's served the part of the State centered in Glenn Allen, other communities in the Wrangell St. Elias National Park area, and it's also providing electricity to Valdez. It serves about 3,600 people in the State.

As a member-owned cooperative, we know that its liabilities are passed along to its rate payers, many of whom are Alaska Natives, and very few are particularly wealthy. We're talking about unemployment rates in this part of the State in the 10 to 11 percent range. Median personal incomes in the service area range from \$28,000 a year to \$34,000 a year, just to give you a sense of the part of the State that we're talking about.

The Alaska Allotment Act of 1906 authorized the Secretary of the Interior to allot not more than 160 acres of land in Alaska to Alaska Natives as a homestead. Now, this Act was repealed by the Native Claims Settlement Act of 1971, but the pending allotment applications were grandfathered at that time.

In 1980, Congress legislatively approved all but a few pending allotments because the BLM adjudication process was bogged down, and the process was potentially going to take decades to conclude. These allotments were approved subject to valid existing rights-of-way, which CVEA's rights-of-way were assumed to be.

Then in 1986, the Interior Board of Land Appeals applied the doctrine of relation-back to rights-of-way, such as CVEA's to Alaska Native allotments. This decision effectively voids CVEA rights-of-way where Native use and occupancy is claimed to predate the date that CVEA was granted its rights-of-way.

We've got 14 cases where this theory of relation-back was applied. Since the IBLA rulings, the Bureau of Indian Affairs has engaged in periodic efforts to levy trespass claims against CVEA. The BIA, through real estate contractors, has also periodically threatened litigation to either void these rights-of-way or to collect on alleged trespass claims. Needless to say, this has been very costly and very disruptive to CVEA.

The threat of further litigation has been held in abeyance while Congress considers the legislation that we have before this subcommittee today. It was at Senator Stevens' request that the GAO looked into the situation, and validated the facts, and the need for a legislative solution, through which the rights-of-way of Copper Valley Electric are validated and the cost of compensating the allottees is borne by the Federal Government on which Copper Valley relied, in constructing their electrical system.

I would like to submit that report for the record.\* I would also ask that the written testimony of Copper Valley Electric Association be submitted for the record. They weren't able to fly back for the hearing, but they do appreciate, a great deal, that you have scheduled this hearing today.

I thank you and look forward to hearing from the witnesses this afternoon.

Senator WYDEN. Without objection, we'll enter those documents into the record. Just as we figured out the old-growth issue yesterday with the help of Mr. Gladics and those numerous forestry encyclopedias he carries around, we'll go to work on your legislation and I look forward to working with my friend from Alaska.

All right. Let's do some brief administrative matters. We'd like each witness to summarize the key points of their testimony and to limit their remarks to about 5 minutes; written statements will be included, in full, in the record.

I think next up in our panel is Mr. Moe with the National Trust for Historic Preservation. He has asked that he be allowed to go first and receive questions, as he has to depart for an early flight.

Mr. Rey is here; is that acceptable to you, Mr. Rey? Thank you for your courtesy.

Let's bring Mr. Moe up, who has done wonderful work in the public interest for many, many years. We welcome him and recognize the good work of the Trust. I'll let us hear from Mr. Moe first. Then let the Senators proceed to their questions. Then we will go next to Mr. Rey.

Mr. Moe, welcome.

#### **STATEMENT OF RICHARD MOE, PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION**

Mr. MOE. Thank you very much, Mr. Chairman. My name is Richard Moe, and I'm president of the National Trust for Historic Preservation. I very much appreciate your scheduling this hearing and accommodating my flight. I'm very grateful.

I'm speaking to you today in support of S. 1139, a bill introduced by Senator Bingaman, that would recognize the National Landscape Conservation System. These are the lands that comprise the crown jewels of the Bureau of Land Management inventory. The National Trust is very pleased and grateful that Senator Bingaman, together with Senator Salazar, is leading the effort to codify this system.

The National Landscape Conservation System is really a network of the last places where you can experience the history and the wild beauty of the American West. The 26-million acre system was established by the Secretary of the Interior in 2000, to recognize and protect the most significant of the lands and waters managed by BLM.

The Conservation System brings together, really, the crown jewels of BLM's 264 million acres. Specifically, all of the National Monuments, the National Conservation areas, the Wild and Scenic Rivers, the National Scenic and Historic Trails, and the wilderness

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\*The information referred to follows has been retained in subcommittee files.

and wilderness study areas. With more than 866 individual units, it comprises 10 percent of the land managed by BLM.

S. 1139 is a very simple piece of legislation that would codify the system, which has been administratively supported by recent Presidents, but it has not yet received the congressional stamp of approval. Currently it exists as an administrative function of the Agency, and codification, in our view, would provide it with additional recognition.

Americans want these conservation lands preserved, but only Congress can protect them with the sound standard of a permanent National system. Codification will recognize a single, unifying system in which these extraordinary lands will belong, raising the profile of these outstanding areas instead of each unit standing alone.

Like many Americans, I thought for a long time that historic preservation was about saving grand old historic architectural landmarks. There's no question that there's a lot to that. But, the more time I spent in the West—and I spend a good deal of time in the West—the more I realize that preservation is much more than that.

It's also about the very first imprints that man made on the land—the rock art, the cliff dwellings, the pueblos, the kivas, and the other remnants of the earliest civilizations that flourished here. These cultural resources represent the opening chapters in the story that is America. They represent the heritage of the first Americans, and that's our part of our common heritage.

Canyons of the Ancients National Monument is in the far Southwestern corner of Colorado. The mesas and canyons of this place encompass an incredibly rich collection of archeological sites. More than 6,000 have already been recorded and thousands more are believed to exist, up to 300 sites per square mile in some areas, the highest known density of archeology in the United States.

The full sweep of the region's history can be traced in this landscape, from the early ranchers whose descendants still live here, all the way back to the ancient hunters who crossed the area 10,000 years ago. I wish every American could experience the Canyons of the Ancients. I spent a lot of time there and believe me, there's no place like it.

At Canyons of the Ancients, the sheer size and remoteness of the place puts many of these important resources at risk. The Monument spreads across 164,000 acres, that's more than 256 square miles, or almost twice the land area of the city of Denver. One ranger is responsible for law enforcement in that vast area, so it's practically impossible to prevent vandalism, looting, and other activities that damage or destroy the resources that are both fragile and irreplaceable.

Agua Fria National Monument is located 40 miles north of Phoenix. While it's not nearly as large as Canyons of the Ancients, Agua Fria is abundantly rich in archeological resources, including more than 130 pueblo sites, stone forts, terraced agricultural fields, and a stunning array of rock art.

Remoteness is not the problem at Agua Fria; in fact, it's just the opposite. Because of its close proximity to Phoenix, the monument is experiencing explosive growth in visitation, from 15,000 visitors in 2000 to 77,000 in 2004, a five-fold increase in just 4 years. And

again, there's only one ranger to protect the resources from the looting and the vandalism that are on the increase.

So, I urge your support, Mr. Chairman and members of the subcommittee, for this important legislation. Official statutory status would raise the recognition of these unique cultural and natural resources. This obviously does not mean that BLM should abandon its multiple-use mandate; on the contrary, clearly, people should have wide access to them and be able to enjoy them. In fact, codification of the conservation system would not impact private in-holdings or lands managed by other agencies, would not alter existing oil and gas or grazing leases or other grandfathered uses, would not limit access or activities, such as fishing or hunting, or in any way affect units that are co-managed with other Federal agencies.

As only BLM lands would be included in the system, it would not affect the underlying enabling legislation for individual units. The National Landscape Conservation System includes landscapes that allow us to see the West through the eyes of its original inhabitants, or as it appeared to the first European explorers and settlers. They also include the tangible remains of thousands of years of human interaction with the land, ranging from the ruins of pre-historic Native American pueblos to the wagon ruts left by westward bound pioneers, and the remnants of mine shafts and farm houses left by those who sought to make a living out of the rock and soil of the Western frontier.

Whether natural or cultural, these resources open windows to the past, often a glimpse, often the only glimpse available to us, of the people who were here before us, the land they found here, and the lives they lived on it.

S. 1139, Mr. Chairman, will permanently establish, perhaps the last great American system of protected lands. By enacting codification legislation, Congress will ensure the system's permanence and an enduring legacy of the West's natural and cultural heritage for future generations.

Finally, Mr. Chairman, I have a letter of support from 45 national regional organizations supporting this legislation, and I would ask that it be submitted for the record.

Thank you, sir.

[The prepared statement of Mr. Moe follows:]

PREPARED STATEMENT OF RICHARD MOE, PRESIDENT, NATIONAL TRUST FOR  
HISTORIC PRESERVATION

Mr. Chairman and members of the Subcommittee, my name is Richard Moe and I am the President of the National Trust for Historic Preservation. I am speaking to you today in support of S. 1139, a bill introduced by Senator Bingaman that would recognize the National Landscape Conservation System, lands that comprise the crown jewels of the Bureau of Land Management (BLM) inventory. The National Trust is very pleased and grateful that Senator Bingaman, along with Senator Salazar, is leading the effort to codify the Conservation System and I urge your support for this measure.

BACKGROUND ON THE NATIONAL TRUST

For more than 50 years, the National Trust for Historic Preservation has been helping to protect the nation's historic resources. Chartered by Congress in 1949, the National Trust is a private, nonprofit membership organization dedicated to protecting the irreplaceable. Recipient of the National Humanities Medal, the Trust leads a vigorous preservation movement that is saving the best of our past for the



future by preserving America's diverse historic places and revitalizing communities. Its Washington, DC headquarters staff, six regional offices and 29 historic sites work with the Trust's quarter-million members and thousands of local community groups in all 50 states. Its mission has expanded since its founding in 1949 just as the need for historic preservation has grown. When historic places are destroyed or allowed to deteriorate we lose a part of our past forever.

#### S. 1139 AND THE CONSERVATION SYSTEM

S. 1139 provides an important Congressional stamp of approval by affording the BLM's National Landscape Conservation System permanent statutory recognition. Like many Americans, I thought for a long time that historic preservation was just about saving grand historic and architectural landmarks. There is no question that this is part of what preservation is all about. But the more time I have spent in the West, the more I have realized that preservation is much more than that. It is also about the very first imprints that man made on the land—the rock art, cliff dwellings, pueblos, kivas and other remnants of the earliest civilizations that flourished there. These cultural resources, mostly found in the West, represent the opening chapters in the story of America. They represent the heritage of the first Americans and thus are part of our heritage as well. Not all of these tremendous places are in the Conservation System's inventory, but those that are represent the top tier of this country's acreage under the Bureau of Land Management.

The National Landscape Conservation System is a network of the last places where you can experience the history and wild beauty of the American West. The 26-million-acre System was established by the Secretary of the Interior in 2000 to recognize and protect the best of the lands and waters managed by the Bureau of Land Management. The Conservation System brings together the crown jewels of BLM's 264 million acres—specifically, all the agency's National Monuments, National Conservation Areas, Wild and Scenic Rivers, National Scenic and Historic Trails, Wilderness, and Wilderness Study Areas. With more than 866 individual units, it comprises 10 percent of the land managed by the BLM.

Formal codification would provide the System with the heightened recognition it deserves. Without authorization, there currently is no guarantee that the System will be around five years from now.

#### ICONS OF THE AMERICAN EXPERIENCE

This month we celebrate the 400th anniversary of the founding of Jamestown, the first permanent settlement in English-speaking America. But, for thousands of years before the first Europeans arrived, there were people on this continent who represented highly developed civilizations and who were proficient in art, architecture, agriculture and astronomy. These were the first Americans, and their story is also part of our common heritage. The National Landscape Conservation System contains a number of important areas rich in artifacts from these civilizations. Let me share with you two examples.

Canyons of the Ancients National Monument lies in the far southwestern corner of Colorado. The mesas and canyons of this place encompass an incredibly rich collection of archaeological sites. More than 6,000 have been recorded, and thousands more are believed to exist—up to 300 sites per square mile in some areas, the highest known density in the United States. The full sweep of the region's history can be traced in this landscape—from the early ranchers whose descendants still live here, all the way back to the ancient hunters who crossed the area 10,000 years ago. I wish every American could experience Canyons of the Ancients. There is no other place like it.

The Agua Fria National Monument is located 40 miles north of Phoenix. While it's not nearly as large as Canyons of the Ancients, Agua Fria is abundantly rich in archaeological resources, including more than 130 pueblo sites, stone forts, terraced agricultural fields and a stunning array of rock art. Scientists have linked many of these sites to the Perry Mesa Tradition, a previously unknown culture that flourished here from 500 to 700 years ago. More recent history is reflected in the remnants of Basque shepherders' camps, mining structures and military sites—all scattered across a landscape that makes the monument a scenic, as well as cultural, treasure.

I urge your support of Senator Bingaman's legislation before the Subcommittee today. Congress should codify the Conservation System. Official statutory basis would raise recognition of the unique archeological and cultural resources of the Conservation System. This does not mean that BLM must abandon its traditional multiple-use mandate. Clearly, people should have wide access to BLM lands and be able to enjoy them. In fact, Codification of the Conservation System would not

impact private in-holdings or lands managed by other agencies; alter existing oil and gas or grazing leases or other grandfathered uses; limit public access or activities such as fishing and hunting; or in any way affect units that are co-managed with other federal agencies, as only BLM lands would be included in the System. It would not affect the underlying enabling legislation for individual units.

#### CONCLUSION

The National Landscape Conservation System includes landscapes that allow us to see the West through the eyes of its original inhabitants, or as it appeared to the first European explorers and settlers. It also includes the tangible remains of thousands of years of human interaction with the land, ranging from the ruins of prehistoric Native American pueblos to the wagon ruts left by westward-bound pioneers and the remnants of mineshafts and farmhouses left by those who sought to make a living out of the rock and soil of the Western frontier. Whether natural or cultural, these resources open windows to the past, offering a glimpse—often the only glimpse available to us—of the people who were here before us, the land they found here and the lives they lived on it.

S. 1139 will Congressionally recognize perhaps the last great American system of protected lands. By enacting codifying legislation, Congress will ensure the System's permanence and an enduring legacy of the West's natural and cultural heritage for future generations.

Senator WYDEN. Without objection, it's so ordered.

Colleagues, any questions?

Senator THOMAS. Yes, Mr. Chairman. Just generally, I understand, and I don't have any particular problems with this, but the National Landscape Conservation System was established by the Department in 2000. This bill does not create any new management authority or doesn't change the authorities at all, so I guess I ask: why is it necessary to do this? It's already Federal property, it's already designated, so, why are we doing this?

Mr. MOE. Well, as I tried to indicate in my statement, Senator Thomas, we're hopeful that by creating a unified system of Federal lands that have particular significance, we're asking the Congress to recognize that not all BLM lands are created equally.

Senator THOMAS. Well, this is already called the National Landscape Conservation System.

Mr. MOE. Yes, but we're hopeful that with this congressional imprimatur that, ultimately, greater funding will come to these units, greater protection will come to these units, that there's no question. But that they need greater attention than some of the other BLM lands that don't receive this attention.

Senator THOMAS. Okay. Thank you.

Mr. MOE. Thank you, sir.

Senator WYDEN. Mr. Moe, Godspeed, you do awfully good work. Chairman Bingaman has made it clear that this is an important piece of legislation, as has Senator Salazar. I'm going to support it fully and work closely with my colleagues and continue to prosecute the good cause that you represent for the Historic Trust.

Mr. MOE. Thank you, Mr. Chairman, very much.

Senator WYDEN. Thank you.

Okay. Our next panel is the Honorable Mark Rey, Under Secretary, Natural Resources and Environment, Department of Agriculture and Mr. Jim Hughes, Acting Director, Bureau of Land Management at the Department of the Interior.

Gentlemen, welcome.

Let us start with Mr. Rey, a frequent testifier at this subcommittee and this committee. Welcome.

**STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE**

Mr. REY. It seems like just yesterday that I was here last.

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to appear before you today, to provide the Department's views on S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

The administration recognizes that the bill's sponsors have conducted a considerable amount of outreach and work with a number of communities of interest, including local and State governmental entities, tribes, profit and non-profit organizations, and individuals in the development of S. 647.

Last year the administration testified in hearings on two bills concerning the management of lands in and around Mount Hood, S. 3854 and H.R. 5025. We're gratified that a number of the suggestions offered at that time have been considered in S. 647 and it is preferable to last year's Senate bill. However, we still have concerns regarding several provisions, which preclude our support for the bill, as presently written.

The administration supports many of the concepts and provisions of the bill, including some of the Wilderness designations and most of the Wild and Scenic River designations, as well as the attention focused on recreation, watershed and forest health, and transportation issues on, and around, Mount Hood. We'd like to work with the committee and the bill sponsors to correct a number of technical items, and to resolve remaining concerns regarding the legislation.

Including: first, the effects of some of the wilderness proposals; second, special use fee retention; third, restrictive management requirements on the Crystal Springs Watershed Management Unit; fourth, the requirement to enter into a land exchange, that in our consideration, is not in the public interest; and, finally, the requirement to undertake procedures required by the National Environmental Policy Act, and other laws, for a legislative land exchange when the statute leaves no discretion to take into consideration the information obtained by those procedures.

The bill also authorizes approximately \$2 million in appropriations and many new management activities without identifying sources of funding or proposed offsets. It requires some 20 different types of plans, studies, and management activities, without consideration for coordinating those with ongoing forest or regional priorities. It also sets a number of timelines that may be unachievable, given the volume of work, current staffing, and requirements for third-party participation desired in the bill.

We, nevertheless, look forward to continuing to work with the committee and the bill's sponsors in the interest of seeing legislation enacted in this Congress.

In addition to testimony on S. 647, the administration supports enactment of H.R. 356, to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States.

The details of our remaining concerns with S. 647 are provided in my testimony for the record. With that summary, I will yield to Mr. Hughes.

[The prepared statement of Mr. Rey follows:]

PREPARED STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to today to provide the Department's views on the bills which are on the agenda today.

S. 647—THE LEWIS AND CLARK MOUNT HOOD WILDERNESS ACT OF 2007

The Lewis and Clark Mount Hood Wilderness Act of 2007 provides management direction for Mount Hood and its surrounding landscapes that emphasizes the importance of wilderness, recreation, and forest health, as well as cultural, historical, environmental and scenic values.

The Administration recognizes that the bill's sponsors have conducted a considerable amount of outreach and worked with a number of communities of interest including local and state governmental entities, tribes, profit and non-profit organizations and individuals in the development of S. 647.

Last year, the Administration testified in hearings on two bills concerning the management of lands in and around Mount Hood: S. 3854 and H.R. 5025. We are gratified that several of the suggestions offered at that time have been considered in S. 647, and it is preferable to last year's Senate bill. However, we still have critical concerns regarding several provisions which precludes our support for the bill as written.

Several of the provisions continue to be highly prescriptive and limiting, and we believe, could benefit from additional collaboration among all stakeholders. While we strongly support public involvement and community collaboration, the concept of legislating management direction is problematic. We find the land exchange provisions and several of the wilderness designations to be especially troubling. We would like to work with this committee and the sponsors to ensure that existing legal and cooperative frameworks for decision-making continue to be honored as we seek to meet the goals of the legislation.

OVERVIEW

S. 647 would expand the National Wilderness Preservation System and the National Wild and Scenic Rivers System, and designate national recreation areas, and a special resources management unit. It would provide for the retention of fees from recreation and other special uses and establish a recreational working group.

In addition, the bill would direct the Secretary to work with State, local, and other Federal governments to develop an integrated multi-modal transportation plan, and, with the State of Oregon, study the feasibility of establishing a gondola connection and a multi-modal transportation center located near Government Camp.

The bill would require the Secretary of Agriculture to conduct a Forest Stewardship Assessment to address forest health, to establish Memoranda of Understanding for watershed management between the Forest Service and irrigation districts or municipalities and to study long-term biomass available on the Mount Hood National Forest. The bill would direct the Secretary to establish priority-use areas and provide for the gathering of first foods by members of Indian tribes with treaty-reserved gathering rights.

The bill would require the Secretary to enter into specified land exchanges with private landowners and directs the Secretary to publish a prospectus to operate a ski area and inn that would be acquired in an exchange.

ANALYSIS

The Administration supports many of the concepts and provisions of this bill, including some wilderness and wild and scenic river designations, and the attention focused on recreation, watershed and forest health and transportation issues on and around Mount Hood.

We would like to work with the committee and sponsors to correct technical items and resolve concerns regarding the legislation including: 1) effects of some of the wilderness proposals; 2) special use fee retention; 3) restrictive management requirements of the Crystal Springs Watershed Management Unit; 4) the requirement to enter into a land exchange that, in our consideration, is not in the public interest;

and 5) the requirement to undertake procedures required by the National Environmental Policy Act, the Endangered Species Act, and other laws for a legislated land exchange when the statute leaves no discretion to take into consideration the information obtained by these procedures.

The bill also authorizes approximately \$2 million in appropriations and many new management activities without identifying sources of funding or proposed offsets. It requires some 20 different types of plans, studies, and management activities without consideration for ongoing forest or regional priorities. It sets multiple timelines that are unachievable given the volume of work, current staffing, and requirements for third party participation.

#### WILDERNESS

S. 647 proposes to designate approximately 128,800 new acres of wilderness on the Mount Hood National Forest, and about 1,700 acres of wilderness on adjacent lands managed by the Bureau of Land Management. The Administration would support the designation of wilderness for areas that are consistent with the hallmarks of wilderness described in the Wilderness Act of 1964—areas dominated by the forces of nature, with primeval character and natural conditions that contrast with developed lands and offering outstanding opportunities for solitude or primitive and unconfined recreation.

The best opportunities for achieving these conditions are within those proposed areas that are contiguous to existing wilderness areas. The additions that, in our opinion, could enhance existing wilderness areas include approximately 59,000 acres consisting of the following: Bull of the Woods (5,400 acres), Mount Hood (2,000 acres), Salmon-Huckleberry (7,700 acres), Roaring River (31,000 acres), and Gorge Face (12,500 acres).

We would like to work with the committee to seek agreement on mapping changes that would provide more manageable boundary locations and enhance the overall wilderness character of the proposed wildernesses. We also seek the flexibility in legislative language to make minor boundary adjustments prior to survey to exclude nonconforming uses such as power lines, roads and existing permitted operations. In addition, we understand that some of the maps referenced in the legislation have been modified since the bill was first introduced, and bill language should be amended to reflect the changes.

We have specific concerns with other proposed wilderness designation including many of the smaller, isolated areas. These areas are currently managed for values and uses that are inconsistent with wilderness designation, including motorized access. Examples of proposed wilderness with limited or impaired wilderness character would include areas close to I-84 and Highways 35 and 26, and small extrusions and peninsulas extending from existing wilderness and from some of the proposed new wilderness. We believe these proposed areas would be adversely impacted from adjacent activities or from activities associated with the continuation of existing uses, such as mountain biking and motorized camping. We would like to work with the committee to explore alternatives that could meet the intent of protecting these areas for future generations short of wilderness designation.

S. 647 proposes new wilderness within the boundary of the Columbia River Gorge National Scenic Area (CRGNSA) designated by Congress in 1986. Most of the area within the CRGNSA covered under the bill is adjacent to urbanized areas and significant infrastructure (such as the cities of Hood River, Bonneville, and Cascade Locks, the unincorporated communities of Dodson and Warrendale, Bonneville Power Administration's high voltage power lines that traverse and transect the Gorge, Interstate 84, and the Union Pacific Rail Line). We believe that adjacent land uses, in conjunction with special provisions for existing rights such as the Army Corps of Engineers permit related to Bonneville Dam, could potentially conflict with and compromise the wilderness character of the proposed Gorge Face Wilderness. The CRGNSA designation has been highly successful in protecting and enhancing the scenic, cultural, and natural and recreation resources of the area while accommodating economic development consistent with these purposes.

Section 106 would require the Secretary to construct a system of defensible fuel profile zones. Significant intergovernmental agency and community involvement has resulted in the development of the City of Cascade Locks Community and the Clackamas County Community Wildfire Protection Plans, completed in 2005. Implementation is being planned by the Forest Service and these partners at this time. However, it would be difficult to implement the proposed zones in a manner consistent with the Mount Hood National Forest Management Plan. The area around Government Camp is spotted owl habitat. Previous fuel reduction projects in this vicinity have been limited because effective treatment would change the stand com-

position, conflicting with spotted owl habitat. More flexibility in bill language would address this concern.

#### WILD & SCENIC RIVER DESIGNATIONS

The Department supports the wild and scenic river designations proposed by S. 647, with the exception of the Fifteen Mile Creek and the East Fork Hood River. The former did not rise to a level of significance for a wild and scenic river eligibility study during the Land and Resource Management Planning process and we believe it still does not merit further consideration. The East Fork Hood River was determined not a suitable addition to the National Wild and Scenic Rivers System in the Mount Hood Land and Resource Management Plan. The paragraphs amending Section 3(a) of the Wild and Scenic Rivers Act should not be numbered, and several river-specific proposals require further clarification. We look forward to working with the committee to address these concerns.

The Forest Service is also concerned about its ability to protect wild and scenic river values with regard to particular wild and scenic river boundary locations; the language relative to water rights and flow requirements; culverts; and treatment of State highways. We prefer that the boundaries be adjusted to exclude potentially nonconforming activities to protect the values associated with these special resources. We would like to work with the committee on amendments to address these concerns.

#### RECREATION

Title IX of the bill would, for a 10-year period, provide for retention of land use fees from special use authorizations, recreation residences, resorts (including winter recreation resorts), communication uses, linear rights-of-way, and other special uses. Revenues would be held in a special account for expenditure toward a variety of purposes, such as installation, repair, maintenance, and enhancement related to visitor enjoyment, access, and health and safety.

We recognize the importance of outdoor recreation to the social and economic well-being of the Mount Hood region today and into the future. We share the sponsors' concerns with the challenges of managing complex and often conflicting recreation values and uses. However, the new fee retention authority for the Mount Hood National Forest as specified in the legislation is objectionable. The inclusion of new authority for retention and expenditure of land use fees would result in a loss of Treasury receipts which are used to fund ongoing programs.

The proposed legislation would provide for the establishment of a Mount Hood National Forest Recreational Working Group that would be exempt from the Federal Advisory Committee Act (FACA). This working group would provide advice on planning and implementing recreational enhancements on the Mount Hood National Forest, including advice on how the retained fees should be expended. The FLREA already requires the creation of a Recreational Advisory Committee, with similar membership. We believe creation of any additional advisory council would be administratively burdensome and costly and would like to work with the Committee to develop a means to address the objectives of this provision.

S. 647 would designate a Mount Hood National Recreation Area (NRA). The Administration supports this designation, which recognizes the variety of recreational activities that visitors currently enjoy in the proposed area. We also appreciate the significant changes in language reflected in this bill in response to Administration concerns with language in previous versions. We suggest that some of the smaller isolated tracts now proposed for wilderness would be better protected as additions to the proposed national recreation areas as an alternative to wilderness designation.

The bill proposes only the Mount Hood NRA, although the maps reference two additional national recreation areas: the Fifteenmile Creek NRA, and the Shellrock Mountain NRA. As mapped, the Mount Hood NRA overlaps the proposed Badger Creek Wilderness (3,004 acres), the proposed Barlow Butte Wilderness Area (1,973 acres) and the proposed Twin Lakes Wilderness Area (6,359 acres). This dual designation would prove difficult to manage and could also be confusing to the public. We suggest that national recreation area designation for all of these areas is most appropriate. The bill should be amended to reflect the designation of the three separate national recreation areas referenced on the maps.

#### TRANSPORTATION

The Administration supports collaboratively participating with the State of Oregon, local governments, and Federal departments in the development of a comprehensive, multi-modal transportation strategy for the Mount Hood region. We do

not support language contained in Section 402(e), which assigns responsibility for the transportation plan to the Secretary, or Section 402(f) which authorizes the appropriation of \$2 million to carry out the section. Existing funding mechanisms under section 1117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (P.L. 109-59) are already available to the Oregon Department of Transportation to address transportation planning. Indeed, the Mount Hood National Forest has recently secured \$100,000 of funding under section 3021 of SAFETEA-LU for the State to begin work on preliminary planning. The transportation plan will include a review and compilation of all existing studies related to transportation in the Mount Hood region.

In addition to the transportation plan, the bill would require the Secretary to conduct a study of the feasibility of establishing a gondola connecting Timberline Lodge to Government Camp and an inter-modal transportation center in close proximity to Government Camp. Given the complexity of conducting this study, we suggest that the Department of Transportation has the appropriate expertise to carry it out.

A 2001 gondola feasibility study conducted with funding from the Federal Highway Administration estimated the cost to construct a gondola from Government Camp to Timberline Lodge ranged from \$21 to \$26 million, and estimated the cost of the gondola from Government Camp to Mount Hood Meadows ranged from \$37 to \$56 million. We do not believe another study of the gondola feasibility would be needed and we would recommend including the completed study as part of the regional transportation planning process.

Section 404 authorizes the Secretary to provide State and Private Forestry program grants to Cascade Locks and Hood River County for the burial of power lines, but the use of these funds is inconsistent with the purposes of the State and Private Forestry program. Section 405 allows for activities not normally permitted in designated wilderness and wild and scenic rivers to repair, realign, expand capacity, and carry out other activities for Highway 35 and any other existing State highway. We would like to work with the sponsors to adjust the proposed wilderness and wild and scenic river boundaries to reduce the need for these types of activities within these designations while still allowing the State to respond to unforeseen emergencies.

#### FOREST & WATERSHED STEWARDSHIP

We support the objectives of the Forest Stewardship Assessment in both bills to determine forest health needs. The Forest Service is currently developing an integrated vegetation management approach similar to the approach provided for in the legislation. The ability to use existing information and processes would expedite developing a forest stewardship assessment consistent with other agency efforts. However, the legislation requires commencement of implementation of the stewardship assessment projects within a limited time frame, and the Department is concerned this requirement will redirect other available funds allocated to meet higher priority needs. The bill, if enacted, therefore would require the Forest Service to utilize existing funds and displace other, more critical, ongoing work. Again, we would like to work with the committee to address this concern.

We support the concept of assessing the amount of long-term sustainable biomass available in the Mount Hood National Forest. The Forest Service has already begun a study as part of a recent memorandum of understanding signed by the Confederated Tribes of Warm Springs and others to analyze the supply of biomass for a tribal cogeneration plant. The bill restricts biomass material to by-products from forest restoration activities. We would like to work with the sponsors to expand the definition of biomass to be consistent with the language in the memorandum of understanding with the Confederated Tribes of Warm Springs.

#### LOCAL AND TRIBAL RELATIONS

The bills would encourage the Secretary of Agriculture to cooperate with the Tribes, Federal and State entities, and local communities. We support this general direction. We also support the requirement to identify, establish, develop, and manage priority-use areas for gathering of first foods by member of Indian tribes with treaty reserved rights (as provided in section 802(a) of S. 647.

#### LAND CONVEYANCES

We appreciate the sponsors' efforts to resolve long-standing conflicts on Mount Hood with the Cooper Spur-Government Camp land exchange proposal, as well as the changes in the bill to address some of the valuation-related concerns expressed in previous testimony.

While we support the direction in S. 647 to use nationally recognized appraisal standards, the Administration objects to the bill's requirements that depart from those standards. The Administration also objects to the additional requirements that the date of valuation be the spring of 2005 and that appraisal be approved by other parties, namely the County and Mt. Hood Meadows. To protect the public's investment, appraisals performed for any proposed exchange should be done as close to the date of transaction as is feasible. Approval of appraisals is normally solely at the discretion of the Secretary. Mount Hood Meadows and Clackamas County should have the opportunity to provide the appraisers with market information, but should not share approval authority with the Secretary because of their potential interest in the outcome. We have a number of suggestions for improving the land exchange proposal.

First, we recommend reconsideration of the requirements that the Forest Service would take possession of an aging infrastructure, solicit a new concessionaire, and be prohibited from subsequent land or facility adjustments, because all could be problematic.

Second, we suggest consideration of alternative exchange lands. The 770 acres of private lands offered to the United States at Cooper Spur do not have national forest characteristics. They are heavily disturbed, fragmented and interspersed with roads, power-lines, and subdivisions.

Third, we recommend re-evaluation of the unique resource implications of privatizing the two parcels of land at Government Camp. We have other concerns regarding the Cooper Spur land exchange process and would like to work with the committee on amendments to address these concerns.

The Administration supports the proposed exchange with the Port of Cascade Locks to improve the Pacific Crest National Scenic Trail. The administration does not object to the Hunchback Mountain exchange with Clackamas County. We note that this exchange would require a legislated adjustment to the Mt. Hood National Forest Boundary and we would work with the committee to address this.

Sec. 503(f)(1) provides that it is the intent of Congress that the Secretary complete all legal and regulatory processes required for the exchange of Federal land and the non-Federal land in 16 months. This timeframe is unachievable given the applicable requirements for environmental studies, public participation, evaluation of alternatives, Endangered Species Act consultation, additional third-party consultation requirements in this legislation, and the limitations in sharing costs with the proponents, as well as conflicts with the Region's existing priorities for critical land exchange work.

In addition, the requirement that provisions with legislated outcomes, such as the land exchanges, be subject to participatory environmental laws such as the National Environmental Policy Act is not consistent with the requirements of such laws since there is no ability for the agency or the public to effect adjustments to the proposal because the outcome is specified in the legislation.

The Administration could support relevant conveyances if bill language is amended to address these concerns.

#### SUMMARY

In summary Mr. Chairman, while we are encouraged by the sponsor's efforts on behalf of the Mount Hood National Forest, the Administration has significant concerns with S. 647 as presently written. Nevertheless, we see a great potential, working with the many stakeholders of the region and beyond, to meet the bills objectives to protect for future generations the recreation opportunities and resource values of the Mount Hood National Forest. We believe we can accomplish these objectives using existing authorities as well as some of the provisions of the bill. We strongly support negotiated agreements on land management and we are committed to continuing to work on the sections where we have concerns.

H.R. 356—"TO REMOVE CERTAIN RESTRICTIONS ON THE MAMMOTH COMMUNITY WATER DISTRICT'S ABILITY TO USE CERTAIN PROPERTY ACQUIRED BY THAT DISTRICT FROM THE UNITED STATES"

Thank you for the opportunity to present our views on this bill, which would remove use restrictions included in the patent the Mammoth County [California] Water District received when it purchased approximately 25 acres of land from the U.S. Forest Service [Inyo National Forest] in 1987. The lands were purchased at market value by the District for a community sewage treatment facility, which up to that time had been authorized under a Forest Service Special Use Permit. The District has since upgraded their sewage treatment system, and their aeration ponds are no longer necessary. The District wishes to convert these ponds to a more



suitable community use that would be compatible with the adjacent sewage treatment facility, but the use restriction from the patent must first be lifted.

The Department supports the bill.

Mr. Chairman and members of the committee, this concludes my testimony. I am happy to answer any questions you may have at this time.

Senator WYDEN. Very good.

Mr. Hughes.

**STATEMENT OF JIM HUGHES, ACTING DIRECTOR, BUREAU OF  
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. HUGHES. Thank you for the opportunity to testify on a number of bills of interest to the Department of the Interior. I would ask that all four of my testimonies be included in the record and I'll briefly summarize.

Senator WYDEN. Without objection, it is so ordered.

Mr. HUGHES. H.R. 276, the Piedras Blancas Historic Light Station of Outstanding Natural Area Act—the Department of the Interior supports H.R. 276, which would designate the Piedras Blancas Historic Light Station, along the Central California coast, as an Outstanding Natural Area.

H.R. 276 recognizes both the historical significance of the Light Station and the community support for its preservation. In order to safeguard the buildings and public lands immediately surrounding them, the bill provides protections for the area, while encouraging and enabling active community support and involvement.

S. 205 and H.R. 865, the Copper Valley Native Allotment Resolution Act—the Department supports the goals of S. 205 and the House-passed H.R. 865 and the Copper Valley Native Allotment Resolution Act, which would grant right-of-way for electric transmission lines over certain Alaska Native allotments.

The GAO identified 14 specific allotments where Copper Valley Electric Cooperative rights-of-way conflict with Native allottee ownership. S. 205 and H.R. 865 would resolve the dispute by granting to Copper Valley a right-of-way over the specific allotments listed in the bill. In exchange for the rights-of-way granted across each of the properties, owners of the listed allotments would each be compensated based on the results of an appraisal.

While the Department appreciates changes made to the legislation from last year, we do have some continuing concerns, most notably the issue of past compensation.

H.R. 1139, National Landscape Conservation System Act—the Department supports S. 1139, a bill that would legislatively establish the National Landscape Conservation System in order to conserve, protect, and restore nationally significant landscapes.

The NLCS is a significant part of the BLM's conservation efforts and is an integral to the BLM's overall multiple-use mission. The bill would not alter the management of the NLCS individual units, which include National Conservation Areas, National Monuments, National Historic and Scenic Trails, Wild and Scenic Rivers, and designated wilderness.

It recognizes the diverse nature of the components of the BLM's NLCS by directing that the units be managed in accordance with laws related to each individual unit. As each individual unit is

unique, we strongly support this recognition of their individual management framework.

S. 390, the Utah recreational land exchange—this Act would legislate a large-scale land exchange between the Bureau of Land Management and the State of Utah.

We look forward to working with the sponsors and the committee on S. 390, and could support the bill with some additional modifications. S. 390 directs the exchange of lands between the Utah School and Institutional Trust Lands Administration and the BLM in Utah. Many of the lands that the State is proposing to transfer to the BLM are lands that the BLM has a high degree of interest in acquiring, because they would consolidate Federal ownership within wilderness study areas, areas of critical environmental concern, and other sensitive lands. We support the provisions of the bill that establish the phasing process for the transfer of lands from STLA to the BLM.

The bill also identifies a number of parcels for transfer to STLA from the BLM. Some of these would improve manageability and encourage appropriate local development. Other lands identified for transfer to the School Lands from the BLM would have high energy potential. The Department of Interior supports the intent of this legislation. Large-scale land exchanges can resolve management issues, improve public access, and facilitate greater resource protection. And, we support such exchanges.

To that end, we're ready to work with the committee and the sponsor to resolve some issues that we've outlined in our written testimony.

I'd be happy to answer any questions, sir.

[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF JIM HUGHES, ACTING DIRECTOR, BUREAU OF LAND  
MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 205 AND H.R. 865, THE COPPER VALLEY NATIVE ALLOTMENT RESOLUTION ACT

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on S. 205 and H.R. 865, the "Copper Valley Native Allotment Resolution Act of 2007." The Department supports the goals of this legislation, which would grant rights-of-way for electric transmission lines over certain Alaska Native allotments but, as discussed in more detail below, we do have some concerns with the bills.

#### *Background*

The issues related to this bill are described in detail in a September 2004 Government Accountability Report titled "Alaska Native Allotments: Conflicts with Utility Rights-of-Way Have Not Been Resolved Through Existing Remedies" (GAO-04-923). As noted in the GAO Report, the Department and the State of Alaska have granted rights-of-way for a variety of uses, including electrical transmission lines, and some of these rights-of-way cross Alaska Native allotments, giving rise to conflicts between Alaska Natives and holders of rights-of-way. One such holder is Copper Valley, a rural nonprofit electric cooperative which provides electricity to about 4,000 members in Alaska's Valdez and Copper River Basin areas. According to the Report, as early as 1958, Copper Valley obtained rights-of-way permits from Interior, and later from the State of Alaska, to construct and maintain electric lines. However, in some instances it has been determined (either by the Department or the Alaska Realty Consortium, which provides realty services for over 160 Native allotments in south-central Alaska) that Copper Valley is trespassing or allegedly trespassing across Alaska Native allotments.

Since the late 1980s, the Department has applied the "relation back" doctrine when addressing disputes between Alaska Native allotments and rights-of-way holders. Under that doctrine, the rights of Alaska Native allottees relate back to when

each first started using the land, not when the allotment was filed or granted. Prior to that time, Alaska Native allotments generally were subject to rights-of-way existing at the time the allotment was approved. Federal courts have dismissed legal challenges to Interior's use of the relation back doctrine because of sovereign immunity.

#### *Discussion*

The GAO identified 14 specific allotments where Copper Valley's rights-of-way conflict with Native Allottee ownership. S. 205 and H.R. 865 would resolve the dispute by granting to Copper Valley a right-of-way over the specific allotments listed in the bill. In exchange for the rights-of-way granted across each of the properties, owners of the listed allotments would each be compensated based on the results of an appraisal conforming with the Uniform Appraisal Standards for Federal Land Acquisitions, plus interest, using the date of enactment of this legislation as the date of valuation. We have not yet conducted any appraisals, but we do not expect these costs to be significant. Senate bill 205 provides that compensation would be paid from the Judgment Fund (31 U.S.C. 1304); the House bill is silent on this issue.

As noted above, the Department supports the resolution of this matter, and we appreciate changes made to the bills prior to their introduction this year. However, we do have some concerns with the legislation. As an initial matter, we have a concern in S. 205 regarding whether this is an appropriate use of the Judgment Fund. Alternatively, we note that H.R. 865, which has passed the House, does not identify a source for compensation payments. In the absence of a named source, we presume that any compensation awarded under this legislation would be taken from programmatic funding.

Additionally, we strongly recommend that the legislation contain language ensuring that the allottees are provided compensation for the past occupancy of the rights-of-way. We think this is an important issue and one that should be addressed to ensure that the allottees are fully compensated. We look forward to working with you on this matter.

Thank you for the opportunity to present this testimony. I will be happy to answer any questions.

#### S. 390, UTAH RECREATIONAL LAND EXCHANGE ACT

Thank you for the opportunity to testify on S. 390, the Utah Recreational Land Exchange Act. The bill would legislate a large-scale land exchange between the Bureau of Land Management (BLM) and the State of Utah. We strongly support the completion of major land exchanges with the State of Utah. We look forward to working with the sponsors and the Committee on S. 390 and could support the bill with some additional modifications. As a matter of policy, we support working with states to resolve land tenure and land transfer issues that advance worthwhile public policy objectives.

#### *Background*

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.5 million acres of land and 4.5 million acres of mineral estate within the State of Utah primarily for the benefit of the schools of the State of Utah. Many of these parcels are scattered and interspersed with public lands managed by the BLM.

Managing 22.87 million acres of land within the State of Utah, the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. As the nation's largest Federal land manager, the BLM administers the public lands for a wide range of multiple uses, including energy production, recreation, livestock grazing, conservation use, forestry and open space. The Federal Land Policy and Management Act (FLPMA) provides the BLM with a clear multiple-use mandate which the BLM implements through its land use planning process.

Section 206 of FLPMA provides the BLM with the authority to undertake land exchanges. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. Over the past five years, throughout the bureau, nearly 550,000 acres of public lands were disposed of through exchange, while 370,000 acres were acquired by the BLM through this process. During this same time period in Utah, the BLM has disposed of 110,178 acres while acquiring 112,842 acres through exchange. The vast majority of this was completed under the direction of Congress through the Utah West Desert Land Exchange Act (Public Law 106-301).

The legislation before us references maps, but not specifically dated maps. The most recent maps completed by the BLM last year at the request of the House Resources Committee are dated September 22, 2006, and our discussion of the bill is based on those maps.

S. 390 directs the exchange of approximately 42,000 acres of lands managed by SITLA for approximately 40,000 acres of BLM-managed Federal lands. Many of the lands that the State is proposing to transfer to the BLM are lands that the BLM has a high degree of interest in acquiring because they would consolidate Federal ownership within wilderness study areas, Areas of Critical Environmental Concern, or other sensitive lands. Among these are:

- 640 acres on the eastern boundary of Arches National Park which will provide important viewshed protections;
- 1,280 acres and 420 acres along the Colorado River west and east of Moab which includes Corona Arch and other popular recreation sites within the BLM's Colorado Riverway Management Area;
- 4,500 acres within the Castle Valley watershed which also has important wild-life habitat and scenic values;
- 2,560 acres of land currently leased by the BLM and Grand County from the State for recreation-related activities associated with the Sand Flats Recreation Area and the famous Slickrock Mountain Bike Trail; and,
- 800 acres within the Nine Mile Canyon containing significant cultural and recreational resources.

We support the provisions of the bill that establish a phasing process for the transfer of lands from SITLA to the BLM. This will allow BLM to prioritize the use of Federal resources in the appraisal and review process on the lands with the highest resource value for acquisition.

The bill also identifies a number of parcels for transfer to SITLA from the BLM. Some of these would improve manageability and encourage appropriate local development, including:

- 2,800 acres of scattered parcels near the town of Green River which are suitable for private agricultural development; and
- 80 acres adjacent to Canyonlands Field municipal airport operated by Grand County, Utah which are suitable for private development.

In addition, some of the lands identified for transfer to SITLA from the BLM have high energy potential.

#### *Valuation Issues*

In December of 2004, former Secretary Norton issued policy guidance to all of the bureaus on legislative exchanges and land valuation issues. On December 31, 2006, Secretary Dirk Kempthorne extended the policy guidance until August 31, 2007. A copy of that guidance (Secretary of the Interior Order No. 3258A2) is included for the record.\* This policy was developed to ensure that land transactions are conducted with integrity and earn public confidence.

The policy states that all real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP)). Accordingly, the policy specifically prohibits the use by the Department of alternative methods of valuation in appraisals. However, the policy recognizes there may be times when Congress will direct, or the Department will propose, the use of alternative methods of valuation other than, or in addition to a standard appraisal. Under the policy guidance, if Congress directs the Department to use an alternative method of valuation in a specific transaction, the Department will expressly describe the alternative method of valuation applied; explain how the alternative method of valuation differs from appraisal methods applied under the Uniform Appraisal Standards or the Uniform Standards of Professional Appraisal Practice; and, if so directed by Congress, provide this material to the appropriate committees prior to or after completion of the transaction, as required by the direction.

The Department's Inspector General has commented on the Department's appraisal reform efforts. In testimony given before the Senate Committee on Finance in June of 2005, he commended the Department for the significant changes it has made to the land appraisal program and process.

As stated, there are circumstances in which the Congress or the Administration may decide that alternative methods of valuation are appropriate for achieving

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\*The information referred to has been retained in subcommittee files.

worthwhile public policy objectives. It is our duty to be clear and transparent about the details of proposed exchanges and to be clear that an alternative method of valuation is being used.

S. 390 is not an Administration legislative proposal. It is a legislative proposal from Congress. Its stated purpose is to facilitate the exchange of certain Federal lands for non-Federal lands to further the public interest by exchanging Federal land that has limited recreational and conservation resources and acquiring State trust land with important recreational, scenic, and conservation resources for permanent public management and use. To meet these legitimate public policy objectives, Congress may determine that alternative methods of valuation are consistent with the intent of the legislation.

S. 390 directs that all appraisals shall be in accordance with the requirements of FLPMA and with the BLM's regulations governing appraisals. However, we should point out that the FLPMA subsection referenced in the bill (subsection 206(d)) does not relate to appraisal standards. Subsection 206(f) of FLPMA relates to appraisal standards. The bill further directs the use of two alternative methods of valuation for two different purposes. I will describe the Department's view of each of these and the relative benefits or risks of using these methods.

Under Sec. 5(b)(4), the Federal government reserves a share of potential future revenues from any mineral resource subject to lease under the Mineral Leasing Act. Mineral resources leasable under the Mineral Leasing Act include oil and gas and oil shale. However, the economic viability of energy production from oil shale is currently unproven but is under intensive study. This reserved interest arrangement is common in the private sector and protects sellers from disposing entirely of some unknown future mineral wealth.

Sec. 5(b)(4) requires that, for Federal lands that are not under mineral lease at the time of appraisal, such lands shall be valued without regard to the presence of any minerals that are subject to leasing under the Mineral Leasing Act of 1920. This provision would not affect the appraisals for lands that contain no mineral values. Additionally, it would not affect the appraisals for those lands that are already under Federal mineral lease. Rather this provision would modify standard appraisal practice by directing that the appraisal be completed without regard to the presence and any value contribution of minerals that are eligible for lease under the Mineral Leasing Act but are not currently leased. For such lands, the value increment attributable to the minerals will not be determined and will not contribute to the transaction value of the lands in the exchange. In exchange for this reduction in value, the State or its successors in interest to the property (by virtue of covenant language in Section 5(b)(4)(B)) would have to agree to pay the United States 50% of whatever bonus or rentals are paid to the State for any mineral development in the future; and an amount equal to the Federal royalties that would have otherwise been collected by any future mineral development conducted pursuant to the Mineral Leasing Act, minus amounts that would have otherwise been due to the State under Section 35 of that Act.

This is a complicated methodology that departs from a standard appraisal and valuation practice. We note that currently under standard appraisals oil shale, the mineral that, in addition to oil and gas, is likely to be found in the unleased lands that would be conveyed to the State, does not factor into the value because there are no comparable property transactions known to be driven by the economics of oil shale development, or there is no reasonably foreseeable oil shale development on the property. The result of using a standard appraisal process might therefore be that properties with significant oil shale resources will probably have no additional value attributed to them by virtue of the presence of this resource. This could lead to the criticism that the United States is "giving away" potentially millions of dollars in oil shale. The material purpose of the provisions contained in section 5(b)(4) is to address that risk by ensuring that the United States receives the value for any future oil shale or other leasable mineral development it would have received if the Federal government had retained the lands and leased them.

We would like to work with the Committee to further refine this section. In particular, we would like the bill to clarify that under Section 5(b)(4), the royalty rate for which the State would compensate the Federal government in the event that currently unleased minerals are eventually developed is the standard Federal on-shore rate established at the time the resource is developed. Also, it may be more appropriate to narrow the scope of this provision expressly to oil shale and allow for an appraisal that would capture the value of any other leasable minerals according to general appraisal standards. In addition, as currently drafted, the provision conditions the use of the alternative method of valuation on an agreement the State would make after conveyance of the lands. The lands, however, cannot be conveyed until they are valued.

The second alternative method of valuation is found in Sec. 5(b)(6)(B). This provision would apply only to parcels under Federal mineral lease at the time of the appraisal. Clause (ii) in that subparagraph would direct the BLM to reduce the value of an applicable appraisal by an amount equal to what would be the State's share under Section 35 of the Mineral Leasing Act. A standard appraisal would consider all potential uses of the property, including but not limited to, mineral resource production and the resulting income stream. The Department understands that this provision is included to recognize that the Mineral Leasing Act currently provides that 50% of all the money received by the United States in accordance with Section 35 of the Mineral Leasing Act shall be paid to the State within the boundaries of which the leased lands or deposits are or were located.

This provision provides that the transaction value of Federal leased properties will be the market value less the percentage of the Federal revenue sharing obligation under Section 35 of the Mineral Leasing Act. We should note that the bill assumes that an appraisal would conclude that the highest and best use of this property would be mineral resource production and that may not be the case.

The overall result of the proposed valuation methods will be a greater number of Federal acres exchanged for a lesser number of state acres. This may be the desired outcome given the bill's stated public policy objectives.

#### *Other Concerns*

The Department opposes section 5(d) of the bill requiring a "resource report" on the lands to be transferred out of Federal ownership. Under S. 390 the Secretary has no discretion regarding the lands to be transferred out of Federal ownership; therefore the intent and usefulness of this section is unclear. Resource reports on the parcels will be time-consuming and costly, will delay the purposes of the bill, and will not ultimately affect the directed exchange. We urge the Committee to delete this provision.

Additionally, the Department has serious concerns with section 6(a)(2)(B) which places permanent withdrawals from the mineral leasing and mineral materials laws on certain state parcels once they are transferred to the Federal government. We would support the short term withdrawals envisioned in 6(a)(2)(A) because they are consistent with the present public planning process. Generally, the Department prefers to identify lands for permanent withdrawal from mineral entry or leasing through the public land use planning process because it gives all interested parties an opportunity to be heard. A short-term withdrawal of these lands from mineral leasing would preserve the option of more permanent withdrawal for any final record of decision. This is standard BLM practice.

We would like the opportunity to continue to fine tune and clarify some provisions, including section 4(a), to insure that the implementation of the exchange is correctly and appropriately completed. Finally, we would like to work with the sponsors and the Committee on new maps for the legislation. It is our understanding that a number of technical corrections need to be made to the maps.

#### *Conclusion*

The Department of the Interior supports the intent of this legislation. Large-scale land exchanges can resolve management issues, improve public access, and facilitate greater resource protection, and we support such exchanges. To that end, we are ready to work with the Committee and the sponsor to resolve remaining issues in the bill. I would be happy to answer any questions.

#### S. 1139, NATIONAL LANDSCAPE CONSERVATION SYSTEM ACT

Thank you for inviting me to testify on S. 1139, the National Landscape Conservation System Act. The National Landscape Conservation System (NLCS) is a significant part of the Bureau of Land Management's (BLM) conservation efforts and is integral to the BLM's overall multiple-use mission. The BLM is proud to oversee this system which includes areas nationally recognized for their outstanding values. These lands are not simply places to visit; they help define who we are as a Nation and tell the story of our nation as it unfolded in the unforgettable natural landscapes of the West.

The Department supports S. 1139, a bill that would legislatively establish the NLCS in order to conserve, protect, and restore nationally significant landscapes. The bill would provide for the inclusion in the NLCS of Congressionally and Presidentially designated special places administered by the BLM. S. 1139 would provide legislative support to the NLCS and its conservation mission within the BLM.

### *Background*

In June 2000, the Department of the Interior administratively established the NLCS within the BLM bringing into a single organized system many of the BLM's outstanding ecological, cultural and scientific landscapes. The BLM is charged with managing the public lands for a wide range of uses. This multiple-use mission directs the balanced management of public lands for many uses, including conservation, recreation, livestock grazing, energy development, and timber production. The NLCS is an integral part of that mission and includes National Monuments, National Conservation Areas (NCAs), National Scenic and Historic Trails, Wild and Scenic Rivers, Wilderness, and Wilderness Study Areas (WSAs). The BLM, under the authority of section 603 of FLPMA, manages WSAs so as not to impair their wilderness character. The establishment of the NLCS would not change the status of the WSAs or the authority of Congress, at some future time, to designate them as units of the National Wilderness Preservation System or to release them for non-wilderness multiple use.

The NLCS currently includes 20 million acres of archaeological and historic treasures such as Canyons of the Ancients National Monument in Colorado and the Oregon National Historic Trail, wildlife havens such as Snake River Birds of Prey NCA in Idaho and Aravaipa Canyon Wilderness in Arizona, and hiking challenges such as King Range National Conservation Area along the lost coast of northern California and significant sections of the Continental Divide National Scenic Trail as it winds its way through New Mexico, Colorado, Wyoming and Montana.

Over the last six years, since its inception, the NLCS has established successful, collaborative relationships with local communities, States, tribes, friends groups, and private citizens. These partnerships are critical to the on-the-ground success of NLCS units.

In an increasingly crowded and fast-changing West, NLCS units provide some of the best examples of open space. For the most part, NLCS units are not highly developed. Rather, they provide visitors a different kind of outdoor experience—an opportunity to explore, discover and relax. These are places to get lost and find oneself.

Many NLCS units were designated specifically for their scientific values. Recent discoveries at some NLCS units include cave-dwelling millipedes previously unknown to science and numerous new species of dinosaurs. In 2006, at Grand Staircase-Escalante National Monument, the discovery of one of the largest known oviraptor in the world (a giant 7-foot tall, 14-foot long flesh-eating, feathered dinosaur) was revealed. The diverse opportunities for scientific inquiry allow NLCS units to be used as outdoor laboratories by a wide range of universities, colleges, and high schools including Brigham Young University, Montana State University, Colorado State University, Northern Arizona University, Universidad de Sonora (Mexico), Stanford University, Boise State University, University of New South Wales (Australia), Oregon State University, University of Utah, and the University of Witwatersrand (South Africa). Their efforts also directly benefit local communities. For example, studies of lava flows at Craters of the Moon National Monument in collaboration with Idaho State University contribute to hands-on science curriculum for local elementary students.

Much of the support for NLCS units comes from local communities that work with the BLM to engage in cooperative conservation that enhance local economies, cultures, and resources. At New Mexico's Kasha-Katuwe Tent Rocks National Monument, an inter-governmental cooperative agreement between the BLM and the Pueblo de Cochiti has successfully provided for enhanced visitor services while improving the health of the land at this spectacular geologic wonder. In southern Arizona, Las Cienegas NCA is collaborating with local ranchers, water districts, the State and county to develop innovative solutions to managing this precious watershed in a desert environment—all in the context of a historic ranching community.

Many NLCS units are adjacent to growing urban centers and provide respite from the city as well as recreational opportunities. Santa Rosa and San Jacinto Mountains National Monument adjoins the burgeoning Palm Springs area of California; McGinnis Canyons NCA lies near Grand Junction, Colorado; and Red Rock Canyon NCA is located just outside of Las Vegas, Nevada. Red Rock Canyon NCA has some of the highest visitation of any BLM-administered site and serves as an adventurous alternative for locals and visitors from Las Vegas' other attractions. The many communities in California's Coachella Valley welcome the undeveloped open spaces of the Congressionally designated Santa Rosa and San Jacinto Mountains National Monument. Partnerships with the Agua Caliente Band of Cahuilla Indians, the Friends of the Desert Mountains, and the cities of Palm Desert, Palm Springs, La Quinta, Cathedral City, Indian Wells, Rancho Mirage and Indio have enhanced BLM's ability to improve recreational opportunities while also providing for im-

proved habitat for the endangered Peninsular bighorn sheep. Colorado's growing recreation industry promotes McInnis Canyon as a place for outdoor activity including wilderness hiking, rafting and mountain biking.

From the remote, wild Steens Mountain Cooperative Management and Protection Area in the eastern part of the State, to coastal Yaquina Head Outstanding Natural Area's lighthouse and tidal pools, the diversity of NLCS units can be viewed across the breadth of Oregon. The Oregon National Historic Trail and the interpretive center in Baker City provide a window into our pioneer past and the 300,000 emigrants who used this pathway to the Pacific. Three ecosystems collide in Cascade-Siskiyou National Monument in southwestern Oregon forming a unique assemblage of rare plants and animals. Oregon's 802 miles of wild and scenic rivers provide unparalleled opportunities for fishing, hunting and boating which contribute to economic diversity in local communities.

S. 1139 proposes to establish in statute the current administrative structure of the BLM's National Landscape Conservation System. The bill would not alter the management of its individual units. It recognizes the diverse nature of the component parts of the BLM's NLCS by directing that the units be managed in accordance with the laws related to each individual unit. As each unit is unique, we strongly support this recognition of their individual management frameworks.

By formalizing the NLCS, S. 1139 would give Congressional support and direction, strengthening this special system of lands within the context of the BLM's multiple-use mission. This will assure that these landscapes of the American spirit would be conserved, protected, and restored for the benefit of current and future generations.

Thank you for the opportunity to testify in support of S. 1139. I will be happy to answer any questions.

#### H.R. 276, PIEDRAS BLANCAS HISTORIC LIGHT STATION OUTSTANDING NATURAL AREA ACT

Thank you for inviting me to testify on H.R. 276, the Piedras Blancas Historic Light Station Outstanding Natural Area Act which would designate the Piedra Blancas Light Station as an Outstanding Natural Area (ONA) within the BLM's National Landscape Conservation System (NLCS). The Department supports H.R. 276.

#### *Background*

The 18-acre Piedras Blancas Light Station sits on the coastal side of California scenic route 1 (California Coastal Highway) near Hearst Castle halfway between Los Angeles and San Francisco. It is an active lighthouse which began continuous operation in 1875 and is on the National Register of Historic Places. Formerly run by the Coast Guard, it has been managed by the BLM since 2001. Today, in addition to its safety role, the Light Station is a beacon of community support and activism.

The proposed Piedras Blancas Historical Light Station ONA is adjacent to the Monterey Bay National Marine Sanctuary, administered by NOAA. The designation of the Piedras Blancas Light Station would provide a compatible and valuable shore-based presence for this important national treasure and promote historical and educational opportunities consistent with the NLCS.

Community partnerships and an active volunteer force have allowed the BLM to begin the important work of restoration of the light station. Over 80 volunteers are actively involved in Piedras Blancas projects contributing 8,000 hours of service over each of the last three years. With strong local community support our partners include: The Friends of the Piedras Blancas Light Station, Hearst San Simeon Historic Monument, California State Parks, the Central Coast Maritime Museum, the Cambria Historical Society and a wide-range of other federal, state and local governmental agencies. In addition, monthly tours of the light station are being conducted in conjunction with Hearst Castle.

H.R. 276 recognizes both the historical significance of the Piedras Blancas Light Station and the community support for its preservation. By designating the light station as an Outstanding Natural Area, the bill follows in the footsteps of the Yaquina Head Outstanding Natural Area along the Oregon coast established by Congress in 1980. In order to safeguard the buildings and public lands immediately surrounding them the bill provides protections for the area while encouraging and enabling active community support and involvement. In addition, the bill recognizes the importance of administering this area for educational, scientific uses as well as for traditional Native American purposes.

Thank you for the opportunity to testify in support of H.R. 276. I will be happy to answer any questions.



Senator WYDEN. Thank you, why don't we just start with the traditional 5-minute rounds for Senators.

First, Mr. Rey, we thank you for working closely with us. Your folks have reached out to our people and Senator Smith's, and we've got a broad coalition, as you know, that's especially interested in this North side of Mount Hood. We've been working with Forest Service staff to improve the land exchange and your folks have been very constructive. I think we've been able, as your testimony suggests, to improve a variety of aspects of the bill and we're going to continue to work with you on it.

Our legislation includes a requirement for new appraisals under the Forest Service requirements. We will keep working on that.

Let us start, first; can you give us the assurance that we can just continue to work with you all, as we've done in the past to be able to implement this exchange, in particular?

Mr. REY. Absolutely. Over my right shoulder, you'll see our Regional Forester here to participate in this and to carry forward, back to the Northwest, the results of this hearing to continue to work with the delegation staff.

Senator WYDEN. That's very helpful and we appreciate it.

Now, for both of the administration witnesses, just so we can see if we can sort this out.

Mr. Rey stated the administration's concern relates to S. 647 requirements that depart from the nationally-recognized appraisal standards. But, Mr. Hughes, your testimony on S. 390—as it relates to the Department's appraisal process—recognizes there may be times when Congress will direct or the Department will propose use of alternative methods of valuation other than, or in addition to, the “standard appraisal.” Your testimony continues later, on page three, “to meet legitimate policy objectives, Congress may determine that alternative methods of valuation are consistent with the intent of the legislation.”

So, let us say again, we're very appreciative of both of your agencies; you're working with us constructively; we've got folks here from the Forest Service; but we're kind of scratching our heads, saying, “What do we do? We've got BLM and the Forest Service, in a sense, same administration, taking approaches that are different.” How do we reconcile this to try to be able to go forward in a responsible way and do it in a timely fashion?

Mr. Rey and Mr. Hughes.

Mr. REY. I think the short answer is that Mr. Hughes' testimony acknowledges that there are circumstances when the standard appraisal systems may not serve us well, and there may be some justification for congressionally- or legislatively-designated options to that, but the exchanges in the Mount Hood bill don't strike us as ones where that's necessary. The standard appraisal process can, if allowed to work, serve us well in executing these exchanges, if Congress directs us to do so.

Mr. HUGHES. I would concur with my colleague here. I think if you looked—and I think Senator Bennett alluded to it—that we've been trying to conduct exchanges with the State land system in Utah for well over 15 years now. In many cases we would come up to the edge of the door and we could not agree on appraisals at the end of the day. This is because, in some cases, we were trying to

appraise lands with unknown minerals, where we had no way of comparing sales of these types of land, as well as trying to identify the appraised value of lands for a view shed, or for some special geographic or geological feature on the side. We just couldn't get there using recognized Federal appraisal standards.

So, we say there are exceptions when it is in the public interest to try and acquire some of those parcels.

Senator WYDEN. Let me just get to one other area for this round. I think my point is, both of you and your agencies have been working constructively with us. We've got to sort this out, because if we're saying that the administration is advocating one approach as it relates to the Department of Agriculture and another approach as it relates to the Department of the Interior—not only are we going to have headaches in terms of resolving this, but I'm sure we're going to get to the point where people are going to ask about precedent-setting and other areas. Let us just continue to work constructively, and both of you've indicated you'd do that.

One last question on this round. Mr. Rey, you expressed some concern that areas adjacent to proposed wilderness areas have inconsistent activities. Now, the Wilderness Act seems to state clearly that wilderness that doesn't have buffers, and therefore adjacent areas, aren't required to be managed consistently with wilderness. So, what is your reaction to that point?

Mr. REY. I think the problem here is not that the Wilderness Act requires buffers, it's that the wilderness experience that individuals would enjoy when there are inconsistent or nonconforming uses immediately adjacent to a wilderness area, are things that we take into account when we designate wilderness.

So, for instance, if you are in the wilderness and looking immediately adjacent to Bonneville Powers' power line, high-tension lines, you're not really getting a wilderness experience. That's the kind of thing we look at when we make wilderness recommendations.

Now, that having been said, we have a number of wilderness areas that have nonconforming uses within them. We have a number of wilderness areas that have nonconforming uses adjacent to them. But, one of the things we try to evaluate in deciding whether something should be designated as wilderness, or whether something should be designated with some other protective designation like National Recreation Area is, is the person going to get a wilderness experience if they're in that area? In this case, we think the answer is no.

Senator WYDEN. I'll have some additional questions.

But, Senator Smith, your turn.

Senator SMITH. Thanks, Senator Wyden.

Mark, thank you and the administration for, in your budget, fully funding the Northwest Forest plan this year. It's my hope that that means a significant infusion of operating resources in and for the Mount Hood Wilderness, and Mount Hood National Forest, among others.

With that in mind, do you believe that this legislation that we're proposing, if it becomes law this year—would we see an increase or decrease in timber volume because of the wilderness designation?

Mr. REY. With the adjustments that we've made in the wilderness boundaries in discussions with your staff, we have excluded nearly-completed or existing timber sales from some of the wilderness areas where we had boundary issues to begin with. So, I would not expect the passage of this legislation to affect timber harvest levels next year.

Senator SMITH. That's important. In your written testimony, which you didn't read, but, which I think is very important, I note this, these few sentences: "However, it would be difficult to implement the proposed zones in a manner consistent with the Mount Hood National Forest Management Plan. The area around Government Camp is Spotted Owl habitat. Previous fuel reduction projects in the vicinity have been limited because effective treatment would change the stand composition, conflicting the Spotted Owl habitat. More flexibility in bill language would address this concern."

I guess my question is, the draft recovery plan for the Spotted Owl is now out, and I'm wondering—how you see all of this working out? Do we need to modify our legislation in a way that it has an impact on Spotted Owls? What does the draft proposal need for recovery of Spotted Owls and this wilderness designation?

Mr. REY. Well, I'm not sure it has any direct relation to the wilderness designation per se. The draft recovery plan is our effort to utilize the science that's been acquired in the last 20 years about the Spotted Owl to develop a plan that will lead, eventually, to the owl's recovery. Among the issues that the status review and the draft recovery plan discuss, are issues associated with fire risk in owl habitat, with some suggestion that additional flexibility there may be needed.

Senator SMITH. If I understand your testimony, though, you said that there might be a conflict between fuels reduction projects and conserving Spotted Owl habitat.

Mr. REY. As the present Northwest Forest Plan provides for, there is a conflict between the aggressiveness of the fuel reduction activities proposed in this legislation, and what sorts of habitat modification may be allowed in those specific areas. What we would like to do is to work with you to harmonize those and, to the extent that we agree on them, if need be, make it clear that that governs.

Senator SMITH. Am I correct to understand that the draft Recovery Plan now says that logging is not the issue with respect to the Spotted Owl? Or that it has a de minimus impact, and that the real impact is the Barred Owl?

Mr. REY. I wouldn't put it quite that way. I think what the status review indicated and the draft Recovery Plan discusses, and tries to address, is that habitat loss is, today, a somewhat less significant factor than it was 20 years ago. The significant fact, the more significant fact of today, is competition with the Barred Owl, which is a species that's expanding its range at the expense of the Spotted Owl. It is a species that both preys on the spotted and/or mates with it, given the particular circumstances in a specific situation.

Senator SMITH. How does catastrophic wildfire—

Mr. REY. Catastrophic wildfire is the second issue that is, we think, becoming more important in affecting the owl's recovery over the last 20 years.

Senator SMITH. Thank you, Mr. Chairman.

Senator WYDEN. I thank my friend.

Senator from Alaska.

Yesterday, we were learning about the bole, b-o-l-e, which apparently is the main stem of the tree. So, today we learned about the Barred Owl.

We recognize the Senator from Alaska.

Senator MURKOWSKI. It's always a learning opportunity and adventure here.

Senator WYDEN. There you are.

Senator MURKOWSKI. Gentlemen, thank you for your testimony. Mr. Hughes, I appreciate your comments on the CVEA legislation. We have had a discussion with CVEA regarding the issue of past compensation, that you have noted, and the concerns there. It's my understanding that they are okay and willing to work with us on adding language relating to that past compensation.

So, if I might ask you, within your agency, to help us with some language. If you could submit something that we can work to address your concerns, we would certainly like to do that.

Mr. HUGHES. We'd be happy to do that.

Senator MURKOWSKI. I appreciate that. Now, I've got a question, I believe probably to you Mr. Hughes, or to you, Mr. Rey, as well. And, this is as it relates to S. 1139.

I was interested in the response to Senator Thomas's question about, why—if we have the National Landscape Conservation in place already as a result of this internal decision—do we need to, through Congress, legislate such a system? He indicated raising the recognition, wanting codification of the system, but then he went on to indicate that perhaps it's possible to provide greater protection to certain areas.

Can you speak to the need to provide for the legislation? Will this perhaps in a backhand way, provide litigants greater opportunities to challenge the BLM management, within the systems that they do today? I don't know, maybe I'm being too paranoid about it, but—

Mr. HUGHES. Senator, if you look at the individual components of the NCLS wilderness areas, they're protected by law and Congress has set up laws to protect wilderness areas. They've set up laws to protect wild and scenic rivers, and we've issued regulations on how to do that. In our mind, the idea of the system—all around the countryside we are getting a huge number of volunteers coming in to these different units to help us. They will actually help us, in some cases, police these units that Mr. Moe was concerned about. We have a huge number of interests, in terms of our environmental education program, people wanting to come out there—scientists—to look at them.

So, in our opinion, it's probably more of a higher profile with this overall, overriding designation that the bill proposes. That's probably the main thing, is increasing that profile so Americans know what's out there.

Senator MURKOWSKI. Let me ask you again, more as it relates to the lands in Alaska. The bill provides that the Secretary will manage the system in a manner that protects the values for which the components of the system were designated. So, the question would

be, when you're managing the lands within the systems that were put there by way of ANILCA, will BLM manage according to the dictates of ANILCA first? Or in accordance with, perhaps, some other values? How does the interplay there work?

Mr. HUGHES. I believe we would manage them under the provisions of ANILCA.

Senator MURKOWSKI. Okay.

Mr. HUGHES. But there's nothing in this bill that says we should not do that.

Senator MURKOWSKI. Okay. Then, in section 3(b) of the bill, indicating the areas that are administered, then, by the BLM, are there any lands in Alaska, other than those that are enumerated in this section, that would become part of the National Landscape Conservation System, if it were to be enacted?

Mr. HUGHES. I think there's already two existing units, recreation areas that are in the system today, but we wouldn't create any additional units.

Senator MURKOWSKI. No new designated unit, then?

Mr. HUGHES. Right, right.

Senator MURKOWSKI. Then, just one last question. This, of course, relates to the dollars and the budgets. No secret that the Federal Land Management budgets are stressed and there's no specific dollar amount that's authorized to implement this legislation. Will there be more resources devoted to these lands if this legislation is adopted? What does it mean in terms of management of the non-designated lands for the BLM inventory?

Mr. HUGHES. Our budget, which we prepare and send to the Hill, will remain the same whether or not we have this designation. We will continue to manage those lands with the funds that are provided by the Congress this year and next year. We do not anticipate this having a budgetary impact.

Senator MURKOWSKI. You wouldn't be shifting from one area of the BLM budget to another? If these are, and I hate to say, more highly-valued, but lands that were referred to as the crown jewels, will the crown jewels get more protection than the other BLM lands that are not designated as such?

Mr. HUGHES. They will continue to get the attention that we give them today. We will not take money from the rest of our lands, our multiple-use, to pay for some new programs in these.

Senator MURKOWSKI. Okay.

Thank you, Mr. Chairman.

Senator WYDEN. Let me turn to just a few additional areas, with respect to Mount Hood, we want to clear up.

Mr. Rey, you have, in the past, expressed some concern that some of the areas that we put in were too small and were isolated. I and Senator Smith felt that these were really special places to a lot of folks, and that's why we put them in. Now, my understanding is that you all do manage scores of Wilderness Areas that are under 5,000 acres. Is that right?

Mr. REY. That's correct, size is not the sole issue in that.

Senator WYDEN. Okay.

Well, we'll work with you on that. We also want to be clear on one other point. I guess, at some point there was some discussion about how some of the larger communities were close to the Wil-

derness Areas that we were interested in, Hood River and Cascade Locks and Bonneville. Hood River, just so we're clear on that, is miles and miles away from the nearest wilderness proposal and then there are buffers built in around Cascade Locks, and Bonneville Dam, and I-84, and the power lines, and as we go forward with additional discussions, I want to make sure that we keep that in mind as well.

Now, one last point that would be helpful to have you on the record, Mr. Rey, and I picked this up when I had the big town meetings and the like, and we had a little bit of discussion. That's the misconceptions that folks have about what kinds of activities can go on in Wilderness Areas.

Now, my understanding is, that the Forest Service can manage to curtail the possibility of wildfire and disease outbreak, for example, by setting prescribed fires or performing hazardous fuel and disease reduction projects in the Wilderness Areas. Is that right?

Mr. REY. That is correct. Although, there are many Wilderness Areas where we do not do that, but we are not precluded from doing it.

Senator WYDEN. That's the key. As I say, I'm doing this because this has come up so often at the meetings, and so we have it in the record. That's section 23.24.1, Management of Insects and Disease and 23.24.2, Management of Fires.

Now, the second area, Mr. Rey, is mechanized equipment allowed to fight fires and do search and rescue in Wilderness Areas?

Mr. REY. Those are both permitted in wilderness areas.

Senator WYDEN. Very good. That's section 23.26.1 and I am glad that we have been able to, at least put on the record, some of the issues there, and that's helpful.

One last question for you, Mr. Hughes. Our legislation includes what amounts to a small amount of BLM land, essentially the ONC lands. These are the ones where you have the no net loss requirement. Now, are you familiar with your Agency's past experience with performing re-designation of those lands?

Mr. HUGHES. No, I am not. We can get back to you for the record on that, sir.

Senator WYDEN. Okay. I think that would be helpful. We'd just like to know a little bit more information about how the process goes forward.

Senator Smith, any additional questions?

Okay, we thank you both and, again, we especially appreciate the fact that since last session, we've been working very constructively together, and the folks that I and Senator Smith represent feel very strongly about this, as I think you're aware. We appreciate the pledge of more cooperation and we'll stay at it until we get it done. We thank you. You all are excused.

Okay. Our next panel is Mr. Ron Suppah, chairman of the Confederate Tribes of the Warm Springs Reservation of Oregon, Warm Springs, Oregon; the honorable Martha Schrader, chair of the Clackamas County Board of Commissioners in Oregon City; John Sterling, executive director of Outdoor Industry Conservation Alliance in Bend; Kevin Carter, director of the Utah School and Institutional Trust Lands Administration in Salt Lake and Ty Cobb, board member, Grand Canyon Trust, Flagstaff, Arizona.

So, we welcome all of you, Mr. Suppah, why don't we begin with you. Mr. Chairman, welcome. We appreciate all of the many areas that I and Senator Smith work with the tribe in a cooperative way and in which you all work with the Congress. Please proceed.

**STATEMENT OF RON SUPPAH, CHAIRMAN, THE CONFEDERATE TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON, WARM SPRINGS, OR**

Mr. SUPPAH. Thank you. Mr. Chairman, members of the subcommittee, good afternoon.

I am Ron Suppah, chairman of the Warm Springs Tribes. I appreciate the opportunity to be here today to talk about S. 647, the Lewis and Clark Mount Hood Wilderness Act.

Mr. Chairman, about one-third of the Warm Springs Reservation's boundaries adjoins the Mount Hood National Forest. The people of Warm Springs have lived, since time immemorial, within and around the forest, and we continue to do so today, exercising our treaty rights and interests.

Warm Springs welcomes S. 647 as a means to address the growing demands placed on the Forest by the expanding population in Portland and other nearby areas.

There is much to like about this legislation, both in its broad goals, and its specific provisions. However, we note that issues bearing upon our Tribe have eroded from last year's legislation, and that is a matter of concern to us.

But, before discussing those concerns, I'd like to touch upon several of the positive aspects of S. 647. First, we thank the authors of this bill for making sure that the wilderness additions preserve our access to huckleberry patches. Our elders often have to rely on transportation to get to the huckleberries, and we understand this legislation closes very few existing forest roads.

We approve of the deletion of identifying and interpreting archeological and other sites. Publicly identifying such sites can lead to vandalism, and sometimes the best way to protect them, is not to identify them.

We particularly like the forest stewardship assessment and sustainable biomass utilization study. We are developing a 20 megawatt biomass plant, and expect that needed forest health projects on our Reservation, and on the Mount Hood National Forest will help fuel the facility.

Of course, we fully support the savings provisions regarding our 1855 treaty and trust interests. This provision is essential in this bill. We thank the bill's sponsors for adding affected Indian tribes among nominators for the Recreational Working Group. We would only suggest it apply to adjacent affected tribes.

Among our concerns is the extension of the Marco-Hatfield wilderness down the face of the ridge behind Cascade Logs. This is one example where encroaching wilderness could interfere with a city's efforts to improve its economy within its borders. The proximity of new wilderness near non-wilderness activities makes the no-buffer zone language especially important, and we prefer last year's House language as clearer and firmer than that in S. 647.

We also question the deletion of the Class One Airshed Waiver for the Gorge. The Gorge is both a beautiful area, and a main com-

mercial corridor between Portland and Eastern Oregon, Washington and Idaho, and those roles need to be balanced.

With particular regard to our tribe, we are very disappointed S. 647 does not allow temporary closure of Mount Hood National Forest lands for our traditional cultural and religious activities. The National Forest is becoming more crowded, and limited closure would help ensure we can practice our ancient traditions in peace.

The Forest Service can already close lands for a wide variety of reasons. S. 647 allows closure for municipal water sheds and in at least three instances, Federal National Parklands can be closed for tribal traditional and cultural purposes. We would appreciate similar protections from Mount Hood's crowds.

In Recreation Area purposes, protection of cultural and spiritual values is eliminated, and the area can only be managed for recreational, ecological, scenic, watershed, and fish and wildlife purposes. We wonder if that limitation would ban our traditional activities in these areas. We also ask again that Warm Springs be included with other regional governments in the transportation plan in process. Other Reservations within the Mount Hood Region, numerous highways and roads come off the forest onto our Reservation, including heavily-used Highway 26, and there are winter snowmobiles on the roads around Timothy Lake. We would like to take part in the plan.

Finally, we object to S. 647's unilateral removal of tribal first foods priority areas, dedicated for tribal use. We have treaty rights to gather our foods, such as huckleberries, yet non-Indians are destroying the huckleberry patches around Mount Hood. Provisions to allow us limited exclusive use in both of last year's House and Senate bills have been removed without anyone talking to us about it. When this bill allows municipalities exclusive use of whole water sheds, why can't some huckleberry patches be saved for us?

Mr. Chairman, as Mount Hood is turned into Portland's playground, we hope that our old and traditional interests in the area are acknowledged and addressed as well. We look forward to working with you and the committee on these matters.

Thank you.

[The prepared statement of Mr. Suppah follows:]

PREPARED STATEMENT OF RON SUPPAH, CHAIRMAN, THE CONFEDERATED TRIBES OF  
THE WARM SPRINGS RESERVATION OF OREGON, WARM SPRINGS, OR

Mr. Chairman, Members of the Subcommittee, I am Ron Suppah, Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I appreciate the opportunity to testify today regarding S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

Mr. Chairman, the Confederated Tribes of Warm Springs Reservation of Oregon support S. 647's basic premise of updating the Wilderness Areas and other land use designations within the Mount Hood National Forest to address the growing demands placed on the Forest by the expanding population in the Portland metropolitan area and other nearby areas in the State. There is much to like about this legislation, both in its broad goals and its specific provisions. However, we note that the treatment of several issues affecting the Warm Springs Tribe in the Mount Hood National Forest has eroded from last year's legislation, and that is a matter of concern to us.

As we noted in our testimony on last Congress's Mount Hood bills (S. 3854 and H.R. 5025), the people of the Confederated Tribes have lived since time immemorial within and around what is today the Mount Hood National Forest. We have been nourished by its fish, game and plants, and enjoyed its sanctuary, protection and beauty. We arose from this land and have long been its stewards. In more recent



times, as a contemporary government in Oregon's community of governments, we also enjoy and exercise our rights and interests both along side and within the Mount Hood National Forest, including our unique treaty reserved rights and our traditional and religious practices.

Against this background, we set forth our comments below on specific provisions of S. 647.

First, we appreciate the deletion of the Findings section from last year's Senate bill. Several of the Findings' statements did not aptly reflect our Tribe's beliefs or our relationship with the Mount Hood National Forest. Although the bill does not now have a Findings section, this legislation's extensive legislative history, including introductory statements, correspondence and committee hearings, should provide a comprehensive portrait of the context within which this legislation is being developed.

Title I—Designation of Wilderness Areas. As a first order of business regarding the addition of wilderness to the Mount Hood National Forest in S. 647 and last year's bills, S. 3854 and H.R. 5025, we want to express our appreciation for the efforts made, as we understand it, to consider huckleberry patches and particularly to preserve our ability to get to the huckleberry areas to exercise our treaty protected right to gather. It is our understanding that the wilderness additions in the Mount Hood bills avoid the closing of all but a very few existing forest roads in the National Forest, which will allow our Tribal members, particularly our elder members, to continue to take a car or a van to the huckleberry areas.

Section 101(4). Mark O. Hatfield Wilderness Addition. In Warm Springs testimony last year on S. 3854, we supported added acreage to the Mark O. Hatfield Wilderness only to the extent it stops at the top of the ridge above the City of Cascade Locks and does not extend down the face of the ridge. Full Wilderness designation on the very face of the ridge running down toward the City of Cascade Locks could unduly constrain the City's economic options. In S. 647 before the Subcommittee today, we note that the map and acreage describing the addition to the Mark O. Hatfield Wilderness appear essentially unchanged from the map and acreage proposed last Congress in S. 3854. However, upon closer inspection, we note that the wilderness proposal does come significantly down the face of the ridge (as it may have last year), and that the descriptive name of the addition has been changed from "Gorge Ridge" to "Gorge Face." We remain concerned about this encroachment on Cascade Locks, and ask the Committee to work with the City to assure that its capabilities to pursue a full range of economic opportunities, as expressly intended in the Columbia Gorge National Scenic Area Act, are not hampered.

We note and object to the deletion from S. 647 of the Columbia Gorge Airshed provision carried in Section 102(b)(2) of S. 3854 and Section 102(c)(4) in H.R. 5025 last Congress, where it noted that the new Mark O. Hatfield Wilderness addition was not to result in its classification as a Class I airshed. Removal of that provision poses the potential that Class I airshed designation could be applied to the new Wilderness, creating a difficult-to-implement restriction on rail, marine and highway travel through the Gorge that could interfere with one of the important commercial corridors between the Portland metropolitan area and eastern Oregon and Washington and Idaho. We urge that the Airshed provision be reinstated in S. 647.

Section 104. Administration. As we noted in our testimony last year regarding S. 3854, we today note S. 647's omission of the "Continued Use by Members of Indian Tribes" provisions in last Congress's H.R. 5025. That bill's Section 103(i)(1), (2) and (3) authorized access and temporary closure of new Mount Hood Wilderness for tribal traditional and religious purposes. As we said last year, throughout our history, the ancestors of people who today are members of the Confederated Tribes of Warm Springs have used what is currently called the Mount Hood National Forest for traditional cultural and religious purposes. In S. 647, which is predicated on providing Wilderness, Recreation Area and Wild and Scenic River designations for the benefit of the surging majority population, it is particularly essential that our people be assured that we will be able to continue the sacred and ancient traditions that have bound us to the land forever, as in last Congress's H.R. 5025. It is also essential that today's Senate bill include the temporary closure provision from H.R. 5025 so that we can continue to practice our traditional cultural and religious activities without fear of intrusion or interruption. Such closures would have to be arranged with the Forest Service, and would be for the smallest area and the least amount of time practicable to carry out these activities. Additionally, these activities would have to be in accord with the Wilderness Act, as well as the American Indian Religious Freedom Act.

Mr. Chairman, the closure of Forest Service land for limited unique purposes is already authorized. Forest Service regulations (36 CFR 261.53) today allow closure

for endangered species, special biological communities, historical interest, scientific experiments, public health and safety, and protection of property. We note that Section 604 of S. 647 itself authorizes public closure of Mount Hood National Forest land for watershed purposes where appropriate. We further note that the temporary closure of federal land for tribal traditional cultural and religious purposes is already authorized in three instances for National Park lands. So closure of Forest Service land is already authorized for certain circumstances and closure of federal land for tribal traditional cultural and religious purposes is not a new precedent. S. 647's own introductory statement clearly describes the burgeoning demands that the majority population's recreational users are placing on Mount Hood's lands, and we only ask that you provide the Agriculture Secretary the discretion, in the face of that rising tide, to allow our people to be able to continue our traditional beliefs and practices in peace.

Section 105. Buffer Zones. Given that S. 647 extends wilderness designations close to established urban areas in some instances, it is important that "no buffer zone" language is included in the bill. Our preference for such language is that used in Section 103(j) of last year's H.R. 5025, which is clearer than the current language. The old House language states that "nothing in this Act creates protective perimeters or buffer zones" while the current language of S. 647 states that "Congress does not intend for designation of wilderness . . . to lead to the creation of protective perimeters or buffer zones." S. 647 also states that nonwilderness activities or uses up to boundaries shall not, "of itself," preclude the activities. There is some ambiguity in these provisions, and we believe a clear and firm statement like that in last year's House bill is preferable.

Section 107. Fish and Wildlife; Hunting and Fishing. We prefer the Fish and Wildlife provisions from Section 108 of last year's S. 3854, which expressly allowed activities to maintain or restore fish and wildlife populations and habitat in new wilderness additions, so long as those activities are consistent with applicable wilderness management plans. Fish and wildlife are precious to us, particularly salmon. Tremendous efforts have been and continue to be made to restore Columbia salmon populations. It appears to make sense that, if salmon populations and habitat can be improved inside new wilderness, in keeping with the management plans, that should be permitted.

Title III. Mount Hood National Recreation Area. Section 301. Designation. As we stated in testimony last year, the designation of specific Recreation Areas within the Mount Hood National Forest raises for us the prospect of "loving the Mountain to death." Intensive recreational activity, even in nonmechanized forms such as mountain biking, can be destructive. Accordingly, we approach this Title with some caution.

With regard to Sections 301(a) and (d) of S. 647, our caution is heightened when we note that text from last year's S. 3854 assuring protection of "cultural" and "spiritual" values in the Recreation Area is deleted. The removal of this language suggests that locations of cultural and spiritual sensitivity for our Tribe are not to be protected. Further, the directive in (d) that "the Secretary shall only allow uses that are consistent with the purposes and values identified in subsection (a)"—recreational, ecological, scenic, watershed, and fish and wildlife—could be interpreted as banning our use of those lands for traditional cultural and religious purposes. We would like to work with the Committee to resolve this difficulty.

We do appreciate that this year's bill does drop the language from last year that the Recreation Area "interpret" archeological and paleontological sites. "Interpretation" could have led to the identification of sites, and once sites are publicly identified, they can be subject to vandalism. Often the best way to protect such sites is to not identify them.

Section 301(f). Road Construction. Warm Springs appreciates the inclusion of treaty and statutory rights in the Recreation Area road construction exception. Often, the exercise of treaty rights by our Tribal elders can only be accomplished by their driving, or being driven, to a particular area, say to a huckleberry patch. Over time, as huckleberry patch locations may change, new roads may be needed.

Title IV—Transportation and Communication Systems. As our testimony noted last year for S. 3854, significant areas of the Warm Springs Reservation are included in the Section 401 Definition of the "Mount Hood region." Highway 26 and numerous other State and Forest Service roads come off the Mount Hood National Forest directly onto our land. The road to Timothy Lake traverses our Reservation, and is used by snowmobilers in the winter. Additionally, the scope of the Transportation Plan encompasses travelers traversing the Mount Hood region, which involves a long stretch of Highway 26 crossing the Warm Springs Reservation, often snow covered in winter. Finally, members of our Tribe frequently travel deep within the Mount Hood National Forest, as we have for thousands of years, and transpor-

tation access within the Forest is important to us. Accordingly, our Tribal government should be included in the transportation planning process, and we ask that “the Warm Springs Tribal government” be added in Section 402(b)(2)’s listed Mount Hood regional governments involved in the planning.

Title VI—Mount Hood National Forest and Watershed Stewardship. Section 602. Forest Stewardship Assessment. The Warm Springs Tribe supports this provision, which is identical to the provisions in last year’s S. 3854. Our Reservation has an extensive forested border in common with the Mount Hood National Forest. In many ways, the management and health of our forest are closely linked to the management and health of the Mount Hood National Forest. The required development of a stewardship assessment and its implementation for the Mount Hood Forest will help protect our forest, for which the United States government as a whole, including the U.S. Forest Service, has a trust responsibility.

Section 603. Sustainable Biomass Utilization Study. We support this Section, which is identical to last year’s bill. Our Tribe, through Warm Springs Forest Products Industries, is deeply involved in a 20-megawatt biomass electric generation project that would accept significant amounts of excess biomass material from the Mount Hood National Forest. Our Tribe and the U.S. Forest Service, including the Mount Hood National Forest, entered into a Memorandum of Understanding early in 2006 to facilitate both fuels reduction on the Mount Hood National Forest and the provision of biomass for the Tribe’s biomass generation project.

An immediate example of this is the Warm Springs Tribe’s working with the Mount Hood National Forest Clackamas Ranger District on the Cascade Crest Forest Health Improvement Project. Around Olallie Butte, both on our Reservation and on adjoining National Forest lands, more than 60,000 acres of forestland are overstocked and infested with Mountain Pine Beetle. Under the MOU and the Tribal Forest Protection Act, we are developing a stewardship agreement to remove hazardous fuels and thin overstocked stands in this area that will also provide fuel for our biomass facility.

Title VIII—Local and Tribal Relationships. Section 801. Findings and Purpose. Section 802. First Foods Gathering Areas. The Warm Springs Tribe objects to the unilateral elimination of the exclusive use authority for those first foods gathering areas identified as Priority Use Areas in last year’s bill. This provision was a critical element for us in last year’s legislation. It was in both the House and Senate bill. Now, in S. 647, it has been eliminated without so much as a courtesy call to us. No one has bothered to tell us even why they believe this provision should be dropped. Accordingly, we register our strong objection to both the elimination of the provision and the manner in which it was removed.

The Priority Use First Food Gathering Area provisions, including exclusive use, are critical to protecting and preserving the Tribe’s treaty protected right to gather roots, berries and plants within the Mount Hood National Forest. In recent years when our Tribal members have gone to long-established huckleberry patches for the traditional annual harvest, we have been alarmed to see others wantonly stripping the berries with rakes and other tools, with no regard for the permanent destruction they are causing the huckleberry bushes. The establishment of exclusive Priority Use Areas for tribes with treaty gathering rights in the Mount Hood National Forest is an exercise of the federal trust obligation to protect treaty resources, and is essential today to protect our roots, berries and plants from the destructive practices of non-Indians. It is disturbing that this current bill, S. 647, offers to exclusively protect the watersheds of various municipalities, but deliberately reverses course when addressing Indian treaty protected resources. We urge the sponsors of S. 647 and the Committee to work with us to try to correct this situation. We believe the former provisions allowed flexibility in establishing the exclusive Tribal Priority Use Areas, enabling the Tribe and the Forest Service to establish these areas through collaborative discussions to bring a desperately needed measure of protection to our treaty protected roots, berries and plants.

Section 804. Savings Provisions Regarding Relations with Indian Tribes. This Section preserving the full scope of the Warm Springs 1855 Treaty rights and protecting our trust lands and allotments, including our fishing access sites, as well as our hunting and fishing rights, are essential to this legislation. Tribal treaties are the highest law of the land, and their preservation from any potential misinterpretation, alternation or diminishment, intentional or otherwise, as a consequence of this Act is absolutely essential for this bill.

Section 905. Mount Hood National Forest Recreational Working Group. The Warm Springs Tribe supports this provision and wishes to express our appreciation to S. 647’s sponsors for including affected tribal governments in the list of governments that may make nominations for Working Groups members to the Regional Forester. We would suggest one further revision to Section 905(d)(10), making it

“Affected adjacent Indian tribes.” Given the bill’s emphasis on adjacent governments, including just “affected” tribes could potentially include non-adjacent tribal governments, who may assert their rights are affected by Mount Hood related issues.

Mr. Chairman, that concludes the S. 647 testimony of the Confederated Tribes of the Warm Springs Reservation of Oregon. We look forward to working with the sponsors of the bills and the Committee in revising and advancing this important Mount Hood wilderness legislation.

Thank you.

Senator WYDEN. Thank you, Mr. Chairman. Just one question at this point, since it’s timely.

First, you know, both I and Senator Smith want to work very closely with you and the tribe, and I would be interested in your thoughts—if we can look at an approach to add to the bill some priority use areas, would that move in the direction of what the tribe would like to see?

Mr. SUPPAH. Yes, we’re fairly engaged with the Forest Directors already and we also are establishing those stewardship contracts. The only thing that we have some problem with is other users such as hunters, or other tourists that are in the area when we are fathering the huckleberries, because some of them can be quite mean.

Senator WYDEN. Well, we’ll work closely with you, Mr. Chairman, and you all have been very constructive. I think this is always a question of how you balance the various uses, and I’ve told the staff to follow up, and particularly on this question of whether we can find a way to possibly add some priority use areas, and see if we can work this out among all of us, all of the parties.

Senator SMITH. Mr. Chairman, let me just add my complete agreement, Senator Wyden, Ron, and you’ve got ideas for what we can do, how we can change this, priority use, those kind of things. Please come see us, because we’re anxious to get it right for you all.

Mr. SUPPAH. All righty, we appreciate that, and we will stay engaged and participate with you guys. Thank you Matt, Michelle, we appreciate the time you give us when we do come to town. I guess we’ll be looking forward, Senator Smith, to the 14th and your event there. We hope to see you soon, Ron.

Senator WYDEN. You can count on it, we’ll keep it within the Rons.

Mr. SUPPAH. Okay.

Senator WYDEN. I thank you for that, Mr. Chairman. We’ll put the staffs of both our offices on trying to work this out in a way that’s acceptable to you, and all of the various other parties. I think everyone wants to be constructive and to get this done, and we’ll follow up with you.

Ms. Schrader is next, and we welcome you, my lunch-time seatmate from the earlier business meeting. So, Ms. Schrader, please proceed, and thank you for all of your assistance.

**STATEMENT OF MARTHA SCHRADER, CHAIR, CLACKAMAS  
COUNTY BOARD OF COMMISSIONERS, OREGON CITY, OR**

Ms. SCHRADER. Thank you, Senator, and I would like to begin by wishing you a very happy birthday.

Senator WYDEN. There you are. My kids asked me, who many more years do I have to go to be really a true senior Senator?

Ms. SCHRADER. Hopefully many more.

Senator WYDEN. Thank you.

Ms. SCHRADER. You do a wonderful job for Clackamas County.

Senator WYDEN. Thank you.

Ms. SCHRADER. Mr. Chairman and members of the committee, I appreciate the invitation to come before you today to talk about S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

Mount Hood isn't just an icon, it's the first thing that people see that fly into the Portland Airport. At Clackamas County, the end of the Oregon Trail, the county I am fortunate enough to represent as chair of the Board of Commissioners, is the gateway to Mount Hood. It contains some of the most beautiful wilderness and forest lands in the Oregon Country, providing ample opportunities for hiking, camping, fishing, biking and skiing, all within the shadow of this great mountain.

Federal forest lands on Mount Hood contain the watersheds that provide drinking water for many communities in Clackamas County, and beyond. Mount Hood also provides plenty of natural resources, creating timber jobs through responsible forest management.

The mountain is extremely important to Clackamas County, and I am pleased that the U.S. Senate is taking steps to protect this treasure for future generations.

Reaching this point has taken several years, and many hours of work by both of you wonderful Senators, Senator Wyden and Senator Smith, and your staffs.

Senator Wyden, you first introduced this legislation on Mount Hood in 2004, and several other iterations of this bill have been introduced, debated, changed and perfected. I'm pleased that our delegation has been able to work so diligently together to get us to this point, and look forward to the passage of S. 647.

The bill I am here to talk about today, the Lewis and Clark Mount Hood Wilderness Act, contains 128,000 acres of new wilderness, 79,000 of which is located within the boundaries of Clackamas County. Forty-seven miles of new Wild and Scenic River are within our Clackamas County boundaries. Determining exactly which acres merit wilderness designation has been part of the process I mentioned earlier, and Senator Wyden and Smith's offices have worked tirelessly with our county to make these decisions.

At the beginning of this process, Clackamas County support a list of principles through which we examine the bill. Based on these principles, we made a number of suggestions, which we believed would improve the bill, and many of these improvements were made.

For example, the county wanted to ensure that local government would have a voice in transportation planning process on Mount Hood, and changes were made to accommodate this request. The county specifically requested that a number of Forest Service roads be excluded from the Wilderness portion of the bill, and most of these roads were left out of S. 647.

The county has further requested that the Hunchback Mountain Land Exchange be included in this legislation. This exchange will

preserve an important view shed and has the support of local community organizations, including the Mount Hood Area Chamber of Commerce and the Hoodland Community Planning Organization.

The legislation before you today is a good bill. I hope to see it pass. It protects important and sensitive areas of Mount Hood, preserving them for generations to come, and it includes measures to promote economic development in villages and communities where development should happen in a well-planned and organized fashion. I am looking forward to working with all of you to improve the bill even more as we move forward.

Finally, Oregon is a growing State and Mount Hood is so precious and so important to many Oregonians because of its proximity to much of our State's population. Promoting managed planned growth in certain areas is essential to allowing Oregonians to continue to enjoy the beauty, and the majesty that is Mount Hood.

So, let me end by saying, thank you, Senator Wyden, and Senator Smith for inviting me to testify before you today, I hope that you will work to pass the Lewis and Clark Mount Hood Wilderness Act, and Clackamas County stands forward to be your partner in this endeavor. Thank you.

[The prepared statement of Ms. Schrader follows:]

PREPARED STATEMENT OF MARTHA SCHRADER, CHAIR, CLACKAMAS COUNTY BOARD  
OF COUNTY COMMISSIONERS, OREGON CITY, OR

Mr. Chairman, Members of the Committee, I appreciate the invitation to come before you today to talk about S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

Mount Hood is an Oregon icon. The thing most people see on their first trip to Oregon is that of Mount Hood while flying into the Portland Airport.

Clackamas County, the County I am fortunate enough to represent as Chair of the Board of County Commissioners, is the gateway to Mount Hood, and contains some of the most beautiful wilderness and forest-land in the country, providing ample opportunities for hiking, camping, fishing and biking, all within the shadow of this great mountain. Federal forestlands on Mount Hood contain the watersheds that provide drinking water for many communities in Clackamas County and Beyond. Mount Hood also provides plenty of natural resources, creating timber jobs through responsible forest management. Mount Hood is extremely important to Clackamas County, and I am pleased that the U.S. Senate is taking steps today to protect this treasure for future generations.

Reaching the point we are at today has taken several years, and many hours of work by both of our state's Senators and our House delegation. Senator Wyden first introduced his legislation on Mt. Hood in 2004, and several other iterations of this bill have been introduced, debated, changed, and perfected. I'm pleased that our delegation has been able to work so well together to get us to this point, and look forward to passage of S. 647.

The bill I am here to talk about today, the Lewis and Clark Mount Hood Wilderness Act, contains 128,000 acres of new wilderness, 79,000 of which is located within the boundaries of Clackamas County. 47 miles of new Wild and Scenic River are within the boundaries of Clackamas County.

Determining exactly which acres merit wilderness designation has been part of the process I mentioned earlier, and Senator Wyden's and Smith's offices have worked with me and others in my County tirelessly to make these decisions. At the beginning of the process the County put forward a list of principles through which we examined the bill. Based on these principles we made a number of suggestions which we believed would improve the bill, and many of these improvements were made.

For example, the County wanted to insure that local governments would have a voice in the transportation planning process on Mt. Hood, and changes were made to accommodate this request. The County specifically requested that a number of Forest Service roads be excluded from the wilderness portion of the bill, and most of these roads were left out of S. 647.

The County requested that the Hunchback Mountain land exchange be included in the legislation. This exchange, which will preserve an important view shed, and has the support of local community organizations including the Mt. Hood Area Chamber of Commerce and the Hoodland Community Planning Organization, has been included.

The legislation before you today is a good bill, and I hope to see it passed. It protects important and sensitive areas of Mount Hood, preserving them for generations to come, and it includes measures to promote economic development in villages and communities where development should happen in a well-planned and organized fashion. I am looking forward to working with all of you to improve the bill even more going forward.

Oregon is a growing state, and Mount Hood is so precious and so important to so many Oregonians because of how close it is to so much of our state's population. Promoting managed, planned growth in certain areas is essential to allowing Oregonians to continue to enjoy the beauty and the majesty that is Mount Hood.

Again, I want to thank Senator Wyden for inviting me to testify before you today, and I hope that you will pass Lewis and Clark Mount Hood Wilderness Act.

Senator WYDEN. Thank you very much, Ms. Schrader, and we thank you and all of the folks in Clackamas County for cooperating closely with us, and we'll have some questions here in just a minute.

Mr. Sterling, welcome. Senator Smith and I had a town meeting in Bend not too long ago, and we appreciate the chance to hear from you.

**STATEMENT OF JOHN STERLING, EXECUTIVE DIRECTOR, THE  
CONSERVATION ALLIANCE, BEND, OR**

Mr. STERLING. Thank you, Chairman Wyden.

Chairman Wyden, Senator Smith, thank you for the opportunity to testify today in support of S. 647.

As you mentioned, my name is John Sterling, and I am the executive director of the outdoor industry Conservation Alliance, we're a group of roughly 140 outdoor industry companies that work together to protect wild places and rivers for their habitat and recreational values. Many of our key member companies are based in Oregon, and the organization itself is based in Bend.

Eight months ago, I had the honor of standing with the two of you on a beautiful day in downtown Portland as you unveiled your proposal for new protections on Mount Hood. The Conservation Alliance stood behind that vision then, and we enthusiastically support the legislation under consideration today.

It's encouraging to see legislation that has such strong bipartisan support, and I want to acknowledge your colleagues in the House of Representatives, Congressmen Blumenauer and Walden, who share your vision for new protections on Mount Hood and proved their ability to cross party lines to work to move that vision forward. I encourage you to work closely with Oregon's House delegation to ensure that a Mount Hood Wilderness bill passes this year.

I'm here to talk about the economic benefits of wilderness. The Conservation Alliance supports this legislation, because wilderness is good for business. In Oregon, 76 percent of the population, some 2 million Oregonians, participate in some form of non-motorized, outdoor recreation every year, and those people spend roughly \$125 million a year, annually, in the State of Oregon, on the gear, clothing and footwear that they need to enjoy recreation activities in those wildlands.

In particular, outdoor customers look to our protected public lands for their recreation destinations, and passage of this bill would ensure long-term recreational destinations for outdoor customers.

Our protected Wilderness Areas and Wild Rivers are, perhaps, our most valuable economic asset, not only because they provide outdoor recreation opportunities, increasingly economic growth in Oregon and throughout the West, depends on providing services to the rising number of people who flock to our communities to live, work, and retire in places that are surrounded by protected natural areas.

Our protected lands also draw businesses attracted to Oregon's high quality of life. I want to mention three of those businesses that are members of the Conservation Alliance, and that support this legislation.

In 2005, Yakima Products moved its operations from Northern California to the Portland Area. In part, they made that move because of the high quality of life that the Region offers. Yakima now employs 75 people in Beaverton, many of whom look to Mount Hood for their recreational outlets.

The following year, KEEN footwear—perhaps the fastest-growing footwear company in the country—moved its base from the San Francisco Bay Area to Portland. They hired a native Oregonian to run the company, and they now employ about 60 people in downtown Portland. As a fast-growing company, KEEN regularly has to compete with other brands for footwear talent, and in trying to attract people to the Portland area, they regularly tout easy access to protected public land as an asset to living in Portland.

Finally, I just want to mention Columbia Sportswear, a company with a rich history in Oregon, a company started in Portland in 1938, and it is now one of the largest manufacturers of outdoor clothing in the world, employing roughly 2,700 people worldwide.

These three companies share a vision of preserving Oregon's high quality of life, and they also support this bill, because it's good for their customers, and good for their employees.

By protecting 128,000 miles of wilderness, and 80 miles of rivers on Mount Hood, you're not only responding to the demands of an overwhelming majority of Oregonians who want to see these protections, but you're also making an important investment in Oregon's economic future.

Now, economics aside, I just wanted to throw in a personal note. I'm a native Portlander. I grew up in the shadow of Mount Hood. Senator Smith calls it an "icon," Chairman Wyden calls it a "special treasure," it's all those things. When I was a kid, my siblings and I simply called it "our mountain," and now I have two small children of my own, and it's sometimes hard to be away from them and traveling back East is a long trip for me, so I always take photos of those kids with me, so I remember why we do this kind of work.

I thank you and Senator Smith for working hard to protect Mount Hood.

[The prepared statement of Mr. Sterling follows:]



PREPARED STATEMENT OF JOHN STERLING, EXECUTIVE DIRECTOR, THE  
CONSERVATION ALLIANCE, BEND, OR

TESTIMONY IN SUPPORT OF S. 647

Chairman Wyden and members of the subcommittee, thank you for this opportunity to testify in support of S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007. My name is John Sterling, and I am Executive Director of the outdoor industry Conservation Alliance. We are a group of roughly 140 outdoor businesses nationwide that sell products for active use in the outdoors. Our member companies work together to protect wilderness and rivers for their habitat and recreational values. Several of our key member companies have deep connections to Oregon including Columbia Sportswear, KEEN Footwear, REI, Patagonia, Yakima Products, and Mountain Hardware.

Eight months ago, I had the honor of standing with Senators Wyden and Smith on a beautiful day in downtown Portland as you unveiled your proposal for new Wilderness and Wild and Scenic River designations on Mount Hood. The Conservation Alliance stood behind their vision then, and we enthusiastically support the legislation under consideration today. It is encouraging to see legislation that enjoys strong bipartisan support. I also want to acknowledge the hard work of your colleagues in the House of Representatives—Congressmen Walden and Blumenauer—who share a vision for more protection on Mount Hood, and who have proven their ability to cross party lines to work together for that vision. I encourage you to work closely with Oregon's House delegation to ensure a bill passes this year.

The Conservation Alliance supports the effort to secure new Wilderness designations on Mount Hood because wilderness is good for business. In Oregon, 76 percent of the population—more than 2 million Oregonians—participate in some form of nonmotorized outdoor recreation each year. Consumer spending on outdoor recreation merchandise contributes roughly \$125 million to Oregon's economy each year. According to a new study by the Outdoor Industry Association (The Active Outdoor Recreation Economy, Fall 2006\*), the overall outdoor recreation economy—which includes retail gear purchases and trip-related expenditures—contributes more than \$5.8 billion to Oregon's economy and supports 73,000 jobs across Oregon.

Outdoor customers in Oregon look to federal lands for recreation opportunities, and securing Wilderness and Wild and Scenic River protection for special places on Mount Hood will ensure long-term recreational destinations for outdoor industry customers.

Our protected wilderness and rivers are among our most valuable economic assets. Increasingly, economic growth in Oregon is based on providing services to the rising number of residents who flock to our communities to live, work, or retire in places surrounded by protected natural areas. Our protected lands also draw businesses attracted to Oregon's high quality of life. I want to tell you about some of those businesses.

In 2005, Yakima Products, manufacturer of some of the finest bicycle, ski, paddling and cargo rack systems in the world, moved their business from Northern California to the Portland area. They made this move in part because of the high quality of life the region offers. Yakima now employs 75 people in Beaverton, many of whom look to Mount Hood as a recreational outlet.

The following year, KEEN Footwear, perhaps the fastest growing footwear brand in the U.S., moved to Portland from the San Francisco Bay Area. KEEN hired a native Oregonian to run the company and now employs more than 60 people at its offices in Portland's Pearl District. As a fast-growing brand, KEEN has been adding personnel constantly since landing in Portland. In recruiting employees, KEEN regularly touts easy access to protected public lands as an asset to living in the Portland area. Further, KEEN actively looks for employees that share the company's commitment to conservation.

Finally, I want to mention Columbia Sportswear, a company with a rich history in Oregon. To those of us who are native Oregonians, Columbia is a household name. The company started in Portland in 1938 and is now one of the largest manufacturers of outdoor clothing in the world, employing 2,700 people worldwide.

These three companies have at least two things in common. One is that each supports Senators Wyden and Smith's vision for Mount Hood Wilderness. The other is that each company's most valuable asset is its employees. And in attracting and retaining good employees, quality of life plays an important role. Protecting wilderness and wild rivers on Mount Hood will help ensure that the quality of life in Oregon remains high.

\*The information referred to has been retained in subcommittee files.

These are anecdotes. But they support a growing body of evidence that protected public lands play a key role in stimulating and sustaining economic development in the West.

As our economy shifts away from traditional industries—mining, wood products, farming and ranching—Oregon's economic growth is coming from the diverse sectors of finance, high-tech, real estate, business services, and outdoor recreation. A recent study by the Sonoran Institute (*Prosperity in the 21st Century West*, July 2004) concludes that: "Wilderness, National Parks, National Monuments, and other protected public lands, set aside for their wild characteristics, can and do play an important role in stimulating economic growth—and the more protected, the better."

My home town of Bend is a perfect example of how protected public lands support economic growth in the new West. Bend is among the fastest growing towns in the country. Though that growth poses challenges for the community, it is irrefutable that Bend's economy is vibrant and strong. People move to Bend for a variety of reasons that all revolve around quality of life. Bend lies within 20 miles of the Three Sisters Wilderness and the Badlands Wilderness Study Area, and within 40 miles of the Newberry Crater National Monument. Likewise, the town is surrounded by BLM and Forest Service lands that provide open space and recreation opportunities, and serve as a de facto urban growth boundary.

People flock to Bend to take advantage of the outdoor opportunities provided by these public lands. These lands play a key role in attracting tourists and new residents alike. *Prosperity in the 21st Century West* found that, from 1970 to 2000, the closer a county was to protected lands, the faster that county's economy grew. Central to this study's findings is that the economy of the rural West has changed. Communities once dependent on logging, mining, and ranching have built new prosperity on high-end service industries like finance, engineering, real estate and business services. The reason for this shift is that people are increasingly moving to rural Western towns for their unique landscapes and quality of life. Many of these new arrivals are retirees with investment income. They buy or build new homes, eat out, and appreciate the public lands in their new communities.

The study concludes that rural communities benefit substantially from protected public lands—Wilderness, National Parks, National Monuments—particularly when coupled with improvements in schools, transportation infrastructure, and the arts.

This perspective is compelling when placed in the context of the proposal to designate new Wilderness areas on Mount Hood. If we accept that protected public lands are an important economic asset, then S. 647 is an investment in Oregon's economic future. By protecting 128,000 acres of wilderness and 80 miles of rivers on Mount Hood, this legislation responds to the demand from an overwhelming majority of Oregonians to ensure that future generations can enjoy Oregon's natural heritage the same way we have. It would also help safeguard Oregon's quality of life, and give Oregon's economy a competitive edge over states that lack our bounty of spectacular public lands.

Economics aside, I want to thank Senators Wyden and Smith, and Oregon's House delegation for their hard work. I am a native Portlander. Anyone who was raised in the shadow of Mount Hood cannot look at that mountain without feeling a deep sense of pride and good fortune at being born in Oregon. Thank you for your commitment to protecting Wilderness on Mount Hood.

Senator WYDEN. Very good. I thank you for your comments, and it's our intention to work very closely with the House Delegation. I'm glad you pointed out their efforts, as well.

Okay, let's now hear from Utah and Arizona.

Mr. Carter, director, Utah School and Institutional Trust Lands Administration.

**STATEMENT OF KEVIN S. CARTER, DIRECTOR, UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, SALT LAKE CITY, UT**

Mr. CARTER. Mr. Chairman, thank you for the opportunity to testify today.

As you mentioned, my name is Kevin Carter. I am the director of the Utah School and Institutional Trust Lands Administration, and the legislation before you is a product of more than 4 years of

discussions between the State, local governments, the environmental community and Federal land managers.

At a time when most issues relating to Utah's public lands are accompanied by controversy and dispute, this exchange is supported by rural county governments, various environmental groups, representatives of the outdoor recreation industry, Governor Huntsman and the Utah State Legislature.

It is common for land exchange proposals to become entangled in disputes over valuation. On this issue, we have committed to an independent and transparent appraisal process that will fully involve the Department of the Interior's new appraisal services directorate.

The legislation contemplates that all lands included in the exchange will be subject to independent appraisals, using the existing appraisal standards contained in FITMA, and its implementing regulations, prior to conveyance, and that the lands to be exchanged will be conveyed on an equal-value basis.

The legislation contains two provisions, addressing specific mineral evaluation issues. These provisions are discussed in my written testimony, and I would also be happy to respond to any questions regarding valuation.

The legislation before the committee today has a complementary bill before the House of Representatives, H.R. 1210. One recently-negotiated difference between the bills is a provision in the House bill which would ultimately ensure complete transfer of all acreage described in the accompanying exchange maps.

Consequently, concerns raised in previous Department testimony regarding the respective number of acres transferred by each party, should be somewhat ameliorated. We anticipate that the committee will incorporate additional changes, suggested by staff, to allow more flexibility in meeting deadlines, clarify appraisal standards, and provide additional options to the parties in the event that land values are determined by the appraisal process to be unequal.

We have very much appreciated the opportunity to work with you staff on negotiating through some of the difficult parts of this exchange, and the support which we've received from the administration and from the environmental community.

Thank you for the opportunity, and we would urge your support of this bill.

[The prepared statement of Mr. Carter follows:]

PREPARED STATEMENT OF KEVIN S. CARTER, DIRECTOR, UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, SALT LAKE CITY, UT

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to testify today. I would also like to thank Senators Bennett and Hatch of the Utah Congressional delegation, and their colleagues in the House of Representatives, for their work and assistance in connection with the legislation now before the Subcommittee.

My name is Kevin S. Carter, and I am the Director of the Utah School and Institutional Trust Lands Administration ("SITLA"), an independent state agency that manages more than 3.5 million acres of state school trust lands within Utah that were granted by Congress at statehood for the financial support of public education.

THE PROPOSED LAND EXCHANGE

I encourage the Subcommittee, and Congress, to act favorably on S. 390, the Utah Recreational Land Exchange Act of 2007. This legislation is the product of several years of discussions between the State, local governments, the environmental com-

munity, and federal land managers. At a time when most issues relating to Utah's public lands are accompanied by controversy and dispute, the proposed exchange is supported by rural county governments, various environmental groups, representatives of the outdoor recreation industry in Utah, Governor Huntsman and the Utah legislature. We have worked hard to put together an exchange that will be fair and transparent financially, workable in implementation, and conducive to more effective land management by both state and federal governments. We believe that the Utah Recreational Land Exchange Act meets all of these goals.

In summary, S. 390 authorizes the conveyance to the United States of approximately 46,000 acres of Utah state school trust lands and minerals within and near Utah's Colorado River corridor, the Book Cliffs, and areas near Dinosaur National Monument. In return, the State of Utah will receive approximately 44,000 acres of federal lands in eastern Utah with lesser environmental sensitivity but greater potential for generating revenue for Utah's public education system—again, the purpose for which Congress originally granted trust lands to Utah and the other western states.

#### REVISIONS TO PREVIOUSLY-INTRODUCED LEGISLATION

The proposed Act was originally introduced in 2005 in the House of Representatives as H.R. 2069. The House Subcommittee on Forests and Forest Health held a hearing on H.R. 2069 on September 27, 2005. In response to testimony from the Department of the Interior ("DOI") and several environmental organizations at that hearing that raised concerns about specific provisions of H.R. 2069, the House Subcommittee invited interested parties to work with subcommittee staff and the State to attempt to resolve these concerns. The committee discussions included both majority and minority subcommittee staff, representatives of DOI and the Bureau of Land Management ("BLM"), Utah state government, and several environmental organizations.

After multiple meetings and telephonic conferences, and many hours of discussions and negotiations, the various parties reached compromise legislative language that we believe resolved all of the primary concerns raised by DOI and the environmental community. These compromises were incorporated in Senate legislation in the 109th Congress designated as S. 2788. This Subcommittee conducted a hearing on S. 2788 on May 24, 2006. S. Hrg. 109-582. With the negotiated changes, H.R. 2069 passed the House of Representatives in September, 2006. Unfortunately, the Senate was unable to take action on the House Bill or its Senate counterpart, S. 2788, prior to the end of the 109th Congress.

In the current Congress, we have continued to work with committee staff to ensure that S. 390 and its companion legislation, H.R. 1210, are consistent with the priorities of the relevant Committees, and that the proposed legislation continues to have broad, bipartisan support. We anticipate that the Committee will incorporate additional changes suggested by staff to make certain deadlines more flexible, incorporate the Uniform Appraisal Standards for Professional Appraisal Practice in the appraisal standards, and provide additional options to the parties in the event that land values are determined by the appraisal process to be unequal.

#### REASONS FOR THE LAND EXCHANGE

It is worthwhile and necessary to describe the lands that are involved in the exchange, although the accompanying photographs make it clear that these lands are in many ways beyond description. The Colorado River corridor is a uniquely scenic area, in a state known for its scenic beauty. Huge redrock arches such as Corona and Morning Glory arches are found in proximity to the deep canyons carved by the Colorado River as it winds downstream from the Colorado border to Canyonlands National Park. The area supports thriving recreational activities, including white-water rafting in the Westwater wilderness study area and downstream, mountain biking on the famous Kokopelli and Slickrock bike trails, and myriad other activities. The importance of outdoor recreation in the area to local economies and the state as a whole has led the Utah Governor's task force on outdoor recreation to designate the area as one of Utah's critical focus areas for promotion and protection of recreation opportunities.

As you can see from the map included in my submittal, the majority of land in the Colorado River corridor is federal land managed by BLM. Notable exceptions are the Utah school trust lands scattered in checkerboard fashion throughout the area. As the Subcommittee is aware, state school trust lands are required by both federal and state law to be managed to produce revenue for public schools. Revenue from Utah school trust lands—whether from grazing, surface leasing, mineral development or sale—is placed in the State School Fund, a permanent income-producing

endowment created by Congress in the Utah Enabling Act for the support of the state's public education system.

In contrast to state lands, BLM lands are managed for multiple use, with an emphasis in this area on recreation and conservation use. Limitations on the use of surrounding federal lands, through establishment of wilderness study areas, areas of critical environmental concern, or mineral withdrawals can limit the usefulness of the inheld state trust lands for economic uses such as mineral development. Likewise, state efforts to generate revenues from its lands through sale of the lands for recreational development and homesites have been viewed by federal land managers as conflicting with management of the surrounding federal lands. Over the years, disputes over access to and use of state school trust lands within federally-owned areas have generated significant public controversy, and often led to expensive and time-consuming litigation between the State of Utah and the United States.

Land exchanges are an obvious solution to the problem of checkerboarded state land ownership patterns. Exchanges can allow each sovereign—the State of Utah and the United States—to manage consolidated lands as each party's land managers deem most advisable, without interference from the other. In the last eight years, the State of Utah and the United States worked successfully to complete a series of large legislated land exchanges. In 1998, Congress passed the Utah Schools and Land Exchange Act, Public Law 105-335, providing for an exchange of hundreds of thousands of acres of school trust lands out of various national parks, monuments, forests and Indian reservations into areas that could produce revenue for Utah's schools. Then, in 2000, Congress enacted the Utah West Desert Land Exchange Act, Public Law 106-301, which exchanged over 100,000 acres of state trust land out of proposed federal wilderness in Utah's scenic West Desert for federal lands elsewhere in the region.

The hallmark of each of these exchanges was their “win-win” nature: school trust lands with significant environmental values were placed into federal ownership, while federal lands with lesser environmental values but greater potential for revenue generation were exchanged to the State, thus fulfilling the purpose of the school land grants—providing financial support for public education.

#### RESPONSE TO LAND EXCHANGE CONTROVERSIES

More recently, a proposed state-federal land exchange involving state trust lands in Utah's San Rafael Swell area failed due to questions raised about its financial fairness and environmental effects. We recognize that the controversy over the San Rafael proposal raised many questions about land exchanges generally. In working to develop the current exchange proposal, the State of Utah has worked hard to address the issues raised in the aftermath of the San Rafael proposal. In particular, we have sought to work closely with local governments and citizens, the environmental community, and local BLM offices to obtain consensus about the lands to be included in the proposed exchange. On the issue of valuation, we are committed to an independent and transparent appraisal process that will fully involve the Department of the Interior's new Appraisal Services Directorate (“ASD”) in developing and reviewing appraisals for the properties involved in the exchange. As noted above, since the time that this legislation was originally introduced, we have continued to work with Congressional staff from both parties, DOI and the BLM, local communities, and the environmental community to ensure that any questions or concerns are addressed. With the various changes from the original legislation, we believe that S. 390 will direct a fair and equitable land exchange that is clearly in the interest of both the citizens of the United States and of Utah's school children.

#### VALUATION

The legislation contemplates that all lands included in the exchange will be subject to independent appraisals using the existing appraisal standards contained in FLPMA and its implementing regulations prior to conveyance, and that the lands to be exchanged will be conveyed on an equal value basis. The independent appraisal will be subject to review by each party (including the DOI-ASD), and any disputes over valuation will then be subject to resolution through established dispute resolution mechanisms.

The legislation contains two valuation provisions that may require some further explanation. The first relates to mineral lease revenue sharing under the federal Mineral Leasing Act. Certain of the federal lands are prospective for oil & gas development, and are currently under federal mineral lease. Under section 35 of the federal Mineral Leasing Act (30 U.S.C. § 191), the federal government is required to pay 50 per cent of all bonus, rental and royalty revenue from federal lands to the state in which the lands are located. Under Utah statute, these revenues are largely

distributed from the state Mineral Lease Account to local counties to mitigate community impacts of energy development. These distributions are a crucial funding source for rural public land counties.

The proposed legislation would keep this revenue stream to rural counties intact by adjusting values proportionately to reflect the United States' obligation to share 50% of all revenue from the lands. Put another way, those federal lands found to have mineral values would be valued taking into account the United States' existing statutory obligation to pay 50% of the revenue from the lands to the State for distribution to the counties. Utah's school trust would collect these revenues and distribute them in the same manner as federal mineral lease funds, so the school trust would not receive any additional benefit from this provision. Similarly, the proposed legislative language would be revenue-neutral to the United States, because the United States currently retains only 50% of mineral revenue from the subject lands. There is specific precedent for adjustment of mineral land valuation to take into account the preexisting obligation of the United States to share revenue with the states under the Mineral Leasing Act. For example, section 8(c) of the Utah Schools and Lands Improvement Act of 1993, Pub. L. 103-93, provides that if the State shared revenue from selected federal properties, the value of the federal properties would be adjusted downward by the percentage of state revenue sharing. The Utah Schools and Lands Exchange Act of 1998, Pub. L. 105-335, ratified an agreement between the State of Utah and the Department of the Interior containing similar provisions. State revenue sharing payments have also been recognized and protected in land exchange legislation involving states other than Utah. See e.g. 16 U.S.C. 46011-3(b)(3) (Montana's right to receive cash payment for coal tracts used as exchange consideration protected).

A second mineral issue involves the bill's provisions obligating the State to pay to the United States future mineral revenues from currently unleased federal lands, in a share equal to what the United States would have received had the lands been retained in federal ownership. This payment obligation eliminates the need to appraise leasable mineral values under those lands, since the United States will continue to receive all leasable mineral revenues it would have received notwithstanding the exchange.

Significant portions of the federal lands to be transferred to Utah are currently not leased for oil, gas or other hydrocarbon minerals (e.g. tar sands, oil shale), but are thought to be prospective for such minerals. Appraisals of prospective but non-producing mineral lands are expensive and inherently unreliable due to the many unknowable variables involved in determining potential resources and their likelihood of production. To avoid the expense and potential controversy that could arise from appraisal of these non-producing resources, section 5(b)(4) of the proposed legislation proposes an alternative means of compensating the United States for leasable minerals underlying currently unleased federal lands. The lands will be appraised for surface values and for all minerals other than minerals leasable under the federal Mineral Leasing Act. Upon acquisition of the lands, the State also commits to pay the United States all revenue that the United States treasury would have received from leasable minerals had the U.S. retained ownership of the lands, i.e. 50% of bonuses and rentals, and a share of royalties equal to the federal share of production royalties (6.25% in the case of oil and gas, less for tar sands and oil shale). The U.S. treasury is thus held harmless with respect to the exchange. The State of Utah's school trust would also continue to pay the 50% state share to the Utah mineral lease account. In addition to protecting future revenue-generating opportunities for the United States, the administrative costs of preparing the lands for development, administering any subsequent mineral leases, and the distribution of revenues generated on the lands will be borne solely by the State of Utah through the Trust Lands Administration.

These provisions leave Utah's school trust with a commitment to pay the United States and the State of Utah's mineral lease account all amounts that could be derived from the lands under federal law. However, because the school trust has legal flexibility to issue leases for royalty rates greater than permitted under existing federal law, it hopes to achieve some economic return from leasable minerals on the subject lands based upon this flexibility. This risk is solely borne by the Utah school trust; the legislation commits the required payments to the United States as a covenant running with the land. The U.S. is thus compensated for leasable minerals on the subject lands as if it retained ownership, as well as being paid appraised surface values and non-leasable mineral values. Again, this provision is revenue neutral to the United States.

## POST-EXCHANGE LAND MANAGEMENT AND WILDERNESS

Substantial portions of the state trust lands to be exchanged to BLM are located in wilderness study areas ("WSAs") created under Section 603 of FLPMA, or areas proposed for wilderness in pending federal legislation. Other portions are not within proposed wilderness. The legislation provides that exchanged lands that lie within existing WSAs or other formally-designated federal areas will automatically become part of those areas upon conveyance. For other state lands exchanged to BLM, some lands recognized by the parties to have special significance, as designated on the exchange map, will be withdrawn from mineral entry by the terms of the legislation. For all other state lands exchanged to BLM, the lands will be withdrawn pending revisions of BLM's resource management plans to determine appropriate management of the lands. The proposed exchange is not intended as an endorsement of any particular configuration of wilderness, which is a matter that is for Congress to decide at some future time. Rather, the intent of the exchange is to allow BLM land managers to determine, on a landscape scale, how best to manage the lands without having to deal with inheld state trust lands.

## CONCLUSION

Again, if I may refer to the accompanying map, the islands of state trust land intermingled throughout the public domain in Utah present historic, current and future opportunities for contention between the United States and the State of Utah. These scattered sections create never-ending complications for both federal and state land managers, and often hinder federal land managers from accomplishing Congressional mandates. S. 390 represents a significant great step toward simplifying land management in Utah, protecting Utah's natural heritage, supporting local economies through increased opportunities for outdoor recreation, and adequately funding public education. It is the product of public outreach and compromise that has led to a better proposal than originally crafted. In addition, it provides a template that may help to rationalize the "kaleidoscope" that is the Utah land ownership map. I respectfully urge the Subcommittee to approve it expeditiously.

Thank you again for the opportunity to testify today.

Senator WYDEN. Thank you very much, Mr. Carter.  
Mr. Cobb, welcome.

**STATEMENT OF TY COBB, BOARD MEMBER, GRAND CANYON  
TRUST, FLAGSTAFF, AZ**

Mr. COBB. Thank you very much, Mr. Chairman.

My name is Ty Cobb. I'm a partner at the law firm of Hogan & Hartson here in Washington, D.C., but I have the distinct honor of serving on the Board of Trustees for the Grand Canyon Trust, with whom I've been associated with for many years, and we are now in our 22nd year, as the Grand Canyon Trust, it's a non-profit conservation organization, headquartered in Flagstaff, Arizona, with an office in Moab, Utah.

Our mission is to protect and help restore the Colorado Plateau, its spectacular landscapes, flowing rivers, clean air, the diversity of the plants and animals in areas of solitude and beauty. In the course of that effort, we have worked very closely with Congress, historically, most notably during the passage of the Grand Canyon Protection Act in the early 1990's. But we value our constructive relationship with your staff, and with Mr. Carter's organization, and I would like to take the opportunity early in my remarks, if I might, Mr. Chairman, to compliment Mr. Carter, who has just done an extraordinary job in this matter.

S. 390, the Utah Recreational Land Exchange Act of 2007 would protect the valuable recreation lands, critical watersheds, cultural resources, essential wildlife habitat and lands that are extraordinary in scenic beauty. The preservation of this landscape is very

much in the interest of the members of the Grand Canyon Trust, whom I'm representing here today, but also the American public, this Congress, and all Americans to follow us.

In that regard, and to underscore this point more elegantly than I am able to put into words, I've brought for the committee, or the subcommittee's benefit today, a book which I'd like to present to the subcommittee, "Utah, A Celebration of the Landscape," which includes, actually, many photographs of some of the lands that are subject to the Exchange, and I'll leave that with your staff.

Senator WYDEN. Very good.

Mr. COBB. Because this matter has been refined over the past 4 years, I think it represents one of the most well thought-out pieces of legislation of this type in history. Since the House hearing on the proposed legislation in September 2005, the Grand Canyon Trust has worked with your subcommittee, the House Subcommittee on Forests and Forest Land, officials from the Department of Interior, Bureau of Land Management and the Utah State Trust Lands to help refine the legislation as it is moved forward.

As Senator Bennett noted, like him, we were disappointed that it didn't make it through last time, but we very much appreciate this subcommittee's support and interest in this bill, and its efforts to move it quickly through Congress at this stage.

As has been emphasized by Senator Bennett, and by Mr. Carter—rarely has a piece of legislation of this type had the broad coalition of support that this legislation brings. There are rural county commissioners, very bipartisan support, as many of them are Republicans, there's a Democratic Governor, Mr. Huntsman, Senator Bennett, others—everybody sees the value of this, and the wisdom of this, both for the State and for the Federal Government. The checkerboard that Senator Bennett referred to in his remarks, you know, will be harmonized by this legislation in a way that benefits the intended beneficiaries of the Utah, and particularly, in the education area, as intended by their legislation, as well as the Federal Government, in protecting very valuable resources.

I thank you very much for the honor of an invitation to participate today, and encourage the passage of this legislation in harmony with the pending House bill.

[The prepared statement of Mr. Cobb follows:]

PREPARED STATEMENT OF TY COBB, BOARD MEMBER, GRAND CANYON TRUST,  
FLAGSTAFF, AZ

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify. Grand Canyon Trust strongly supports S. 390, the Utah Recreational Land Exchange Act of 2007, with modifications to bring the bill into alignment with H.R. 1210 the House version of the bill. Changes to the bill which are evident in H.R. 1210 were very carefully negotiated in the House National Parks, Forests and Public Lands Subcommittee and should be entirely incorporated into S. 390.

The Grand Canyon Trust, now in our 22nd year, is a non-profit conservation organization headquartered in Flagstaff, Arizona with an office in Moab, Utah. Our mission is to protect and restore the Colorado Plateau—its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of solitude and beauty.

S. 390, The Utah Recreational Land Exchange Act of 2007, will protect valuable recreational lands, critical watersheds, cultural resources, essential wildlife habitat, lands of extraordinary scenic beauty and lands in Wilderness Study Areas by conveying sensitive state-owned lands in the Colorado River corridor to the Bureau of Land Management. The area is currently a checkerboard of federal lands and Utah State Trust Lands (SITLA) which the state is mandated to manage for benefit of



Utah's school children by raising dollars for the Permanent School Fund. This is accomplished primarily through leasing the lands for minerals development or selling the lands for private development. Since conservation dollars cannot keep pace with the disposition of state lands, the proposed land exchange is the only viable way to keep such a broad and cherished landscape from becoming fragmented. Preservation of this landscape is in the interest of members of the Grand Canyon Trust and the American public, since the existing federal estate in southeast Utah is a national treasure.

#### THE LANDSCAPE

In southeast Utah, the spectacular 1200 square mile basin of Canyonlands National Park lies at the geographic heart of the Colorado Plateau. Here, 300 million years of geologic history are revealed in the deep canyons of the Colorado and Green Rivers. The downward cutting movement of the rivers and their tributaries, through layers of sedimentary rock, continues to form one of the largest and most intricate canyon systems on earth. Upstream on the Green River are Labyrinth and Stillwater Canyons, and on the Colorado River, the twin jewels of Arches National Park and Westwater Canyon. S. 390 will consolidate federal lands for consistent management in this landscape of the Colorado River corridor.

This extraordinary geologic province is filled with the greatest density of natural arches in the world; Morning Glory Arch and Corona Arch will be conveyed to the federal estate in the proposed exchange. Pinnacles, rock fins, grottos, balanced rocks, hoodoos and natural bridges abound, sheltering a richness of species in diverse habitats. Mountain ranges provide watersheds that give life to the adjacent desert country. Vast expanses of bare red rock are broken by lush riparian areas, ephemeral pools, grassland and sage steppes. In this land of extremes, temperature fluctuations of 50 degrees in one day are common, animals and plants have evolved unique adaptations to survive and many of these species are endemic to the region. In addition, southeast Utah contains one of the world's great archaeological districts where priceless treasures from the past are abundant. S. 390 will convey lands like these to the BLM where they can be managed to protect their values for the American public.

#### CONSERVATION VALUES

There have been numerous acquisitions of SITLA lands in Grand County in recent years by individuals and conservation organizations for the purposes of preserving open space and recreational lands, and for protecting watersheds and wildlife habitat. This reflects a very strong desire and commitment of private resources for protecting this spectacular landscape. During the same period, developers and even Off-Highway Vehicle groups have outbid conservationists and purchased SITLA lands in the area for their private uses, fragmenting the surrounding federal estate. In this competitive market, conservation sales have necessarily become comparable sales. S. 390 provides for appraisers to determine these values with respect to the actual parcels included in the exchange.

With escalating land values, it has become difficult to procure funding for conservation initiatives on a scale commensurate with the problems posed by checkerboard federal/state patterns of ownership. Legislative land exchanges can be a rational solution in such cases and are now a very important conservation tool. Approximately 350,000 acres of SITLA lands remain in Grand County and some naturally possess conservation values, such as those adjacent to Arches National Park. It would be impossible to purchase all sensitive SITLA lands to protect them. Therefore the Grand Canyon Trust and other conservation organizations working in the state support this kind of carefully negotiated land exchange legislation as a common sense solution for protecting these important landscapes.

#### PUBLIC BENEFITS

In addition, protecting these lands is consistent with Grand County's economy, which is based on tourism. In 2006, the Governor's Office of Planning and Budget reported that the tourism industry provided over \$100 million dollars to Grand County's economy. On the other side of the ledger, SITLA will receive federal oil and gas development property in Uintah County, slated for development regardless of ownership, ensuring new revenues for their beneficiaries. We support this public benefit for education in the state of Utah. In Uintah County, minerals development is the primary force in the local economy, which is why elected officials there also support S. 390.

## REVIEW AND SUPPORT

We also approve of the process through which this legislation was developed. Cooperating with Grand Canyon Trust, Southern Utah Wilderness Alliance and Utah Wilderness Coalition, SITLA vetted the proposed exchange lands and these groups now approve of the selected lands. Grand Canyon Trust worked with The Nature Conservancy and the Utah Natural Heritage Program to map Threatened, Endangered, and Sensitive species, both plant and animal, on the proposed exchange lands. Using current data, we found no habitat overlap on lands SITLA would acquire for development while TES species do exist on lands being conveyed to BLM, where they would ostensibly have better protection under federal laws.

Groups supporting this legislation include Grand County, Uintah County, San Juan County, Castle Valley Town, Moab City, Governor Huntsman's Task Force on Outdoor Recreation, the Utah Legislature, Utah Open Lands, The Nature Conservancy, Southern Utah Wilderness Alliance, Grand Canyon Trust, Utah Guides and Outfitters, Utah Rivers Council, National Parks and Conservation Association, Outdoor Industry Association, area ranchers, Grand County Backcountry Council, Grand County resort and tourist business owners, Utah Education Association, National Education Association. Other groups reviewing and commenting on the legislation included Utah Natural Heritage Program, Center for Native Ecosystems, Utah Wilderness Coalition, The Wilderness Society, Moab Field Office Bureau of Land Management, Utah Department of Natural Resources and the Utah Division of Wildlife Resources.

## REVISIONS AND ENDORSEMENT

Since the House hearing on the proposed legislation in September 2005, Grand Canyon Trust has attended meetings of the House Subcommittee on Forests and Forest Health. Committee staff and officials from Department of the Interior, Bureau of Land Management and Utah State Trust Lands have revised H.R. 2069, the Utah Recreational Land Exchange Act of 2005, to address issues raised at the House hearing and Senate hearing in 2006. We are grateful to the staff and agencies for their cooperation with one another and many hours of time, over two years, devoted to drafting a better bill which is reflected in the House version of the 2007 bill, H.R. 1210.

Under Section 4(d)(1), we favor changing the timing language so that the set period for implementation is not mandatory and allows sufficient time for any actions necessary to properly implement the exchange.

Grand Canyon Trust supports the fair and equal exchange of values for the trade. We also support rolling conveyance of the lands as provided in the legislation.

Grand Canyon Trust is also in favor of permanent mineral leasing withdrawals for this exchange under Section 6(2)(B) which refers to some 20,000 acres of high value scenic and recreation lands being conveyed from SITLA to the BLM.

## MANAGEMENT OF CONVEYED LANDS

Southeast Utah's living Eden of canyons mesas and deep river gorges attracts recreational users from all over the world who come to hike, mountain bike, climb, run rivers, ride horses, ski and explore via jeeps and all-terrain vehicles. In recent years, an exponential increase in visitation to the public lands has demonstrated the necessity for good planning to accommodate the multiple use mandates on federal lands.

The Moab BLM Field Office is currently revising its Resource Management Plan. Lands being conveyed to the BLM in the exchange will be managed according to the plan that is now being designed for lands currently in BLM ownership which surround exchange parcels. The Moab BLM planning team has stated that, in the Colorado River corridor, they are working to be consistent with the Three Rivers withdrawal signed by Secretary Norton in September 2004. This withdrawal protects two hundred miles of the Colorado, Green and Dolores river corridors and an additional fifty miles of side canyons from nuisance mining claims on locatable minerals for twenty years. Moab BLM planners have written special management designations into their preferred alternative to protect scenic and recreational values in the river corridor.

## CONCLUSION

The Utah Recreational Land Exchange Act of 2007 has a very broad coalition of support, from rural Republican county commissioners to conservation organizations. In Utah, it is rare to have consensus of this kind for a public lands management proposal. S. 390 is an extraordinary conservation opportunity for protection of fed-

eral lands in Utah. Grand Canyon Trust believes S. 390, with the above stated modifications, provides the opportunity for a successful legislative land exchange. We respectfully urge the Subcommittee to approve a version of this bill with our recommended changes. Thank you again for the opportunity to testify.

Senator WYDEN. Well, Thank you very much, Mr. Cobb, and for you and Mr. Carter, I just know we'll work closely with both of you and your organizations. I don't think there's a Senator who is more fastidious about trying to make sure that everybody's included, and the stakeholders involved, than Senator Bennett. You're absolutely right, he's done a very good job in terms of trying to bring folks together; the staff has some areas they're going to follow up with you on, but we really appreciate your input, and look forward to getting it done, and done quickly.

For the folks in Oregon, Ms. Schrader, you all, at this point, feel comfortable in terms of the inclusiveness. I gather, from your testimony, that people have had the opportunity to participate. How do you feel about, on the recreation side in terms of rafting and fishing—these are extraordinarily important activities for folks in Clackamas County. I think rafting and fishing are probably embedded in the gene pool of folks in Clackamas County—do you feel we're moving in the right direction there?

Ms. SCHRADER. Thank you for that question, Senator, because, indeed tourism and recreation is one of the key economic engines of our country at this point in time, and as a traded sector and as you've heard in other testimony, we work closely with the businesses that provide the footwear and the things that people need to recreate in the forest. We recently had a recreation technology showcase in our County, under the auspice of Clackamas County, and the Oregon Science and Technology Partnership, that was working to work with those individuals that produce these recreational materials for folks.

So, indeed, it is a key part of what we do in our county, and I certainly do think that this bill will help our efforts.

Senator WYDEN. Well, we'll continue the discussions with all of you. I know that there are a host of some issues that you all feel strongly about, related communities, drinking water, and we'll continue to work with all of you, and please tell folks on the Clackamas County staff that we very much appreciate their cooperation, and their good-faith efforts to help us resolve some of these issues.

I know, when I put that bill in the first time, and we'd had the two, you know, long meetings, and everybody said, "Wow, where in the world is this coming from, Ron, where did Ron get this idea with respect to Clackamas County, or that idea," your folks stepped in and began to do a lot of work with us, given the fact that it was new to them.

A lot of people, despite the two big town meetings and forums, so we just appreciate your good work.

Mr. Sterling, your thoughts about the National Recreation Area: I think you were here when I talked about the fact that, if there's been one part of the legislation over the years that we've been working on this that has surprised us, it's been the National Recreation Area. I mean, we thought there was going to be a lot of interest, and it's been even greater than we expected, and that's why

we expanded it, and are going to continue to talk with folks about it. But what's your reaction to the National Recreation Area and what are folks in the Outdoor Industry Conservation Alliance saying about that?

Mr. STERLING. Well, as a group of businesses, many of which make products for a variety of outdoor recreation activities, I would say on balance, our membership is most strongly dedicated to the wilderness component of the legislation. But clearly there are some areas in there that have significant conflicts with the mountain bike community, and Yakima Products, one of the companies I mentioned, actually makes bike racks, so that's something they're certainly concerned about.

But, you know where you can't designate wilderness, sometimes you have to find a compromise that works for everyone, and so I think that our members feel comfortable with some of the areas that have been designated as a National Recreation Area.

Senator WYDEN. We'll follow up with you as well, and I think it touches on the point that Ms. Schrader made with respect to tourism. Tourism and recreation in many parts of Oregon go hand in hand. People come to our State and come from one part of Oregon to another because of the spectacular recreation opportunities, and certainly in the area of mountain biking, there's an enormous interest.

We had thought earlier about one kind of model approach—you probably both know Mary Gautreaux who does terrific work in our office—and we thought about a Hood PDX, an almost experimental approach to promote mountain biking, and the mountain bikers thought that there were probably other ways to do it, although they complimented us on our creativity, in terms of out-of-the-box thinking. I think thus far, the mountain biking provisions seem to have gotten a good response; we're going to continue to work to refine those, as well.

So, you all from Utah and Arizona have learned an awful lot about Oregon wilderness policy here in the course of the afternoon, I want to give you all a chance to have the last word with respect to the good work that Senator Bennett and the Utah folks are doing. Is there anything you all would like to add?

Mr. CARTER. I think our message, again, would be we very much appreciate his support, and his willingness to have his staff work with us, and work with committee staff and working through some always difficult issues when it comes to land exchanges, and we're very appreciative of that, and for your time. Thank you.

Mr. COBB. I would echo that. I think that Mr. Carter, likewise, deserves credit for getting this accomplished, and there are difficult analytical issues, political issues, and geological and other issues, in a manner that's complex, and was done with great skill, and serious engagement by a broad and bipartisan group.

If I might, Senator. I've been moved all afternoon, having heard so much about Mount Hood, drawn to my own recollection of the first time I saw it, and it was as a bicyclist riding at night along the Columbia River Gorge as a 23-year-old, and it appeared to me for the first time, as a triangle, white triangle hovering in the sky. Because, you could see the snow cap, but you couldn't see the mountain. It was a beautiful, moonlit night, and it was one of the

most stupefying memories that I have, so I congratulate you on that work as well.

Senator WYDEN. Thank you, that bike ride's about as good as it gets.

Mr. COBB. It is.

Senator WYDEN. You have obviously remembered it forever, and we'll have to figure out a special exchange, or something, between, we'll call it the Bennett-Smith-Wyden Exchange, in terms of wilderness efforts and visitation.

Mr. COBB. Excellent.

Senator WYDEN. We thank you for your good work.

We're going to get these bills moving, and we're going to get them moving expeditiously. A last word for the Oregon trio there, Mr. Chairman? Ms. Schrader, Mr. Sterling. Anything you all would like to add?

Mr. SUPPAH. I guess two elaborations. We get to—our neighbors, our legislators and we—continue, as stewards of our country, to make a better Oregon. Thank you.

Senator WYDEN. That sums it up.

Ms. Schrader, Mr. Sterling.

Ms. SCHRADER. Thank you, Senator, for asking me to come today, and as someone who started out in environmental conservation and biology, I just wanted to say how thrilling it is to be part of this great legislation as it comes forward, so thank you.

Senator WYDEN. You're going to continue to be a big part.

Mr. Sterling.

Mr. STERLING. Well, I just want to thank you, again, for the invitation and I know that there are other places in Oregon after Mount Hood that you are interested in protecting, and we hope that this the a first of a series of conservation measures that will ensure future quality of life for Oregon.

Senator WYDEN. You can count on it.

The subcommittee is adjourned.

[Whereupon, at 4:15 p.m., the hearing was adjourned.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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STATEMENT OF ROBERT A. WILKINSON, CHIEF EXECUTIVE OFFICER, COPPER VALLEY  
ELECTRIC ASSOCIATION

Mr. Chairman, Honorable members of the Subcommittee, my name is Robert Wilkinson. I am from Glennallen, Alaska, and serve as Chief Executive Officer of the Copper Valley Electric Association. CVEA is a non-profit, member-owned, rural electric cooperative founded in 1954 by the residents of Glennallen in the Copper River Basin region of Alaska. Thank you for this opportunity to submit testimony on S. 205, the Copper Valley Native Allotment Resolution Act of 2006. This bill is very important to the 3,600 members of this Cooperative and will resolve a long standing problem which has been created by an unfortunate disconnect between Congressional passage of the Alaska National Interest Lands Conservation Act in 1980 and subsequent federal administrative rulings by the Department of Interior, Interior Board of Land Appeals.

CVEA provides electric service to a large geographic area along 240 miles of the Glenn and Richardson Highways in eastern Alaska. This area was one of the earliest settled areas in the State and has the oldest public road, the Richardson Highway running from tidewater to the Interior of the state. CVEA is headquartered in Glennallen, Alaska, and maintains a district office in Valdez.

CVEA's mission is to provide exceptional customer service through safe, reliable, cost-effective electric service and programs. The native allotment issue is contrary to a number of core cooperative principles including a requirement that customers provide easements without cost to the Cooperative. Second, cooperatives operate at cost and purchasing rights of way from allottees will increase the cost to provide service. Finally, cooperatives strive to serve customers in a nondiscriminatory manner. Purchasing rights of way from allotment owners creates an unfair advantage at the expense of other customers who have to foot the bill. S. 205 corrects long-standing problems, allows us to operate consistent with our core 50-year old principles, and we strongly support the passage of S. 205 this session.

#### BACKGROUND

S. 205 addresses a problem created by an inadvertent combination of federal law and Interior Department administrative rulings that have created a conflict for 14 Alaska native allotments located in the Copper River Basin. This conflict was not intended by the Congress, and CVEA is the unintended victim of the conflict. This problem jeopardizes the validity of electric transmission lines and rights of way, all of which Congress intended to protect as valid existing rights when it passed ANILCA in 1980. CVEA has invested millions of dollars in these transmission lines in reliance on BLM decisions to grant these rights of way. After many years of fruitless ongoing discussions concerning the problem, a detailed study was conducted by the Government Accountability Office: Alaska Native Allotments: Conflicts with Utility Rights-of-Way Have Not Been Resolved through Existing Remedies, GAO-04-923, September 7, 2004. The GAO report identified several alternative solutions which have been incorporated into S. 205 which was introduced by Senators Stevens and Murkowski on May 24, 2006. CVEA strongly endorses this legislation and urges its swift passage.

#### THE INADVERTENT PROBLEM

Much of the factual record is documented by the GAO in the background section of its report.

The GAO found the following:

CVEA located, applied for and was granted proper transmission line easements and rights of way both prior to and following Alaska's admission to the Union in 1959. The rights of way were confirmed by the BLM and permits were issued to cover these rights of way.

In 1971, Congress repealed the Alaska Native Allotment Act, but many native allotments were not adjudicated prior to repeal which was part of the Alaska Native Claims Settlement Act.

In 1980, Congress legislatively approved all but a few pending allotments because the BLM adjudication process was bogged down and would take decades to conclude. These allotments were approved subject to valid existing rights of which CVEA's rights of way were assumed to be.

In 1986, the Interior Board of Land Appeals, an administrative court of the Department of Interior applied the doctrine of "relation back" to rights of way such as CVEA's to Alaska native allotments. This decision effectively voids CVEA rights of way where native use and occupancy is claimed to predate the date CVEA was granted its right of way. There are 14 such cases where the theory of the relation-back principle has been applied.

Since the IBLA rulings, the Bureau of Indian Affairs has engaged in periodic efforts to levy trespass claims against CVEA. The BIA, through real estate contractors, has also periodically threatened litigation to either void these rights of way or to collect on alleged trespass claims. This has been very costly and disruptive to CVEA.

Over the years, CVEA has also made good faith efforts to resolve this problem by using the BIA's regulatory processes. However, these processes are extremely cumbersome, slow, and expensive, require the continuous involvement of lawyers and land consultants, and have not achieved a satisfactory resolution of CVEA's easement problems.

This cumbersome process, and the threatened litigation by the BIA and others, has resulted in substantial administrative cost and legal bills to defend against these claims brought against CVEA, and ultimately has led CVEA to ask Congress to correct this inequity through legislation.

Furthermore, it has created member relation problems for the Cooperative. As a non-profit cooperative electric utility, CVEA's Bylaws prohibit paying any customer for a right of way to provide service to that customer. Therefore, we are in a no-win position that we cannot provide service to some allotment owners because so long as this conflict continues, CVEA cannot get a right of way from the allottee even if the allottee wants to provide it. That decision is left in the hands of the BIA as allotment trustee. This is yet one more troubling and difficult problem created as a result of the IBLA's application of the relation-back doctrine to rights of way granted to CVEA.

#### S. 205

After consultation with Senator Stevens, following release of the GAO report, it was determined that the problem cannot be solved by existing remedies. The only alternative is federal legislation.

The terms of S. 205 are simple. All CVEA past and present rights of way for electric transmission lines in conflict as identified by the GAO report are confirmed legislatively as was intended by ANILCA. A compensation procedure is established to compensate any allottee affected by this legislative action. The appropriate compensation will be determined by the BLM and paid to the allottee. The rights of other property owners to other lands are protected in this legislation.

CVEA strongly supports this legislation and urges its rapid passage into law.

#### CONCLUSION

Mr. Chairman, this problem is a local issue limited to 14 native allotments in the Copper Basin in eastern interior Alaska. As demonstrated by the GAO report, this problem needs a solution that only Congress can provide. CVEA cannot properly serve its customers until this problem is solved. CVEA is a small, non-profit, rural electric cooperative. CVEA has expended significant resources to solve these problems over a period of many years, and we remain threatened with imminent trespass litigation if this problem is not corrected. We cannot afford time consuming and costly litigation and we can no longer withstand the continuing threat of litigation.

In that regard, and on behalf of the 3,600 members of Copper Valley Electric Association, I urge this Committee and the Congress to solve this longstanding problem by passing this legislation as rapidly as possible. Thank you for the opportunity to submit testimony on S. 205.



JOINT STATEMENT OF THE AMERICAN HIKING SOCIETY, AMERICAN RIVERS, AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS, ARIZONA WILDERNESS COALITION, ARIZONA ZOOLOGICAL SOCIETY, CALIFORNIA WILDERNESS COALITION, CAMPAIGN FOR AMERICA'S WILDERNESS, CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (CIEL), CITIZENS ACTION COMMITTEE FOR TULE SPRINGS (CACTUS), COALITION FOR SONORAN DESERT PROTECTION, DEFENDERS OF WILDLIFE, EARTHJUSTICE, ENVIRONMENTAL DEFENSE, FRIENDS OF THE AGUA FRIA NATIONAL MONUMENT, FRIENDS OF THE EARTH, FRIENDS OF GOLD BUTTE, FRIENDS OF IRONWOOD FOREST, FRIENDS OF THE MISSOURI BREAKS MONUMENT, FRIENDS OF SLOAN, GRAND CANYON TRUST, GRAND CANYON WILDLANDS COUNCIL, GRAND STAIRCASE ESCALANTE PARTNERS, IDAHO CONSERVATION LEAGUE, IDAHO WILDLIFE FEDERATION, MONTANA WILDLIFE FEDERATION, NATIONAL TRUST FOR HISTORIC PRESERVATION, NATIONAL WILDLIFE FEDERATION, NEW MEXICO WILDERNESS ALLIANCE, NEW MEXICO WILDLIFE FEDERATION, OREGON NATURAL DESERT ASSOCIATION, OUTDOOR INDUSTRY ASSOCIATION (OIA), PARTNERSHIP FOR THE NATIONAL TRAILS SYSTEM, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (PEER), REPUBLICANS FOR ENVIRONMENTAL PROTECTION (REP), RINCON INSTITUTE, SAN JUAN CITIZENS ALLIANCE, SIERRA CLUB, SODA MOUNTAIN WILDERNESS COUNCIL, SONORAN INSTITUTE, SOUTHERN UTAH WILDERNESS ALLIANCE, TULEYOME, US PIRG, THE WILDERNESS SOCIETY

Chairman Wyden and Senator Burr, on behalf of our 44 national and regional organizations and our many members, we write in support of The National Landscape Conservation System Act, S. 1139.

As you know, the 26-million-acre National Landscape Conservation System was established by the Secretary of the Interior to recognize and protect the outstanding lands and waters managed by the Bureau of Land Management (BLM). The Conservation System is comprised of BLM lands and waters designated for conservation by Congress or the President: National Monuments, National Conservation Areas, Wild and Scenic Rivers, National Scenic and Historic Trails, Wilderness Areas, Wilderness Study Areas, and other congressionally designated BLM conservation areas. The System, which comprises 10 percent of BLM-managed lands, protects the BLM's crown jewels, from Montana's Upper Missouri River Breaks National Monument to Colorado's Gunnison Gorge National Conservation Area.

Hundreds of thousands of Americans each year enjoy these nationally significant landscapes, through recreation such as hunting, river rafting and hiking, as well as outdoor education for local schools, scientific research on valuable paleontological and archaeological resources, and more. For example, hikers, ecologists and other visitors to Oregon's biologically diverse Cascade-Siskiyou National Monument enjoy an unparalleled diversity of butterflies, animal species, unique fish and mollusks, and rare plants.

The National Landscape Conservation System is a network of some of the last places where visitors can experience the history and wild beauty of the American West. Although the most recent Democratic and Republican administrations have both supported the System administratively, it lacks statutory recognition keeping the great recreational, natural and scientific resources of the Conservation System hidden from many Americans who stand to benefit from them. By enacting codifying legislation, Congress will ensure the System's permanence and an enduring legacy of the West's natural and cultural heritage for future generations.

In conclusion, enactment of S. 1139 will permanently establish perhaps the last great American system of protected lands, and we hope the Committee will favorably report this important piece of public lands legislation.

AUDUBON SOCIETY OF PORTLAND,  
Portland, OR.

*Subcommittee on Public Lands and Forests, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN WYDEN, SENATOR SMITH AND MEMBERS OF THE SUBCOMMITTEE: On behalf of the Audubon Society of Portland and its 10,000 members, I am pleased to provide testimony on S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

Portland Audubon is grateful to you for advancing the Mount Hood Wilderness legislation, which would protect Mount Hood, the Columbia River Gorge and the Clackamas watershed. Oregonians and visitors alike overwhelmingly support protecting these awe-inspiring landscapes that shelter old-growth forests, community watersheds, wildlife habitats, salmon and steelhead spawning streams, whitewater rivers and hiking trails.

Among the places that would be protected which are near and dear to the hearts of Portland Audubon members is Bonney Butte. Bonney Butte is a designated Oregon Important Bird Area because it is home to the largest known fall concentration of migrating raptors in Oregon.

Other special places that would be protected include:

- White River's scenic alpine canyons and rare plants;
- the exceptional big-game habitat of Sisi Butte;
- the ancient forests of Fifteenmile Creek; and
- the wetlands and fish and wildlife habitat in Salmon River Meadows.

We applaud your leadership and thank you for your efforts.

Sincerely,

MERYL REDISCH,  
*Executive Director.*

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INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION  
*Boulder, CO, May 3, 2007.*

Senator RON WYDEN,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy & Natural Resources, U.S. Senate, 364 Dirksen Senate Office Building, Washington, DC.*

Dear CHAIRMAN WYDEN: On behalf of the International Mountain Bicycling Association (IMBA) and the Oregon Mountain Bike Alliance (ORMBA), I write to support S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

IMBA and ORMBA first thank the Oregon Senators and staff for their tireless efforts to craft land protection language for Mount Hood. We applaud the collaboration that has resulted in this legislation, preserving natural resources and many mountain bicycling opportunities.

Specifically, we are pleased the bill includes:

- National Recreation Areas to allow diverse, muscle-powered recreation to continue,
- An investment of almost \$800,000 of unobligated special use permit fees to be retained for trails and recreation on Mount Hood,
- A seat on the Mount Hood National Forest Recreational Advisory Council for a mountain bike representative,
- Recognition of recreation as a dynamic social and economic component of Mount Hood.

Mountain biking is a very popular sport, with 39 million participants nationally and close to 400,000 participants in Oregon (according to a recent study by the Outdoor Industry Association). Outdoor recreation is a way of life for Oregon residents, and many tourists travel to the state to experience Oregon trails via mountain bikes.

#### WILDERNESS DESIGNATIONS

Bicyclists love to ride remote backcountry areas on narrow trails—just like hikers and equestrians—and feel conflicted when Wilderness is proposed that affects significant biking trails. On the one hand, we want to protect the areas we ride. Yet we don't want to lose access to the trails we have ridden for almost two decades.

To preserve the lands we care about, bicyclists support protection of many pristine areas and undeveloped public lands. The challenge is the agencies have defined Wilderness to ban bicycle access. Bicyclists therefore must seek modifications of Wilderness proposals that will allow our quiet, low-impact, muscle-powered form of recreation to continue.

Nationally, our organization hopes to shift the land protection discourse from Wilderness only conversations to one that is more inclusive of other designations. We need a toolkit of strong protections to apply the right designation to suit each area's distinct history and its future.

S. 647 bodes well for mountain bicycling and maintains many boundary adjustments that will accommodate access to significant trails. Some of the most popular and scenic places for cycling will remain open in the bill, such as Fifteenmile Creek, Larch Mountain, Dog River, Surveyors Ridge, Boulder Lake, Shellrock and Mount Defiance. With a few key amendments to the legislation, we believe it can protect the land and allow our existing, historical use to continue.

Most promising for cyclists, the bill creates the Mount Hood National Forest Recreation Area (NRA) that will allow mountain biking to continue in areas such

as Fifteen Mile Creek, Boulder Lake, and Shellrock Mountain. Instead of taking away trails our community has enjoyed for decades, National Recreation Areas are a way to protect Mount Hood for our children to enjoy and also to engage more of the Oregon bike community in land protection. National Recreation Areas have been used in many places around the country and on National Park Service, Bureau of Land Management, and USDA Forest Service lands.

ORMBA and IMBA strongly endorse the NRA proposal and suggest expanding it to several other key areas, such as Hell Roaring Creek; and including provisions to prohibit mining, resource extraction, commercial logging, and motorized access.

#### SPECIFIC TRAIL RECOMMENDATIONS

ORMBA and IMBA strongly support protecting the lands around Mount Hood, and are asking for two minor but important changes to the bill.

First, we suggest preserving a popular trail, known as the Bonney Butte Trail (Trail #471) under the aegis of Wild and Scenic River status. The Bonney Butte Trail starts in the Twin Lakes area and travels east toward Boulder Lake. This 5.2 mile trail provides a critical connection across three key areas for mountain biking: Boulder Lakes, Bonney Meadows, and Twin Lakes. It currently enjoys Wild and Scenic River designation status—one of the most protective land designations afforded by Congress.

As proposed, the Mount Hood bill would change the status of the Bonney Butte Trail to Wilderness protection. Layering this area with Wilderness unnecessarily prohibits continued bike access and blocks a connector trail to other key trail systems. Keeping this trail protected by a Wild and Scenic designation, removes less than 1,000 acres from the overall proposal and only a few hundred acres if the boundary is narrowly drawn.

As a low-impact, quiet and human-powered activity, mountain biking is compatible with Wild and Scenic areas. We ride on many trails protected under this designation. Mountain bikers care deeply about these areas and want the lands protected for our existing use.

IMBA also asks the committee for a minor boundary adjustment to help re-open the Clackamas River Trail. IMBA advocates have started conversations with the Forest Service concerning this area and this narrow adjustment would help restore a trail that was open to our use for many years.

It is important to note that there are many differences between the 16-year-old Forest Plan and what is happening on the trail. There are many, many miles of trails that, in the 16 years since the Forest Plan, have remained legally open to mountain bike use because the Forest Service has actively maintained these trails and chosen not to close them. These trails are not posted closed nor has there been a Forest Order, the final step in closing a trail, as required by the Forest Plan and Forest Service regulations. Actual signage posting a closed trail is important because the Mount Hood National Forest Plan requires that “Roads, areas, and trails closed or restricted to recreational use shall be posted.” [MHNFF Forest Plan, page 4-95, emphasis added]. In addition, IMBA has confirmed with Forest Service on other occasions, that “National Forest System lands are open to a wide variety of recreational activities, including hiking, equestrians, bicycling, and motor vehicles, except where, specific activities are restricted by regulation, closure orders, programmatic direction or land allocations identified in a Forest Land and Resource Management Plan.” According to Forest Service Handbook (FSH) 2309.18, 2.31c, “mountain bikes can utilize trails and routes constructed for other purposes and can be ridden on hike, pack and saddle, motorized bike trail, and four-wheel drive ways” in addition to riding on trails specifically designated for mountain bike use through Trail Management Objective (TMO) determinations.

Consequently, the general Forest Service policy is that a trail is open to bikes unless specifically closed. Meanwhile these trails have experienced continued and active use by the mountain bike community. Approximately 100 miles of trails would close under S. 647. To the best of our knowledge all these trails are open to bikes in compliance with Forest Service rules and regulations and are actively used by mountain bicyclists, despite guidance in the 16-year old plan appendix listing many of them as closed.

In light of the increasingly out-of-date Mount Hood National Forest Plan, IMBA and ORMBA look forward to working with the Forest Service develop new single-track trail opportunities for mountain biking. Mountain bicyclists are avid trail stewards and contribute thousands of hours of volunteer trailwork across the state and on Mount Hood. If more lands are designated Wilderness, and thus made off-limits to cyclists, an important constituency will be shut out.

Mountain biking is a healthy, human-powered outdoor activity with minimal environmental impact and a positive economic influence for Oregon. Mountain biking is an inherent use on Mount Hood and many accommodations have been made in the legislation for other historical and existing uses.

Oregon is known for being solutions-minded and looking for new ways to tackle old problems. Thank you for your dedicated efforts to craft legislation protecting Mount Hood in that spirit; and for the opportunity to submit comments on this important legislation.

Sincerely,

JENN DICE,  
*Government Affairs Director.*

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STATEMENT OF GARY SISSON, GENERAL MANAGER, MAMMOTH COMMUNITY WATER DISTRICT, MAMMOTH LAKES, CA

On behalf of the Mammoth Community Water District (District), I am submitting this written testimony in support of H.R. 356 and ask that it be submitted for the record. The District is located in the Eastern Sierra Nevada Mountains in Mono County, California and provides the drinking water supply and wastewater treatment services to the Town of Mammoth Lakes (Town). The Town has approximately 7,500 year-round residents and during the peak winter season the population swells to over 35,000. The Town is surrounded by lands administered by the Inyo National Forest, and the economy of the area is primarily based on recreation and tourism.

On behalf of the District and the residents we serve, we are very grateful for the Subcommittee's willingness to hold a hearing on H.R. 356 which was introduced by Representative Buck McKeon. I also want to express our public appreciation to Senator Dianne Feinstein and her staff for their continued strong support of this legislation.

H.R. 356 addresses an unintentional consequence of existing law as it relates to real property that the federal government transferred to our community several years ago. The legislation will provide our community with the ability to make the most of lands that have remained underutilized over several years because of advances in the way in which our community treats wastewater flows. Essentially, H.R. 356 would remove certain restrictions on the Mammoth Community Water District's ability to use property we acquired from the federal government.

Under H.R. 356, the District is seeking authority to allow specified land patented to the Mammoth County Water District in Mono County, California, to be used for alternative purposes from those that were in existence at the time of land conveyance. This is an important bill since the geography of our area limits the way we can accommodate drinking water and wastewater infrastructure.

The legislation is strongly supported by all elements of the Mammoth Lakes community and Mono County. Recently the Mono County Sheriffs Department expressed an urgent need for property to store equipment for their Search and Rescue Team (letter attached). The U.S. Forest Service has testified in support of this minor technical change in land use.

The issue that requires this subcommittee's attention and action is a function of the law that allowed the original conveyance of the federal lands to the District. I will attempt to summarize the circumstances of the law and where we are today in our planning efforts to better utilize the property.

In 1987, the Mammoth Community Water District (formerly Mammoth County Water District) acquired 25 acres from the U.S. Forest Service under Public Law 90-171. The District had occupied these lands for many years prior to the conveyance through a special use permit. The District used the lands for two primary purposes; its administrative offices and its wastewater treatment operations.

Under the terms of the conveyance, Public Law 90-171, the transfer was conditioned in that the lands could be used only for the purposes for which they were being used prior to the time of the conveyance. Of the 25 acres acquired by the District, the District continues to use approximately 13 acres for its offices and wastewater treatment facilities. The remaining 12 acres were used for the storage of materials and oxidation ponds related to wastewater treatment. However, these activities are no longer necessary for the District or the community at large.

As a consequence of the conditions imposed by federal law, the District is unable to utilize the 12 acres for other purposes that are needed by the District and the Mammoth Lakes community. The area in question is within the existing city limits and would not affect the outlying area. Prior to the actual construction of any industrial park, an environmental impact review would be conducted to ensure compliance with appropriate mandates.

H.R. 356 removes an impediment to the District's ability to use the property to meet its current and future needs and those of the Mammoth Lakes community which it serves. Again, we are grateful for the subcommittee's consideration of this important legislation.

## APPENDIX 1

MONO COUNTY SHERIFF,  
*Bridgeport, CA.*

Gary Sisson,  
*General Manager, Mammoth Community Water District, P.O. Box 597, Mammoth Lakes, CA.*

To Gary Sisson: The Mono County Sheriffs Department Search and Rescue Team has for sometime been looking for property in and around the Mammoth Lakes Basin. However, due to a limited budget, and a lack of adequate suitable property available, these efforts to date have not been successful. If property could be made available to the Mono County Sheriff's Department Search and Rescue Team at the Mammoth Community Water District a huge hurdle would be overcome.

To date, the Mammoth Community Water District has been the only entity willing to step to the plate and assist Search and Rescue with the identified need of land. A building would be placed on this land that would house Search and Rescue equipment. It would allow this equipment to be removed from the elements, and would greatly improve the teams' ability to respond to calls for service when time is sometimes a matter of life and death.

Your assistance with this matter is greatly appreciated. If I can be of any assistance please do not hesitate to give me a call.

Sincerely,

DANIEL A. PARANICK,  
*Sheriff/Coroner.*

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STATEMENT OF DAVID GARBETT, PUBLIC LANDS FELLOW, THE SOUTHERN UTAH  
WILDERNESS ALLIANCE ON BEHALF OF THE UTAH WILDERNESS COALITION

Thank you for the opportunity to submit this testimony on behalf of the Utah Wilderness Coalition, an alliance led by Sierra Club, Southern Utah Wilderness Alliance, The Wilderness Society, and the Wasatch Mountain Club and representing over 220 groups who together work to protect Utah Wilderness. We have a common interest in preserving our nation's public lands and natural legacy, and in pursuing lasting protection for the Utah public lands proposed for wilderness in America's Redrock Wilderness Act.

The Utah Wilderness Coalition is supportive of the Utah Recreational Land Exchange Act of 2007, which would enable public acquisition of spectacular public lands along the Colorado River corridor in Utah. Many of the public lands to be acquired by the Bureau of Land Management (BLM) in this exchange qualify as wilderness and we believe this legislation advances protection for these proposed wilderness landscapes by bringing them into common public ownership. At the same time, the State of Utah and its school children will benefit by receiving lands more appropriate for development and the ensuing revenues that development would provide.

We appreciate the efforts of Senator Bennett, Congressman Matheson, the State Institutional Land Trust Administration (SITLA), and the Grand Canyon Trust in crafting this legislation. We thank the Committee for considering this legislation and we support the Committee's effort to fully vet the legislation, including aspects such as exchange methodology, valuation, and the bill's effect on existing laws. We also note below a few recommended improvements to the bill that we hope the Committee will consider.

The Utah Recreational Land Exchange Act of 2007 would direct the BLM to enter into a beneficial land exchange with SITLA. Specifically, this bill would instruct the BLM to acquire environmentally sensitive and recreationally valuable lands located along portions of the Colorado and Green rivers, including spectacular scenic lands such as Westwater Canyon, the Fisher Towers, Behind the Rocks, Mary Jane Canyon, and Mill Creek; and lands near Arches National Park and Dinosaur National Monument.

The vast majority of the state-owned lands identified in the legislative map are located within areas proposed for wilderness under the Utah Wilderness Coalition's citizens' wilderness proposal, introduced in this Congress as America's Red Rock Wilderness Act (H.R. 1919/S. 1170).

In exchanging these proposed wilderness lands, S. 390 has the potential to achieve its stated purpose of providing the public with lands that are important for their conservation, scenic, and recreation values—assuming that the proposed lands are acquired and adequately protected thereafter. In particular, the bill would help protect some of the most sensitive and spectacular lands that would be acquired by the BLM by permanently withdrawing selected parcels from future mineral leasing and entry. Such action is necessary to help fulfill the recreational, scenic, and conservational purposes of this legislation. The legislation also temporarily withdraws all federally acquired lands from mineral leasing. We strongly support this measure as it would permit the BLM to draft adequate management plans for these areas that would take into consideration the addition of these valuable conservation and recreation parcels.

The BLM lands identified for conveyance to the State do not conflict with proposed wilderness areas of America's Red Rock Wilderness Act. We greatly appreciate that Senator Bennett's legislation does not propose to convey to SITLA BLM lands that are proposed for wilderness designation.

Finally, we recommend that the Senate adopt a few minor improvements to S. 390 already included in the House version of this bill (H.R. 1210). These suggested modifications include the following: 1) the inclusion of "special account" provisions found in Section 5(b)(4)(C) & (D) of H.R. 1210, which create a special account that may be used in the future to purchase sensitive and significant lands for public ownership from revenues generated by this land exchange; 2) the adoption of the equalization of value instructions found in Section 5(c)(1) of H.R. 1210, which instruct the BLM to compensate the State of Utah in the event that the appraisals show Utah stands to lose from this exchange, rather than removing important recreational and environmental parcels from the trade; 3) the adoption of the compliance provision found in Section 4(e) of H.R. 1210; and 4) the removal of the qualifying "notwithstanding any other provision of law" phrase found in Section 4(a) of S. 390, but absent from the same section in H.R. 1210.

#### CONCLUSION

We appreciate the substantial efforts made by Senator Bennett, Congressman Matheson, SITLA, and the Grand Canyon Trust in writing this legislation and commend them for meeting with such a diverse group of stakeholders and involving so many interested parties. This land exchange is a noteworthy example of how diverse stakeholders can work constructively together. Further, this legislation provides a good example of balancing conservation and development needs in a mutually beneficial way. The Utah Wilderness Coalition looks forward to working with the Committee to help move this important land exchange bill forward. We are hopeful the Committee will consider adopting the minor modifications already in the House version of the bill discussed above, and we are hopeful that Congress will support and pass this legislation.

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#### STATEMENT OF THE MAXINE NATCHEES, CHAIRWOMAN, UTE TRIBE OF THE UINTAH AND OURAY RESERVATION

##### INTRODUCTION

Good afternoon Chairman Wyden, Senator Burr, and Members of the Subcommittee on Public Lands and Forests. My name is Maxine Natchees and I am the Chairwoman of the Ute Indian Tribe of the Uintah and Ouray Reservation (U&O Reservation) in northeastern Utah.

The U&O Reservation comprises some 8% of the entire State of Utah and ranges 120 miles north and south, east and west, and 150 miles diagonally. The Ute Tribe has become an aggressive energy producer and has leased tribal land for oil and gas resources for many years. In fact the Ute Tribe recently opened up an additional 400,000 acres of tribal land that had never before been developed. Today you will receive testimony on a number of legislative proposals including S. 390, legislation to direct the exchange of certain land in Grand, San Juan and Uintah Counties in the State of Utah. This bill was introduced by Senator Bennett and co-sponsored by Senator Hatch. I note that companion legislation (H.R. 1210) has been introduced in the House by Congressman Matheson and co-sponsored by Congressmen Bishop and Cannon.

In brief, S. 390 directs the Secretary of the Interior to convey certain Federal lands to the State of Utah in exchange for certain non-Federal land in Grand, San Juan, and Uintah Counties, Utah. The bill also contains provisions regarding the administration of the exchanged lands including mineral leasing and occupancy,

grazing permits, and a number of other matters. The Ute Tribe respectfully submits the following statement because it too is confronting the challenges created by so-called "split-estate" issues that bedevil land management, hinder resource development, and often deny the full protection of the law to areas that are of cultural and religious significance to the Ute Tribe.

#### SPLIT-ESTATE ISSUES ON THE U&O RESERVATION

Beginning in 1948, the U.S. Congress took action related to the boundaries of the U&O Reservation by adding an area known as the "Hill Creek Extension" (Extension) which included lands then owned by the State of Utah and managed by the School and Institutional Trust Land Administration (SITLA). This congressional action also authorized the State to relinquish lands within the U&O Reservation and make in lieu selections of Federal lands in other areas within the State. In 1955, Congress authorized the State to make in lieu selections that are "mineral in character". As a result, SITLA holds some 20,000 acres of mineral lands in the southernmost portion of the Extension and the Ute Tribe holds the surface rights to these lands. SITLA's mineral lands lie south of the Grand County line in an area of great cultural significance to the Tribe. In addition, the Ute Tribe maintains these lands as a wildlife conservation area. If SITLA were to lease these lands it would create great conflict with the Tribe and might ultimately prevent these lands from being developed.

#### TRIBE-SITLA LAND EXCHANGE AND RELINQUISHMENT

To rectify this problem the Ute Tribe negotiated a comprehensive land exchange and relinquishment agreement with SITLA and in June 2006 submitted the agreement with all necessary documentation to the Utah State Director of the U.S. Bureau of Land Management. The proposed exchange and relinquishment has the support of Duchesne, Grand, and Uintah Counties as well as the majority of the Utah delegation.

Under the terms of the proposal, SITLA would relinquish state-owned mineral lands south of the Grand County line within the Extension. The Tribe and SITLA have similarly identified Federal subsurface minerals to the north of the Grand County line in the Extension area that SITLA can select under the 1948 and 1955 congressional enactments. SITLA's in lieu selections would be in an area of potential oil and gas development and it and the Tribe have entered a letter of intent under which SITLA would lease these minerals to the Tribe which would, in turn, develop them.

Simply put, the proposed land exchange and relinquishment would protect sacred tribal lands; align Federal, tribal and State interests related to mineral development of tribal lands; and reduce the potential use of these sensitive lands by third parties. At the same time, it would ensure the State of Utah of a revenue stream made possible by the development of oil and gas resources that are not currently being deployed. If, on the other hand, the proposed land exchange and relinquishment is not approved, the split-estate problems will prevent the development of mineral resources, and wilderness and culturally significant areas will not receive the certain protection they would under the terms of the agreement.

I thank the Chairman for including my statement in the record of today's hearing and look forward to answering any questions the Subcommittee might have.

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#### STATEMENT OF ROBERT FREIMARK, SENIOR POLICY ANALYST, THE WILDERNESS SOCIETY

On behalf of The Wilderness Society and our 204,000 members, I wish to convey The Society's views regarding S. 647, the Lewis and Clark Mount Hood Wilderness Act of 2007.

The Wilderness Society greatly appreciates the efforts by Senators Ron Wyden and Gordon Smith to develop legislation that preserves an outstanding part of Oregon's wilderness heritage. Oregon is fortunate to have two Senators who work in bipartisan effort to protect such an important part of Oregon's landscape.

The Wilderness Society takes pride in our nation having a network of public lands that can be enjoyed by all Americans. Mount Hood and the Columbia River Gorge are recognized nationally as two of the crown jewels of this public lands network, as well as revered in the Pacific Northwest as regional icons. The National Wilderness Preservation System helps provide the strong safeguards necessary to ensure these special places are protected now and for our great-grandchildren. Congress has previously designated wilderness on Mount Hood, first in 1964 with passage of

the Wilderness Act, and again in 1978 through the Endangered American Wilderness Act. Additional areas on the Mount Hood National Forest were protected as wilderness in 1968 with the creation of the Mount Jefferson Wilderness and also in the Oregon Wilderness Act of 1984.

Roaring River, Bull of the Woods, Tilly Jane, Big Bottom, Bonney Butte, Clackamas Canyon, Gorge Ridgeline are names of special places in the hearts of Oregonians and Americans that would receive wilderness designation by S. 647. They all deserve the strongest protection now and for future generations. The Wilderness Society strongly supports the 128,600 acres of wilderness and 81 miles of wild and scenic river designations in S. 647. In addition, we believe Boulder Lake and Fifteenmile Creek are two areas that should be upgraded to a wilderness designation from the National Recreation Area designation directed in the legislation.

Based on our initial review of this legislation we have concerns and recommendations about the following provisions of S. 647.

*Protecting the North Side of Mount Hood is Essential.*—Perhaps the greatest threat facing the Mount Hood region is from inappropriate and expansive developments proposed on the north side of the mountain. We support the efforts in the legislation to protect this area through wilderness and a special watershed protection area. We also support the effort to exchange private land at Cooper Spur for land at Government Camp, where development is more appropriate. We support the preservation of trails and wetlands in the 120 acres of Government Camp land as directed by the legislation.

However, The Wilderness Society has concerns about the appraisal portion of the land exchange provision. While the bill appropriately calls for uniform federal appraisal standards, it then alters those standards by fixing the date of valuation to the spring of 2005 and providing potentially interested parties with the shared authority to approve the appraisal.

Under accepted professional appraisal standards, land should always be valued as close to the date of transaction as is feasible. Otherwise, it fails to consider inflating land values. To date, we see no compelling rationale for disregarding this well-established appraisal and valuation principle.

Approval of appraisals for government land exchanges is normally solely at the discretion of the Secretary. We believe that mandating that parties other than the Secretary (here Mount Hood Meadows and the County) must share approval authority with the Secretary is inappropriate. Here, there is a particular concern because the additional parties involved have a potential interest in the outcome of the appraisal. Outside parties should—and do—have the opportunity to provide appraisers with market information relevant to the appraisal. But we believe it is important that appraisal authority for federal lands remain solely within the Secretary's discretion.

Thus, we recommend that section 503(d)(2)(B) be deleted. We also recommend that section 503(d)(2)(C) be modified to only require the appraisal to be approved by the Secretary (deleting required approval by the County and Mt. Hood Meadows).

*BLM Land Reclassification is Unnecessary and Inappropriate.*—Section 109 requires a process for eventually reclassifying BLM land in Oregon as comparable replacement acreage for a perceived loss of Oregon and California (O&C) Railroad Grant lands in portions of the Clackamas Wilderness designated by S. 647. This reclassification is not necessary since wilderness designation does not change the fact that the land is still classified as O&C Railroad Grant lands. Congress has previously designated wilderness within O&C lands but to the best of our knowledge has never reclassified “replacement” O&C land in wilderness legislation (see, for example, the Table Rock Wilderness and the Wild Rogue Wilderness designations). We believe such reclassification is neither necessary nor appropriate in the context of wilderness designation.

We recommend that section 109 be deleted.

*Community Support for Fire Safe Zones is Important.*—Section 106 mandates vegetation management activities around the communities of Cascade Locks and Government Camp. We believe this forest management should be planned in close collaboration with the affected communities. The Forest Service should be directed to work with these communities, and should not be legally obligated to undertake forest management activities without solid local support. We believe this section should also clarify that forest management activities adjacent to Cascade Locks must be consistent with the Columbia River Gorge National Scenic Area Act.

The Wilderness Society commends Senators Smith and Wyden for their public outreach efforts and for advocating for legislation to protect the values that Mount Hood and Mount Hood National Forest provide to Oregonians and all Americans. We are committed to working with both Senators to make the legislation as strong as possible, and to insure swift passage through the Senate.



Thank you for this opportunity to provide The Wilderness Society's views on protecting the special place that is Mount Hood.

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