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PUBLIC LANDS BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

COMMITTEE ON

OF THE

ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

S. 303
S. 1129
S. 1473
S. 1492
S. 1559
S. 1635
S. 1687
S. 1774
S. 1788
S. 1906
S. 2001
S. 2015
S. 2056

MARCH 22, 2012

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PUBLIC LANDS BILLS

THURSDAY, MARCH 22, 2012

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. Let me also say that all our guests and my good friend, Chairman Baucus, apologies for being a few minutes tardy. Today has been bedlam.

This afternoon the Subcommittee on Public Lands and Forests is going to consider 13 bills involving National Forests and Public Lands.

The agenda includes S. 303, Senator Murkowski's bill addressing claim maintenance fee waivers for small miners.

S. 1129, Senator Barrasso's bill concerning grazing management.

S. 1473, Senator Heller's Mesquite Nevada Land Conveyance bill.

1492, another bill relating to Nevada, relating to the Three Kids Mine.

S. 1559, Senator Cantwell's bill to establish the San Juan Islands National Conservation Area.

S. 1635, Senator Udall's San Juan Mountains Wilderness Act.

S. 1687, Chairman Bingaman's bill to modify the boundaries of the Carson National Forest in New Mexico.

S. 1774, Chairman Baucus' Rocky Mountain Front Heritage Act.

S. 1778, Senator Reed and Senator Heller's bill to designate the Pine Forest Range Wilderness in Nevada.

S. 1906, Senator Tester's bill to establish a new formula for cabin fees on National Forests.

S. 2001, my bill to expand the Wild Rogue Wilderness Area in Oregon and to designate additional segments of the Rogue River to the National Wild and Scenic River system.

S. 2015, sponsored by Senators Enzi and Barrasso which would convey BLM land in Wyoming to the Powell Recreation District.

Finally S. 2056, sponsored by Senator Hatch and Senator Enzi, authorizing the Secretary of the Interior to convey certain lands acquired for the Scofield Project in Utah.

The subcommittee, obviously, has a full agenda this afternoon. We've had many hearing requests. So the point of today's sub-

committee's hearing is especially is to hold a hearing to look at as many bills as possible since we know that a number of these bills are of particular interest to members of the committee.

Given the fact that we're starting a bit late Chairman Baucus and others have been waiting, I'm going to put my remarks into the record, but just by way of one quick thought, the Rogue River legislation which I have authored with colleagues to expand the Wild Rogue Wilderness Area by 60,000 acres. This is a part of our country that is one of America's premier recreation destinations. Famous for free flowing waters which provide numerous rafting, fishing, backpacking and hiking opportunities, spectacular cannons, diverse natural areas with habitat for Bald Eagles, elk, bears, green sturgeons, salmon and steelhead, among other species.

So I'm going to put the rest of my remarks into the record. But would only note and I've heard Chairman Baucus and others talk about it that so many of the bills that we're talking about allow us to protect America's great treasures. Are also good for the economy and good for business because we see so many American businesses supportive of recreation and the values these bills represent.

Senator WYDEN. With that let me turn to Senator Barrasso. I also see the ranking minority m ember is here. We'll put everybody's statement into the record. I thank my colleagues for their attendance.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. I wish to welcome Senator Baucus and also wanted to welcome Jim Magagna from the Wyoming Stock Growers Association. There are 3 bills related to Wyoming included in this hearing. I wish to address S. 1129, the Grazing Improvement Act of 2011, S. 2015, the Powell Shooting Range Land Conveyance Act and S. 1906, the Cabin Fee Act of 2011.

Livestock grazing on public lands has a strong tradition in Wyoming and the West. Ranchers are proud and responsible environmental stewards of the land. Yet ranchers face too much uncertainty surrounding their grazing permits.

Hard working ranching families are routinely attacked by extreme anti-grazing and pro-litigation groups. Uncertainty and litigation undermine all businesses. It is especially true for rural ranching communities.

These family ranches in many communities across the West are the driving force of rural economies. That's why I introduced the Grazing Improvement Act of 2011. This is an act that is needed by livestock grazing permit holders and the Federal Land Management Agencies themselves.

Additionally for over a decade agencies have relied on year to year appropriation rider language to reissue grazing permits. My bill codifies this important language. The BLM and Forest Service simply cannot keep up with the required NEPA analysis due to limited funding and a backlog of lawsuits by the anti-grazing, pro-litigation groups. This bill provides the respective Secretaries with the needed flexibility when reissuing grazing permits. Such reforms will provide greater certainty and stability to the livestock grazing

community, the rural economies and wildlife they support and our Federal land agencies.

Additionally I'm pleased the committee is considering S. 2015, a bill Senator Enzi introduced and I have co-sponsored. This legislation would convey land currently used as a shooting range to the Powell Recreation District in the State of Wyoming. The land has been used as a public recreational shooting complex since 1980. Once conveyed it will continue to operate as a public shooting range.

The Powell Recreation District has been working to obtain this land since 2005 but has been unable to make progress due to questions of ownership. Senator Enzi and I looked at every option. We believe the most appropriate option for moving forward is passage of S. 2015. I hope the Department will agree with that assessment.

Finally I want to say a word about S. 16—I'm sorry, 1906, the Cabin User Fee Act of 2011. This is the second time Congress has been asked to modify the Forest Service Cabin User Fee law. The Cabin User Fee Fairness Act of 2000 has proven unworkable and has resulted in excessive fees for cabin owners. I know my colleagues from Oregon, California, Washington and other States have heard from cabin owners who lease Federal Forest Service land for their cabins. Unless changes are made to the 2000 fee structure a good number of these folks will lose their cabins.

I want to thank our witnesses, and appreciate their testimony. I look forward to working with my colleagues to move these important pieces of legislation forward.

Senator WYDEN. I thank my colleague. We always recognize our Chair and our Ranking Minority Member. Senator Murkowski I know you've got a bill to be considered as well today.

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

Senator MURKOWSKI. I do, Mr. Chairman. I appreciate the committee's hearing this bill along with so many. As Senator Barrasso has outlined, there's a lot of small things. You've mentioned trying to move some things through.

But a lot of small things have, I think, profound impact on men and women that are trying to make things happen. Whether it's out on the grazing lands or in the forests or up in Alaska where I'm focusing on an issue today as it relates to small mining operations. I have a bill, S. 303, that is up for consideration today.

A number of years ago, the Congress created the Small Miner Waiver bill, which allows small plaster miners with fewer than ten claims to avoid paying their $125 claim fees provided that they perform minimum annual work required on the claims. The language was pretty clear that if the miners made a mistake in filing their waiver applications they'd be given 60 days after receipt of written notification to correct any defects for any reasons. It was pretty clear what the intent of Congress was.

Small miners were going to get some pretty simple due process and have a chance to fix their mistakes before they lost their mining claims which they'd been working on for a considerable period of time. Instead what we're seeing is the BLM's Appeals Board has ruled that if an applicant's defect is an initially tardy arrival date,

even by just 1 day, then the miner loses all claims. They lose them for good. They've ruled that there is no appeals process for the loss of the claims in this scenario.

It doesn't matter whether the U.S. mails were late. It doesn't matter if the BLM personnel put the wrong time and date stamp on it. It doesn't make any difference if the computers were down at the BLM office as they were in the situation of the constituent in Alaska that we're speaking with. It doesn't make a difference if somebody had a bad day.

It's just done. It's over. There is no process after that. The miner loses everything.

I don't think, Mr. Chairman, this is what Congress had intended. It was pretty clear. So what my bill does is it requires BLM to notify a miner that his or her application was not received in a timely fashion. It gives the miner the same 60 days to correctly file it or to pay their work maintenance fees and then if it doesn't happen then they lose the claims. So there's a process out there.

This bill isn't going to cost the government much of anything. I can't believe that CBO is going to score this for more than a few thousand dollars for the time the clerk might have to spend to actually send notice letters to the dozen miners a year that I would suspect might be in this situation. But it is an extremely important measure to provide a modicum of due process protections to our small miners and making them petition a Congressman for private relief legislation every time something like this happens, I think is a waste of time. It risks their livelihood. It undercuts the respect for the basic fairness of the institution.

So I hope that this committee would show some understanding here because the current practice by BLM, I don't think, is fair. I've had a tough time trying to explain to my constituents why we haven't already been able to remedy this. I hope we can advance the bill which, by the way, passed the Senate in 2007. Didn't clear the House this year, so we're going to give it another try.

I want to submit for the record statements in support of the legislation by both the National Mining Association, the Northwest Mining Association and a statement by Alaska miner, John Trautner, who has been impacted by this issue.

I thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Murkowski. I'm looking forward to the testimony and working with you.

Chairman Baucus, you've been extremely patient. I know you're trying to protect a breathtaking part of your State. We're anxious to hear your remarks.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you very much, Mr. Chairman and Chairman Wyden, Senator Barrasso, Murkowski, Udall. It's a real honor for me to tell you how much we like Montana and how much this legislation is going to just help us in our State. It memorializes and take advantage of our great outdoors.

We're an outdoor State, just like Alaska and Utah and like Oregon and Colorado and New Mexico and all these States. I like to think, I don't know if it's true or not, but I think we have more

fishing licenses per capita and more hunting licenses per capita than any other State in the Nation. Although Senator Murkowski might take issue with that.

Senator WYDEN. There will be a competition.

[Laughter.]

Senator BAUCUS. We're—but we really love the out of doors. As you mentioned, Mr. Chairman, much of our, you alluded to it, our economy is recreation, is tourism. So this is jobs in Montana as well.

But thank you for allowing me to testify in support of the Rocky Mountain Front Heritage Act. This is a bill I introduced after talking to a lot of groups at home over a long period of time. I went back to them over and over and over again.

If you talked to the ranchers, if you talked to the miners, you talk to the motorized vehicle folks. You just make sure you talk to all the groups that are like really relevant is oh, yes, we have or do we have their support. We're getting it.

Don't come back to me until you have their support. It's—that's how this bill developed. I must say it embodies really who we are as a State.

I'd like to start out by giving to you some idea how special a place the Front is. On your left is a photograph of Ear Mountain. Now I'm the guy there on the right.

I must say to my friend from Colorado, this is not Everest. It's not K2. But sometimes, sir, I'd like to take you up Ear Mountain.

It's a very special place in our part of the country. People climb here with some frequency. As you can tell the great view over the plains in Eastern Montana.

On your right is the Sawtooth Ridge in the Front. Let me just tell you what the Front is. The Front is this.

When James Hill was building the railroad, the Great Northern, coming West and homesteaders coming west, they'd stop, some even on their wagons. They come across the dusty, flat, Eastern part of Montana and then all of a sudden. Wow. Up sprung this mountain range right out of the plains and that's the Rocky Mountains, it's the Front.

It's incredible. It's just so stunning. It's hard to get a picture of it with these two pictures, but it's a very special spot in our State. It's the Rocky Mountains. It's the Eastern side of the Rocky Mountains in Montana.

Let me just read to you the Preamble of our Constitution to give you a sense of the State Constitution, what this means.

"We the people of Montana, grateful to God for the quiet beauty of our State, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations, do ordain and establish this constitution."

We were the last State to write a constitution. It was back about 1970, 1972. I was there. I worked on the staff when this was written. This captures who we are as a State and protecting our great outdoors.

Of course we want jobs. We work hard to get jobs. We've got the Bakken formation, huge oil and gas reserves being developed in Montana. In fact the Bakken formation is even starting at shale

that's being fracked is coming all the way up close to the Front. But Montana is going to keep the Front the way it is because we want to develop oil and gas in other parts of our State. This is what defines us.

Let me give you a couple of quotes.

A guy named Ben Long from Kalispell, Montana wrote me a letter about how important this is. Another about climbing about Ear Mountain, another lady, Allisa Carrow of Stevensville thanked me. Here's what she said. "Having access to wild lands is very important for hunting, not just for bringing home your own meat and for filling your own freezer, but also to get out and connect with the land." This is our heritage.

Sportsman in Montana spend about ten million every year during hunting season on the Front. Good paying jobs rely on mineral leasing that's booming very close by in Teton and Pondera counties. But this bill will not stop that development. That development should go ahead and proceed.

The point of the Rocky Mountain Front Heritage Act is to keep that heritage the way it is. This is a made in Montana bill. No one sat down in Washington and started to draw lines on a map.

Let me tell you also what's captured this bill. The Western author Wallace Stegner said this. "Who built the West as a living place? Frugal, hard, gloriously satisfying civilizations scrabbling for its existence against the forces of weather in a land as fragile as it is demanding was not rugged individuals, but cooperators." I add, underline rugged cooperators. That's who put this together, people cooperating.

Dusty Crary, whom you'll hear from later, and Karl Rappold both here, they ranch along the Front. They know how important it is to Montanans and to their livelihood, their businesses. Gather around the kitchen tables in small towns like Choteau, Augusta and Fairfield. These "rugged cooperator" came up with the bill we're here to talk about.

They came up with a good balance. 200,000 acres of conservation management areas, 67,000 acres of wilderness additions and a plan to block the invasion of noxious species like Spotted Knapweed that damage valuable forest. We have a strong weed control provision in here. We're going to make sure we do our very best to control weeds.

Dusty is testifying because the bill was basically his idea. But it's also the idea of an awful lot of other "rugged cooperators." They sat down and put this thing together.

After hearing from many ranchers let me tell you something I insisted on. That's grazing. Make sure ranchers get billed to graze.

I very much appreciate your bill, Senator, you know, the Grazing Improvement Act. I fully appreciate it. I'm sensitive to it and agree with the points you're making.

Montana ranchers, I'm sure are just like Wyoming ranchers. They want to make sure they've got a lot on the National Forest land that it's—they're not being jacked around, that they can keep it. They can get access to it, to their ponds and they can fence and so forth.

I made that point over and over and over again to the people who wrote this bill. How we're protecting grazing rights. Went back

over and over again and made some adjustments and changes to help make sure that that's the case.

So I'll just stop there by saying just, I think this is a no-brainer. There's no conflict. People worked very hard to make this happen. I just hope that we can get this passed this year because it would mean a lot to a lot of people.

Senator WYDEN. Thank you, Chairman Baucus.

I don't have any questions myself. I'll turn it over to colleagues. But obviously you have done this in, kind of, vintage Baucus style, which is to really spend the time working through an issue again and again and again until you find that consensus.

I've got written down, "Made in Montana with rugged cooperators." I think that's a pretty good theme. I congratulate you for your good work.

I'd just like to note for the record you've been very favorable. It was "Made in Montana," but there were very favorable comments from the Natural Resources agencies here about your bill. That's to your credit as well.

Senator BAUCUS. If I might just say, Chairman, too. I've been involved in wilderness bills done the other way.

Senator WYDEN. Right.

[Laughter.]

Senator BAUCUS. Top down. It doesn't work. It just does not work. So I'm very hopeful we can do it this way.

Now it's not unimportant to note that all these people, who have worked so hard on this bill and took every person's view into consideration, it would be a tragedy is a bit too strong, if we let them down. Here they've done it the right way. They haven't tried to jam something down anybody's throat. They haven't come to Congress and said, do this because it's my way or the highway.

Rather they worked and worked and worked to try to work with people that are in any way related to it. So I think it's important to uphold that effort. A lot of people who really want to work together at home to be able to reach conclusions where we justify, legitimize, we validate, you know, what they do. So long as it seems to make sense and clearly this bill makes a lot of sense.

Senator WYDEN. Said.

Colleagues, questions for Chairman Baucus?

Alright, Mr. Chairman, thank you.

Senator BAUCUS. Thanks.

Senator WYDEN. I look forward to working closely with you and getting it out.

Senator BAUCUS. You mentioned a lot of bills here and I'd like to help work with all of you too on the committee for those bills, get those passed as well.

Senator UDALL. Mr. Chairman.

Senator WYDEN. Senator Udall.

Senator UDALL. Mr. Chairman, if I might?

Wallace Stegner was a marvelous writer and he's a touchstone for all of us Westerners and if I can I'm going to borrow the "rugged cooperators" concept.

Senator WYDEN. Right.

Senator UDALL. He also talked about stickers, people who stuck to the land. But I would note for the record that Senator Baucus

is a rugged individual as well, but you could have been even more rugged if you'd climbed Ear Mountain in your bare feet like the man that's there in the picture with you.

[Laughter.]

Senator UDALL. Thank you.

Senator BAUCUS. My buddy took his shoes off at the top.

[Laughter.]

Senator UDALL. Senator Murkowski would have climbed the mountain in her bare feet because we know how rugged she is. She's from Alaska.

[Laughter.]

Senator BAUCUS. We're not as tough as Alaskans.

Senator UDALL. But kudos to Senator Baucus.

Senator BAUCUS. Thank you.

Senator UDALL. Colorado and I are going to speak briefly in a moment or two, but we're trying to do the same thing, follow your example.

Senator BAUCUS. Thanks.

Senator UDALL. Thank you.

Senator BAUCUS. Appreciate it. Thank you.

Senator WYDEN. Mr. Chairman, thank you.

Let's bring forward Mr. Mike Pool, Deputy Director, Bureau of Land Management at the Department of Interior.

Ms. Leslie Weldon, Deputy Chief, Forest Service, Department of Agriculture.

Oh, as you all are coming forward let me also recognize that several colleagues came in and would like to be able to make some comments.

Senator Udall, would you like to say something at this point?

Senator UDALL. I would. Thank you, Mr. Chairman. I have a——

Senator WYDEN. Senator Risch, would you like to say something at this point too?

Senator RISCH. No.

Senator WYDEN. OK.

Senator Udall.

STATEMENT OF HON. MARK UDALL, U.S. SENATOR FROM COLORADO

Senator UDALL. I've got some brief comments. I know we're eager to hear from people who have come to testify. Thank you for holding this hearing. Thank you for including S. 1635, the San Juan Mountains Wilderness Act.

As Senator Baucus so compellingly pointed out, the out of doors is an important part of our way of life, not just in Montana, but in Colorado, all over the West. I dare say, all over our country. But we're pretty proud and particular, to our part of the country.

For many outfitters and small business owners, preservation of our State's majestic mountains and valleys is critical to their livelihoods and vital to their ability to create jobs. I've been committed to ensuring that Coloradans have a wide variety of options for recreation. Including places to bike, ski and snowmobile as well as back country trails and wide open, pristine lands will be preserved, frankly, for generations.

Wilderness is one of our State's great economic engines. The bill that I mentioned is co-sponsored by my colleague, Senator Michael Bennet and was first introduced in 2009 by our former colleague and Congressman John Salazar. I want to express my deep appreciation for the work that Congressman Salazar and his staff did with all the stakeholders to develop the original bill in 2009.

Let me tell you a little bit about the bill.

It would designate over 33,000 acres of National Forest and Bureau of Land Management land in Southwestern Colorado as wilderness, mostly as expansions of existing Lizard Head and Mount Sneffels wilderness areas.

It would also establish a new area called McKenna Peak, which presides over imposing sandstone cliffs that rise 2,000 feet above the plains.

I don't have to tell you these are very important lands that possess critical wildlife habitat, clean water and other scenic valleys. They would be very, very worthy additions to the National Wilderness Preservation System.

S. 1635 would also protect 28,000 acres on Sheep Mountain and Naturita Canyon with other special designations.

Now the bill protects existing water rights, allows continued grazing, does not affect the continued operation of a hydro electric plant, continues to allow established heli-skiing on Sheep Mountain and does not interfere with an important and popular foot race called the Hard Rock 100.

It does not affect any current legal motorized or mechanical access.

The bill reflects extensive collaboration done over several years with local leaders and interested stakeholders.

Because of this community based effort a large group of citizens, local leaders and other stakeholders from across Southwestern Colorado have officially come out in support. I'd like to mention these stakeholder groups: Ouray, San Miguel and San Juan County Commissions, the city of Ouray and the Towns of Ophir, Ridgway, Mountain Village, Telluride and Norwood as well as a number of local homeowner's associations and land owners. It was also endorsed by groups representing hunters and anglers including the Colorado based Bull Moose Sportsman Alliance, Colorado Back Country Hunters and Anglers and Trout Unlimited.

Finally, a long list of small businesses in the region endorse the bill because they know that protecting the public landscapes helps create jobs and draws new residents, tourists and businesses to surrounding communities.

This region, in fact I would say much of my State, depends on our surrounding public lands, not only for recreational opportunities, hunting and fishing and scenic vistas, all of which are vital to our local economies, but also for protecting municipal water supplies and clean air. Colorado's population is expected to double by 2050 and we need to be proactive so that future generations can experience the beauty, clean air and water and wildlife that we have today.

I'm proud of my successful past work to designate wilderness at James Peak in Rocky Mountain National Park. I look forward to this bill and to my new, collaborative, community driven processes

that I hope will ultimately lead to additional legislation to protect two other very special places in my State, the Central Mountains and the Arkansas River and Browns Canyon.

Mr. Chairman, again, thank you for holding this important hearing.

Senator WYDEN. Thank you, Senator Udall. We'll be working closely with you on your legislation.

Mr. Pool, Ms. Weldon, welcome and why don't you, if you would, just summarize your oral remarks. Some of you may have heard me over the years say that I know there's almost a biological compulsion to just read and make sure that every single word is read. If you could just, kind of, summarize your remarks, that would be very helpful because I know we've got a lot of guests here and a lot of interest.

Mr. Pool.

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

Mr. POOL. Thank you, Mr. Chairman. Thank you for inviting the Department of Interior to testify on ten bills of interest to the BLM. I will briefly summarize our position on each of these bills and ask the entire statements be included in the record.

Senator WYDEN. Without objection, it's ordered.

Mr. POOL. In addition I'm submitting a statement for the record on behalf of the Bureau of Reclamation, S. 2056, the Scofield Land Transfer Act. The Department would like to work toward addressing revisions outlined in their statement. I'm accompanied today by Richard Beeman, the Bureau of Reclamation's Regional Liaison to the Upper Colorado Region. We'll be happy to answer any questions regarding S. 2056.

The Department of Interior supports each of the 5 bills providing for conservation designations on lands managed by the BLM.

These bills are S. 1559, the San Juan Islands National Conservation Act.

S. 1635, the San Juan Mountains Wilderness Act.

S. 1774, the Rocky Mountain Front Heritage Act.

S. 1788, the Pine Forest Range Recreational Enhancement Act.

S. 2001, the Rogue Wilderness Area Expansion Act.

Most of these proposals were included in Secretary Salazar's November 2011 preliminary report to Congress on BLM lands deserving protection. We welcome this additional attention to conserving these special places.

Just some of the remarkable features including these areas are cold, sub Alpine lakes, rivers running through canyons of dense forest, prime destinations for hunters and anglers and a string of small islands and rocks from which Orcas, porpoises and sea lions can closely be observed. There's a long history of bipartisan support in Congress for the conservation of America's special places. These 5 diverse, unique and valued areas deserve swift Congressional action.

Three of the bills provide for specific land conveyances. The BLM supports Senate bill 2015, the Powell Shooting Range Conveyance Act. Under the bill the BLM would convey approximately, excuse me, an isolated 322 acre tract of public land, Southeast of Powell,

Wyoming to the Powell Recreation District for continued use as a shooting range. We welcome this opportunity to work with local community and to improve recreational activities.

The BLM also supports the goals of two Nevada land conveyance bills, Senate bill 1492, the Three Kids Mine Remediation Reclamation Act and Senate bill 1473 which is the Mesquite Lands Act of 1986. Senate bill 1473 renews the city of Mesquite's exclusive right to buy lands for economic development purposes until the year 2021 and allows some of the proceeds to fund a multi-species conservation plan for the nearby Virgin River. The economic downturn and other factors have made the extension necessary.

The other bill, S. 1492, offers an innovative solution to a long standing issue surrounding the abandoned Three Kids Mine in Henderson. S. 1492 provides for the conveyance of the public lands to the Henderson Redevelopment Agency at fair market value less the estimated cost to assess, remediate and reclaim the site. The Federal Government would be released from all liabilities arising from the contamination of the site.

The Department of Interior opposes S. 303. The bill requires the BLM to offer relief to miners with ten or fewer claims from long standing regulatory requirements. It also singles out for special treatment two mining claimants whose claims had been deemed forfeited as read in the legislation would effectively eliminate the deadlines for filing a small miner waiver in an affidavit of annual assessment work. Defining an untimely filing as "defective" would require the BLM to accept filings after the deadline no matter how late. This change will place an excessive Administrative review and notification burden on BLM and would vastly increase the cost of administering the small miner waiver program.

Finally I'd like to address S. 1129, the Grazing Improvement Act. The BLM recognizes that sustainable use of public lands is important to people who make their living on these landscapes. People like our livestock permitees. Livestock grazing is an important part of BLM's multiuse mission. At the right levels and timing grazing can serve as an important vegetative management tool improving wildlife habitat and reducing the risk of catastrophic wildfire.

The BLM is committed to collaborating with those who work on the public lands. Take seriously as charged to conserve and manage healthy range lands for current and future generations. The Department shares the committee's interest in increasing efficiencies in public land grazing administration as well as finding ways to make permit renewal less complex, costly and time consuming.

Now where the Department cannot support S. 1129 because of the provisions for automatic permit renewal without assurances that permitees are meeting land held standards and because of the limitations on the bill—because of the limitations the bill would place on BLM's ability to provide for appropriate environmental review and public involvement. We view this as critical components of BLM's multiuse management of public lands.

The BLM would like to work with the committee to make progress on these shared goals while maintaining the integrity of NEPA, the Nation's bedrock, environmental and citizen involve-

ment law and FLPMA, our multiple use statute requiring consideration of many uses and values of public lands.

Thank you for, again, the opportunity to testify today.

[The prepared statement of Mr. Pool follows:]

PREPARED STATEMENT OF MIKE POOL, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 303

Thank you for the opportunity to testify today on S. 303, which would require the Bureau of Land Management (BLM) to allow mining claimants a chance to "cure" their failure to meet the required filing deadlines. This bill would also give private relief to two particular mining claimants whose mining claims have been deemed forfeited or abandoned for failure to comply with applicable laws and regulations, and would give one of those claimants the opportunity to obtain fee title to the reinstated mining claims from the Government.

The Department of the Interior opposes S. 303 because of the enormous administrative burden it would generate, and because it singles out two mining claimants for special treatment and leaves open the question as to how other mining claimants in similar situations would be affected.

Background

The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 §§ 10101 to 10106, 107 Stat. 312, 405-07 (Aug. 10, 1993) (maintenance fee statute), established an annual maintenance fee for unpatented mining claims, mill sites, and tunnel sites. This annual maintenance fee is currently set by regulation at $140 per mining claim or site. The maintenance fee statute also gave the Secretary of the Interior the discretion to waive the annual maintenance fee for certain "small miners"—mining claimants who hold 10 or fewer claims or sites.

Following the enactment of the maintenance fee statute, the Department promulgated regulations that exercised the Secretary's discretion to allow the "small miner waiver." These regulations state that in order to qualify for this "small miner waiver" under the maintenance fee statute, the claimant must, among other things, file a maintenance fee waiver request that certifies that he and all related parties hold 10 or fewer mining claims or sites. Under the original regulations, the deadline for filing the maintenance fee waiver request for the upcoming assessment year was August 31, which was the same day as the statutory deadline for filing annual maintenance fees. When Congress changed the statutory annual maintenance fee deadline to September 1, the Department changed the deadline for maintenance fee waiver requests to also be September 1 for the coming assessment year. The Secretary's decision to make the regulatory deadline for filing maintenance fee waiver requests the same as the statutory deadline for paying annual mining claim maintenance fees took into consideration the statutory constraint that maintenance fee waivers could not legally or practically be sought any later than the deadline for the maintenance fee itself.

The same year that Congress changed the deadline for paying the maintenance fee to September 1, it amended the maintenance fee statute to allow claimants seeking a "small miner waiver" to cure a "defective" waiver certification. Omnibus Consolidated and Emergency Supplemental 3 Appropriations Act for Fiscal Year 1999, Pub. L. No. 105-277, 112 Stat. 2681-235 (1998) (codified as amended at 30 U.S.C. § 28f(d)(3)). The amendment required the BLM to give claimants filing timely "defective" maintenance fee waiver requests notice of the defect and 60 days to cure the defect or pay the annual maintenance fee due for the applicable assessment year.

Another change in the administration of mining laws and regulations occurred in the Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332 §§ 112-113, 108 Stat. 2499, 2519 (Sept. 30, 1994), which placed a moratorium on the patenting of new mining claims or sites, and the further processing of existing patent applications; this moratorium has continued unbroken through subsequent appropriations language. The processing of a patent application to completion can result in the transfer of fee title or "patent" to the claimant for the Federal lands where the claims and sites are located.

Congress provided an exemption from the patenting moratorium for applicants who had satisfied the requirements of the Mining Law of 1872 for obtaining a patent before the moratorium went into effect. Only patent applications for which a "First Half of Mineral Entry-Final Certificate"(FHFC) had been issued were considered exempt or "grandfathered" from the moratorium. Over 600 patent applications were pending with the BLM when the moratorium went into effect on October 1,

1994. Of those, 405 patent applications had received a FHFC by September 30, 1994, and were determined to be "grandfathered" from the moratorium. Mining claimants in a "grandfathered" patent application are not required to comply with the maintenance fee statute after the FHFC was issued.

The remaining 221 patent applications were considered "non-grandfathered" and subject to the moratorium. The BLM did no further processing of these patent applications and the mining claimants were responsible to continue to meet annual maintenance requirements—timely payment of the annual maintenance fee, or filing a small miner waiver and completing the required annual assessment work—in order to keep their mining claims active and their "non-grandfathered" patent applications pending.

S. 303

Section 1(a) of S. 303 would require the BLM to provide holders of 10 or fewer mining claims or sites with written notice of any "defect" in their maintenance fee waiver request or their affidavit of annual assessment work associated with the request. Unlike the current maintenance fee statute, failure to timely file the waiver request or affidavit of annual assessment work would be considered a "defect" under S. 303. As under the current statute, mining claimants would have 60 days from the receipt of written notice to correct that defect or pay the applicable maintenance fee.

The BLM opposes the provision in Section 1(a) to amend the maintenance fee statute to make failure to timely file a small miner fee waiver request a curable "defect." The BLM also opposes amending the maintenance fee statute to allow claimants to "cure" defective affidavits of annual assessment work, including failure to timely file the affidavits as required by section 314 the Federal Land Policy and Management Act. Currently, the cure provision in 30 U.S.C. § 28f(d)(3) applies only to maintenance fee waiver requests.

As written, the legislation would effectively eliminate the deadlines for filing a small miner waiver and affidavit of annual assessment work. Defining an untimely filing as "defective" would require the BLM to accept late filings after the deadline, no matter how late. This change will place an excessive administrative review and notification burden on the BLM and would vastly increase the cost of administering the small miner waiver. Further, it would enable a mining claimant to avoid filing the waiver or affidavit of annual work and hold the claims or sites in suspense until the BLM is able to identify the deficiency and notify the claimant.

Under Section 1(a) of S. 303, if a mining claimant either files an untimely maintenance fee payment or waiver or fails to make any filing at all, the BLM would no longer be able to simply declare the mining claim void by operation of law, as authorized under the current maintenance fee statute since 1994. Rather, under this new provision, if any claimant fails to pay the annual maintenance fee by the deadline, the BLM will have to first determine whether the claimant is qualified as a small miner and, if so, give notice and opportunity to cure—whether or not the claimant had any intention of filing a maintenance fee waiver request.

This additional administrative step would be required even if the holder of the mining claim or site had not filed a maintenance fee waiver in the past, for two reasons. First, fewer than 13,000 mining claimants among those who are eligible for a maintenance fee waiver each year actually request a waiver, and S. 303 does not restrict the "cure" provisions to those claimants who had intended to file a waiver but missed the deadline. Second, verifying eligibility for the "cure" provisions of S. 303 would be required each year for any mining claimant who missed the payment deadline because eligibility for a maintenance fee waiver depends on the number of mining claims and sites on the date that the maintenance fee payment was due. See 30 U.S.C. § 28f(d).

It would be costly and difficult for BLM to assess whether every mining claimant who either makes an untimely filing or fails to file anything is eligible to invoke the "cure" provisions of S. 303. Moreover, because the agency would have no way to determine if a claimant holding 10 or fewer claims or sites had simply decided not to pay the fee or file the fee waiver request and intentionally relinquish his claims, the BLM would have to send a "defect" notice to all such claimants who fail to either timely pay their maintenance fees or timely file a maintenance fee waiver request and give them the opportunity to cure. This effectively extends the payment deadline for any claimant holding 10 or fewer mining claims by removing any penalty for failing to pay in a timely manner.

In addition, this increased administrative burden would so drastically increase the processing time for all mining claimants as to allow some claimants to continue to hold and work their claims for months or potentially years after what would have been forfeiture by operation of law under the current statute without providing pay-

ment. It would be challenging for the BLM to reliably determine if a mining claimant intended to relinquish his mining claim or site. Action on the part of individuals wishing to maintain a claim to a Federal resource is a basic responsibility found in many of our Federal programs. Relieving individuals of this basic responsibility is contrary to the interest of the general public that owns the property.

In addition, the BLM opposes the bill's provisions outlined in Section 1(b) under "Transition Rules" on behalf of two mining claimants who forfeited their claims for failure to meet the filing requirements discussed above. Section 1(b) is essentially a private relief bill that gives special treatment to two sets of claimants, allowing their mining claims to be reinstated, and allowing one of them to have his patent application considered "grandfathered" from the patent moratorium.

The mining claims described under Sec. 1(b)(1) belonged to a claimant from Girdwood, Alaska. The claimant owned nine mining claims located in the Chugach National Forest in southeastern Alaska. The claimant had filed a patent application for these mining claims, but his application had not received a FHFC by the deadline. As such, his patent application was considered "non-grandfathered" and his mining claims were subject to ongoing annual maintenance requirements. The BLM determined these mining claims to be statutorily abandoned in January 2005 when the claimant failed to file his annual assessment work documents in accordance with the Federal Land Policy and Management Act of 1976, and the Interior Board of Land Appeals subsequently upheld the BLM's decision. The bill would give the claimant the opportunity to "cure" the defects that led to his mining claims being declared abandoned and void, and to pay prior maintenance fees or seek a waiver of those fees for his mining claims.

The bill would also consider the claimant "to have received first half final certificate" for these voided mining claims before September 30, 1994, thereby "grandfathering" his patent application from the patent moratorium. A portion of the land formerly covered by these claims is now closed to mineral entry, because the State of Alaska has filed Community Grant Selection under the authority of the Alaska Statehood Act. Considering the claimant's patent application "grandfathered" would give him priority over the State of Alaska with respect to these lands, and may mean that he, rather than the State of Alaska, would obtain the fee title.

The forfeited mining claims described under Sec. 1(b)(2) belonged to claimants from Homer, Alaska, and are located on the Seward Peninsula in western Alaska. In 2009, the BLM declared the claimants' mining claims to be forfeited for failure to timely pay maintenance fees or file a maintenance fee waiver request, and the Interior Board of Land Appeals upheld the BLM's decision in 2010. The claimants are now challenging the Department's voidance decision in Federal court in Alaska. The bill would allow the claimants' forfeited mining claims to be reinstated by "curing" their untimely maintenance fee waiver request or paying the applicable maintenance fees. The claimants are seeking private relief because the State of Alaska has selected these lands under the authority of the Alaska Statehood Act. As discussed above, selection by the State of Alaska has closed these lands to mineral entry, so the claimants may not relocate their claims.

The BLM's final concern with respect to this legislation requiring the BLM to consider failure to timely file a maintenance fee waiver certificate a curable "defect" is that the bill is unclear as to the retroactive effects on other small miners who have forfeited or abandoned their mining claims because they failed to timely file a small miner waiver or affidavit of annual assessment work. This includes those small miners who have lost their challenges of BLM decisions declaring their claims forfeited or abandoned at the IBLA. Furthermore, the Department of Justice advises that, as a practical matter, it seems likely that small miners will pursue a "cure" for failure to pursue a small miner waiver only where the claim owner cannot simply relocate that claim, which might occur if, for example, intervening rights have been granted or the land has been conveyed or assigned other uses. If that has happened, then reinstating any forfeited or abandoned mining claims would create confusion, and generate litigation, and could arguably create takings liability on the part of the United States.

Conclusion

Thank you again for the opportunity to testify on S. 303. I would be glad to answer your questions.

ON S. 1129

Introduction

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 1129, the Grazing Improvement Act. The Bureau of Land Management (BLM) is dedicated to a broad range of stewardship goals, including the long-term health and viability of the public rangelands. Our Nation's rangelands provide and support a variety of goods, services, and values important to every American. In addition to being an important source of forage for livestock, healthy rangelands conserve soil, store and filter water, sequester carbon, provide a home for an abundance of wildlife, provide scenic beauty and are the setting for many forms of outdoor recreation.

The BLM recognizes that the conservation and sustainable use of rangelands is important to those who make their living on these landscapes-including public rangeland permittees. Public land livestock operations are important to the economic well-being and cultural identity of the West and to rural Western communities. Livestock grazing is an integral part of BLM's multiple-use mission, and at the right levels and timing, can serve as an important vegetation management tool, improving wildlife habitat and reducing risk of catastrophic wildfire.

The BLM is committed to collaborating with those who work on the public lands and takes seriously its challenge to conserve and manage healthy rangelands for current and future generations.

The Department shares the Committee's interest in identifying opportunities for increasing efficiencies in public land grazing administration, as well as finding ways to make permit renewal less complex, costly, and time-consuming. The BLM would like to work with the Committee to further these shared goals. However, the Department cannot support S. 1129 as it limits the BLM's ability to provide for appropriate environmental review and public involvement-critical components of the BLM's multiple-use management of the public lands-as well as the BLM's ability to implement permits that have been appealed. The Department looks forward to continuing a dialogue with the Congress on these important matters.

Background

The BLM manages approximately 17,750 livestock grazing permits and leases for 12.3 million AUMs (animal unit months) on over 160 million acres of public lands in the West. Since 1999, the BLM has evaluated the health of the rangelands based on standards and guidelines that were developed with extensive input from the ranching community, as well as from scientists, conservationists, and other Federal and state agencies. The BLM collects monitoring and assessment data to compare current conditions with the standards and land use plan objectives. This information is used to complete environmental assessments, to develop alternative management actions, and to modify grazing management as needed.

The BLM administers the range program through issuance of grazing permits or leases. The Federal Land Policy and Management Act (FLPMA) provides for a 10-year (or less) term for grazing permits. In a typical year, the BLM processes over 2,000 permit renewals or transfers. In 1999 and 2000, the BLM saw a spike in permit renewals, when over 7,200 permits were due for renewal. The BLM was unable to process all those permits before expiration, which resulted in a backlog of grazing permit renewals that remains today. By the end of the 2012 Fiscal Year, BLM anticipates that a backlog of 4,200 unprocessed permits will remain. The BLM is committed to eliminating the backlog of grazing permit renewals and to issuing permits in the year they expire. An increase in appeals and litigation of grazing management decisions continues to pose significant workload and resource challenges for the BLM.

The BLM will continue to focus on grazing permits for the most environmentally sensitive allotments, using authorities Congress provided in the FY 2012 Consolidated Appropriations Act concerning grazing permit renewals and transfers. This strategy will allow the BLM to address a wide array of critical resource management issues through its land health assessments and grazing decisions. Additionally, this strategy will help ensure that the backlog of unprocessed permits consists of the least environmentally-sensitive allotments that are more custodial in nature and/or that are already meeting land health standards.

S. 1129

S. 1129 provides for automatic renewal of all expired, transferred, or waived permits, and categorically excludes all permit renewals, reissuance, or transfers from preparation of an environmental analysis under the National Environmental Policy Act (NEPA) if the decision continues current grazing management of the allotment.

Terms and conditions of the permit would continue until a permit is later renewed in full compliance with NEPA and other Federal laws. The bill does not first require a determination that the permittee is meeting land health standards. S. 1129 also doubles the duration of grazing permits from 10 to 20 years. Additionally, it provides for the transfer of permits without further environmental analysis when terms and conditions are unchanged, but only for the remaining term of the permit.

The Department supports the concept of having the flexibility to issue longer term permits in certain circumstances, as well as the transfer provision that is currently in place under the FY 2012 Consolidated Appropriations Act. That provision is expected to reduce the permit renewal workload in 2013 by about 700 permits. The number of transfers needing processing each year is unpredictable, posing significant challenges to the BLM as it works to manage staff and other resources.

However, S. 1129 also includes provisions that the Department cannot support since they provide for automatic permit or lease renewal without requiring further analysis, or requiring the permittee to meet land health standards. The bill also limits the BLM's ability to provide for appropriate environmental review and public involvement. As written the bill would result in the majority of permits being renewed under a categorical exclusion, although it is unclear what constitutes a "minor modification" and whether extraordinary circumstances would need to be applied in situations where current management was being continued. The engagement of the public through the environmental review process under NEPA is a crucial component of the BLM's multiple-use management of the public lands.

Further, S. 1129 requires that if a permittee appeals a grazing permit or lease decision, the BLM must suspend the decision until the appeal is resolved. Under current regulations, a typical BLM grazing decision is implemented while under appeal unless the permittee or interested public requests, and the Interior Board of Land Appeals grants a stay of the decision. By contrast, under S. 1129, if a permittee appealed a grazing decision, the BLM could not implement the decision unless it determined there was an emergency regarding deterioration of resources. Otherwise, the permittee could continue grazing at the current level of use until the appeal was resolved. The provisions would effectively give a permittee, by the simple act of appealing any grazing decision, the ability to continue current levels of use for an indefinite period of time (since appeals and litigation may take years). Moreover, grazing at the current level could continue even if the BLM determined land health standards were not being met and changes to the permit were thus warranted.

In summary, while S. 1129 contains provisions that would expedite permitting, the Department cannot support the overarching impact the bill could have on the 160 million acres of public lands used for livestock grazing.

Conclusion

Thank you for the opportunity to present testimony on S. 1129. The BLM looks forward to working with the Congress to develop improvements to the grazing permit renewal process while maintaining the integrity of NEPA, the Nation's bedrock environmental and citizen involvement law, and FLPMA, our multiple-use statute requiring consideration of many uses and values of the public lands. I will be pleased to answer any questions.

ON S. 1473

Thank you for the opportunity to present the views of the Department of the Interior on S. 1473, which amends the Mesquite Lands Act of 1986 in order to renew the exclusive right of the City of Mesquite, Nevada, to purchase certain public lands for development, and allows for proceeds from land sales to be used to implement a habitat conservation plan for the Virgin River and any associated groundwater monitoring plan. The Department of the Interior supports the goals of the bill, however, we believe we can achieve the purposes of the bill administratively, such as through sales under the Federal Land Policy Management Act (FLPMA) or the issuance of an airport lease.

Background

The Mesquite Lands Act of 1986 (PL 99-548) as amended by PL 104-208, PL 106-113 and PL 107-282,has provided the City of Mesquite, a community located in eastern Clark County, Nevada, between Las Vegas and St. George, Utah, the exclusive right to purchase lands to its west for a replacement airport and related development. To date, the city has acquired approximately 7,700 acres of public lands from the BLM. These authorities expired on November 29, 2011.

In addition to identifying lands for sale, the Mesquite Lands Act, as amended, provides that a portion of the proceeds from the sale of certain parcels be deposited

in an account established under the Southern Nevada Public Land Management Act of 1998 (SNPLMA). It also provides that these funds would be available to pay for, among other things, the BLM's costs to convey land to the City of Mesquite and the development of a multispecies habitat conservation plan for the Virgin River, also in Clark County. The U.S. Fish and Wildlife Service, in cooperation with the BLM, has begun work on the plans for the Virgin River. These authorities also expired on November 29, 2011.

S. 1473

S. 1473 renews until November 29, 2021, the City of Mesquite's exclusive right to purchase parcels of public lands identified in the PL 106-113 amendment to the Mesquite Lands Act, which are near lands already acquired by the City. It also allows for the proceeds from previous land sales to Mesquite to be used to implement a multispecies habitat conservation plan for the Virgin River in Clark County and any associated groundwater monitoring plan. It also extends the withdrawal of the lands from all forms of location, entry and appropriation under the public land laws, including mining laws, and from operation of mineral leasing and geothermal leasing laws, subject to valid existing rights.

The BLM supports the bill and its goal of providing for the economic development needs of Mesquite, Nevada. Some of the lands that may be acquired through enactment of the bill have been identified for a proposed replacement airport and related development. The legislation will provide additional time for the Federal Aviation Administration (FAA) to complete an environmental evaluation under the National Environmental Policy Act for the replacement airport and to identify mitigation measures, if necessary. The BLM is working with the FAA and the Nevada State Historic Preservation Office to develop appropriate measures to mitigate potential impacts to the Old Spanish National Historic Trail as a result of the proposed replacement airport. The additional time provided by this legislation will aid this effort.

Conclusion

That concludes our prepared testimony in support of S. 1473. We would be glad to answer your questions.

ON S. 1492

Thank you for the opportunity to testify on S. 1492, the Three Kids Mine Remediation and Reclamation Act. S. 1492 seeks to resolve longstanding issues surrounding the abandoned Three Kids Mine, in Henderson, Nevada. During the past four years, the Bureau of Land Management (BLM) in Nevada has worked with Nevada governmental entities in search of administrative remedies to the problems posed by the abandoned mine. The BLM supports the goals of S. 1492, which aims to provide legislated solutions to the issues surrounding the Three Kids Mine area and clear the way for its eventual development. However, we have concerns and the legislation needs a number of modifications.

Background

The Three Kids Mine is an abandoned manganese mine and mill site located along the south side of Lake Mead Drive, across the highway from Lake Las Vegas, in Henderson, Nevada. The mine and mill operated from 1917 through 1961 on 314 acres of private land, in part providing steel-strengthening manganese to the defense industry and contributing to the United States' efforts in World War I and II. Federal manganese reserves were stored in the area from the late 1950s through 2003. S. 1492 directs 948 acres of the public lands adjacent to the private site be conveyed, bringing the total size of the project area to 1,262 acres. Of the 948 acres of public lands, 146 acres are contaminated and will require mine reclamation and environmental remediation. The most severe contamination appears to be on the 314 private acres where the mine and mill were located. No viable former operator or responsible party has been identified to remediate and reclaim the abandoned mine and mill site. Today, the site's deep open pits, large volumes of mine overburden and tailings, mill facility ruins, and solid waste disposal areas pose significant risks to public health, safety and the environment. The Nevada Division of Environmental Protection (NDEP) identified the Three Kids Mine site as a high priority for the implementation of a comprehensive environmental investigation, remediation, and reclamation program.

Representatives of the BLM, the Bureau of Reclamation, and the Department of the Interior Solicitor's Office have worked with the City of Henderson and representatives of developer Lakemoor Canyon, LLC, to find solutions to the complex challenges this site presents. Discussions have focused on overlapping Federal agen-

cy jurisdictions, land management designations and other resource issues, Resource Management Plan amendments, future liability, and an important utility corridor that traverses the site.

S. 1492

S. 1492 designates the combined 314 acres of private land and 948 acres of public land as the 1,262-acre "Three Kids Mine Project Site" and provides for the conveyance of the public lands to 2 the Henderson, Nevada Redevelopment Agency. The legislation further provides that fair market value for the Federal lands to be conveyed should be determined through standard appraisal practices. Subsequent to that determination, the Secretary shall determine the "reasonable approximate estimation of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site." That cost would then be deducted from the fair market value of the public land to be conveyed. The Henderson Redevelopment Agency would pay the adjusted fair market value of the conveyed land, if any, and the Federal government would be released from "any and all liabilities or claims of any kind arising from the presence, release, or threat of release of any hazardous substance, pollutant, contaminant, petroleum product (or derivative of a petroleum product of any kind), solid waste, mine materials or mining related features" at the site in existence on or before the date of the conveyance.

While the BLM has not established a range for the cost of cleanup, a proponent of the transaction, Lakemoor Canyon, LLC, estimates the cost of remediating the public and private lands at between $300 million and $1.3 billion. While it is possible that the cost of remediating and reclaiming the entire project area might exceed the fair market value of the Federal land to be conveyed, the cost of the transaction will only be known after the Secretary completes the appraisal process outlined in the legislation. There has been no determination regarding the Federal government's liability for reclaiming the private lands in the project area.

The BLM supports innovative proposals to address the cleanup of the Three Kids Mine, and we do not oppose this proposal to transfer the entire 948 acres of public land to the Henderson Redevelopment Agency at fair market value, subject to valid existing rights. However, the BLM has concerns about the legislation. Most importantly, the BLM recommends the bill be amended to clarify that the Federal land in the Project Area is conveyed to the Henderson Redevelopment Agency after the Secretary appraises the Federal land and the cost of remediating and reclaiming the site and before the remediation and reclamation activities begin.

Additionally, there are a number of minor and technical concerns that need to be addressed, including the timeframes for conducting an appraisal and for securing a Phase II environmental assessment from the Hendersonville Redevelopment Authority. The BLM also notes that under the legislation, the subsurface mineral rights would be included in the sale of lands and should be included in any appraisal of the value of the land. The BLM recognizes that the transfer would include a small portion of the River Mountains ACEC, and we would like to discuss with the committee opportunities to mitigate that loss. Finally, the Bureau of Reclamation would like to work with the bill's sponsors and the Southern Nevada Water Authority (SNWA) to ensure that SNWA's current needs for access to and protection of critical water and utility infrastructure are specifically addressed in the legislation.

Conclusion

Thank you for inviting the Administration to testify on S. 1492. The Three Kids Mine problem needs to be resolved, and we look forward to working toward a solution that protects the environment and serves the public interest. I would be happy to answer your questions.

ON S. 1559

Thank you for the invitation to testify on S. 1559, the San Juan Islands National Conservation Area Act. The Department of the Interior supports S. 1559 and urges Congress to move swiftly to designate Washington State's San Juan Islands as a National Conservation Area (NCA). Secretary of the Interior Salazar has made several trips to the San Juan Islands, most recently in February of this year, and has heard from local citizens about their strong support for protecting this special place. The Secretary's November 2011 Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations highlighted the San Juan Islands NCA as a proposal deserving Congress' prompt attention.

Background

The Bureau of Land Management (BLM) currently administers nearly 1,000 acres of the proposed NCA land in the San Juan Islands of Puget Sound, Washington. These lands include portions of a few large islands and over 50 small islands, rocks, pinnacles, and outcroppings. These islands have been molded and shaped through tens of thousands of years of glacial forces.

Anglers, hikers, and wildlife watchers are all attracted to the diverse and abundant biological resources of the islands. BLM lands in the San Juan Islands include forests, sandy beaches, woodlands, grasslands, and wetlands. Bald eagles and peregrine falcons are among the many species of birds that soar above the landscape, while orcas, porpoises, and other marine mammals ply the waters. The proposed NCA is not only biologically complex, but also culturally diverse. Two historic lighthouses built in the late 19th century are included in the proposed NCA, as are several archaeological sites of the Coast Salish people who have walked these lands for the last 12,000 years.

S. 1559

S. 1559 would designate the lands administered by the BLM within the San Juan Islands as a NCA. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land, mining, and mineral leasing laws; off-highway vehicle use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established. Furthermore, NCA designations should not diminish the protections that currently apply to the lands. Section 4 of S. 1559 honors these principles, and the BLM supports the proposed NCA designation.

The BLM would like the opportunity to work with the Sponsor and the Committee on a modification to the map and related bill language to ensure that all rocks and islands managed by the BLM within the San Juan Islands are included within the NCA.

Finally, S. 1559 establishes an Advisory Council to advise the Secretary and the BLM on preparation and implementation of a management plan. We support this provision, which recognizes the important role that the local citizens have played, and will continue to play, in the conservation of these lands. A wide-ranging group of local residents, stakeholders, and enthusiasts have joined with Senator Cantwell, Senator Murray, and Representative Larsen to support permanent protection for the BLM-administered lands in the San Juan Islands. Today's hearing is the culmination of those efforts.

Conclusion

Thank you for the opportunity to testify in support of S. 1559, the San Juan Islands National Conservation Area Act. The Department urges Congress' swift passage of the bill.

ON S. 1635

Thank you for the invitation to testify on S. 1635, the San Juan Mountains Wilderness Act. The Department of the Interior supports the wilderness designation of the McKenna Peak area on lands managed by the Bureau of Land Management (BLM). Additional protection for the McKenna Peak area was highlighted in Secretary Salazar's November 2011 Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations. We urge swift Congressional action to protect this special area.

We defer to the Department of Agriculture regarding designations on lands managed by the U.S. Forest Service (FS).

Background

The McKenna Peak Wilderness Study Area (WSA) covers nearly 20,000 acres of BLM-managed lands in San Miguel and Dolores Counties in southwestern Colorado. This WSA is currently managed by the BLM to protect its wilderness characteristics while awaiting Congressional action.

This area is rich in wildlife, including mule deer, elk, mountain lions, black bear, and a variety of raptors. The McKenna Peak area is also home to the Spring Creek wild horse herd. Geologically, the area is quite diverse and includes 100 million year-old remnants of inland seas (now black Mancos shale rich in invertebrate marine fossils). This area offers a wide variety of recreational opportunities, including hunting, hiking, horseback riding, snowshoeing, and cross-country skiing, all of which are compatible with this wilderness designation.

S. 1635

S. 1635 is the result of a collaborative process, including the Colorado Congressional delegation, county commissioners, adjacent landowners, ranchers, conservationists, recreationists, and other interested parties. The results are the proposed wilderness designations on both BLM- and FS-managed lands in San Miguel, Ouray, and San Juan Counties.

Section 3 of the bill designates 8,600 acres of the existing BLM-managed McKenna Peak WSA as wilderness. The BLM supports this designation. The legislation covers only those areas of the WSA in San Miguel County. The remaining almost 11,000 acres of the WSA, which include the eponymous McKenna Peak, are south of the proposed wilderness in Dolores County and are not addressed in the legislation. These acres will remain in WSA status, pending Congressional action. The BLM and the Department support future designation of this area in order to improve the manageability of the area. The BLM is currently completing a careful review of the boundaries of the proposed wilderness area to ensure manageability and would welcome the opportunity to work with the sponsor on possible minor modifications.

Section 6 of S. 1635 provides for the release from Wilderness Study Area (WSA) status of those portions of the Dominguez Canyon Wilderness Study Area that were not designated as Wilderness under Title II, Subtitle E of Public Law 111-11, the Omnibus Public Land Management Act of 2009. Section 2403 of that Act designated the Dominguez Canyon Wilderness Area. However, small portions of the underlying WSA totaling approximately 3,035 acres were neither designated wilderness nor released from WSA status, which would allow the consideration of a range of multiple uses. This release would benefit the BLM's ongoing management by removing narrow strips and scattered tracts of remaining WSA. These areas remain within the Dominguez-Escalante National Conservation Area (NCA), also designated by Public Law 111-11 and will be managed consistent with the rest of the NCA.

Conclusion

Thank you for the opportunity to testify in support of S. 1635. We look forward to its swift passage and to welcoming the covered area into the BLM's National Landscape Conservation System.

ON S. 1774

Thank you for the invitation to testify on S. 1774, the Rocky Mountain Front Heritage Act which designates approximately 208,000 acres of Federal land in Montana as the Rocky Mountain Front Conservation Management Area. S. 1774 primarily affects lands managed by the United States Forest Service (FS). The Department of the Interior defers to the Department of Agriculture regarding designations on lands managed by the FS. Over 13,000 of the acres proposed for special designation under the bill are managed by the Bureau of Land Management (BLM). The Department of the Interior supports the designation of the BLM lands as part of the Rocky Mountain Front Conservation Management Area (CMA).

Background

A unique and stunningly beautiful area in west-central Montana, the Rocky Mountain Front is located within Pondera, Teton, and Lewis and Clark Counties and contains unparalleled cultural, recreational, scenic, and biological resources. The lands administered by the BLM are dominated by massive limestone cliffs rising to an elevation of 7,700 feet and include grasslands, shrub lands, and limber and white-bark pine forests. Numerous wildlife and fish populations are supported by the highly varied topography and diverse vegetation that for generations has provided an outstanding experience for hunters, anglers and other recreationists. Huntable populations of elk, mule deer, big horn sheep, mountain goats and black bear all occur within the area being considered in the proposed legislation. In addition, threatened species including grizzly bear, Canada lynx, and bull trout are found on these BLM-managed lands.

Congress recognized this priceless region in 2006 when it included the withdrawal of the entire area from new mining claims and mineral leasing in section 403(a) of Public Law 109-432. The BLM currently manages these lands for their important resource values as administratively-designated Outstanding Natural Areas (Blind Horse, Ear Mountain, Chute Mountain and Deep Creek-Battle Creek).

S. 1774

S. 1774 designates over 200,000 acres of federal land in Montana's Rocky Mountain Front as the Rocky Mountain Front Conservation Management Area. Approximately 13,000 acres of public land managed by the BLM would be included in that

designation. Running along the eastern edge of the CMA, the lands managed by the BLM are largely closed to motorized access and include a trail system popular with those seeking a wilder recreational experience.

The overall management scheme envisioned for the CMA is consistent with current BLM management of these lands. Under the provisions of S. 1774, motorized vehicles within the CMA would be limited to roads and trails designated for their use and grazing would be allowed to continue where it currently exists.

The BLM recommends that the bill be amended to specify that the BLM-managed lands within the CMA be included in the BLM's National Landscape Conservation System (NLCS). The CMA is very similar to BLM's National Conservation Areas (NCAs) and inclusion in the NLCS is appropriate.

Conclusion

Thank you for the opportunity to testify in support of S. 1774 as it applies to lands managed by the BLM.

ON S. 1788

Thank you for inviting the Department of the Interior to testify on S. 1788, the Pine Forest Range Recreation Enhancement Act. The Department of the Interior supports S. 1788, which designates the Pine Forest Range Wilderness in Humboldt County, Nevada, on lands managed by the Bureau of Land Management (BLM). We urge the Congress to move swiftly to pass this bill.

It is gratifying to see Congress moving to protect this area that was highlighted in Secretary Salazar's November 2011 Preliminary Report on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations. There is a long history of bipartisan support in Congress for the conservation of America's special places. Members from both parties have been essential to passing every major public lands bill that has been enacted in recent years. This type of cooperative and bipartisan approach to designating special lands for protection as wilderness, national conservation areas, or similar designations has historically been a regular practice for Congress. The designation of the Pine Forest Range has strong support from County government and local citizens. It is a wonderful example of how people can come together to protect one of America's real gems.

Background

The Pine Forest Range in northern Nevada's arid Great Basin is a rare and exceptional area of abundant streams and clear, cold subalpine lakes. Nestled in a cirque and fed by snowmelt and springs, these lakes are not only visually stunning but also possess an excellent trout fishery. The lakes are surrounded by a rare remnant population of white bark and limber pines. Stands of quaking aspen and mountain mahogany are also found throughout the proposed wilderness. Fall brings an abundance of color found in few other places in northern Nevada.

The spectacular scenery and vistas, combined with outstanding recreational opportunities, draw thousands of visitors annually. Despite being one of the most highly visited recreational areas in the region, the proposed wilderness still appears pristine. Day hiking, horseback riding, rock climbing, hunting, fishing, and camping are all popular in the area. Visitors enjoy a true primitive recreation experience, without trails or facilities. Even during peak visitation periods, solitude is easy to find in the rugged terrain. Abundant wildlife coveted by sportsmen includes trophy mule deer, antelope, bighorn sheep, mountain lion, and chukar.

A wide range of stakeholders began working cooperatively in 2009 and 2010 to bring together diverse interests in a grass-roots effort to protect this special area. In the fall of 2010, the Humboldt County Commission voted unanimously to approve the final recommendations of the Pine Forest Range Working Group to designate the Pine Forest Range Wilderness. The Nevada State Legislature subsequently passed a resolution praising the process used in arriving at the consensus represented by S. 1788.

S. 1788

S. 1788 proposes to designate the 26,000-acre Pine Forest Range Wilderness in Humboldt County, Nevada, on public land managed by the BLM. This wilderness area is largely formed by the Blue Lakes and Alder Creek Wilderness Study Areas (WSAs). Under the bill, approximately 1,150 acres of land within those WSAs would not be designated as wilderness and would be released from WSA status, thereby allowing the consideration of a full range of multiple uses.

Section 13 of S. 1788 provides for land exchanges to improve the manageability of the Pine Forest Range Wilderness Area and nearby public lands while likewise allowing private landowners the opportunity to consolidate their holdings. The land

exchanges are discretionary and would be completed consistent with the Federal Land Policy and Management Act (FLPMA) and other applicable laws. The BLM supports this provision. In addition, these land acquisitions may be undertaken through existing authorities such as purchase or donation.

The Pine Forest Range Wilderness meets the definition of wilderness; the land and its community of life are largely untrammeled. It has retained its primeval character and has been influenced primarily by the forces of nature, with outstanding opportunities for primitive recreation or solitude. The BLM strongly supports this designation. We would like to work with the sponsor and the Committee on some minor technical modifications to management language to insure consistency and to ensure an updated map reference.

Conclusion

Thank you for the opportunity to testify in support of S. 1788. We look forward to the swift passage of this legislation designating the Pine Forest Range Wilderness.

ON S. 2001

Thank you for inviting the Department of the Interior to testify on S. 2001, which would expand the existing Wild Rogue Wilderness by nearly 60,000 acres and extend the existing Rogue Wild and Scenic River by designating an additional 35 Rogue River tributaries to the National Wild and Scenic Rivers System. The Department supports S. 2001, and would welcome the opportunity to work with the Committee and the members of the Oregon delegation on modifications to the bill to improve manageability.

Additional protection for the Rogue River was highlighted in Secretary Salazar's November 2011 Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations. S. 2001 has wide support at state and local levels, as well as from a wide range of local citizens and stakeholders. It is a wonderful example of how people can come together to propose protection of such a beautiful and dramatic area.

Background

The Rogue River's headwaters begin near Crater Lake. It then rushes 215 miles through the mountains and valleys of southwestern Oregon, eventually emptying into the Pacific Ocean near the town of Gold Beach. Over millions of years, the Rogue has patiently carved its way through western Oregon's mountains creating 3,000 foot canyons, rugged valleys and inspiring scenery. Dense, old-growth forests flank the Rogue providing habitat for older forest-dependent species, including the Northern Spotted Owl and the Marbled Murrelet. The cold, clear waters of the river provide a home for Pacific salmon, steelhead trout, and green sturgeon.

Recreationists are drawn to the entire Rogue River watershed to experience nature in a multitude of ways. These recreationists are a critical economic engine for local economies and include commercial and sport fishing, rafting and jet boat tours, and hiking and backpacking. The untamed landscape offers countless opportunities for challenge, exploration, and discovery.

The 36,000-acre Wild Rogue Wilderness was designated by an Act of Congress (Public Law 95-237) in 1978. Located primarily on lands managed by the U.S. Forest Service, the Wild Rogue includes approximately 8,600 acres of lands administered by the Bureau of Land Management (BLM). In 1968, Congress passed the Wild and Scenic Rivers Act (Public Law 90-542), establishing the Wild and Scenic River System and designating eight original rivers. As one of these initial eight rivers, Oregon's Rogue River has long been recognized for its beauty, exceptional recreational opportunities and extraordinary resource values.

For several years, Senator Wyden and other members of the Oregon Congressional delegation have worked with local stakeholders, governments, recreationists, and the conservation community to enhance protections of the Rogue River watershed. S. 2001 is a result of those concerted efforts.

S. 2001

S. 2001 proposes to enlarge the existing Wild Rogue Wilderness by adding nearly 60,000 acres of land administered by the BLM. The bill also extends the existing Rogue Wild and Scenic River by adding 93 miles of 35 tributaries of the Rogue to the wild and scenic river system. In addition, the bill withdraws 50 miles of 20 other Rogue River tributaries from operation of the land laws, mining laws, and mineral leasing laws, and prohibits the Federal Energy Regulatory Commission (FERC) from licensing new water resource projects and associated facilities along these tributaries.

The BLM supports the expansion of the Wild Rogue Wilderness as provided by S. 2001. This wild and rugged area is largely untrammeled. It has retained its primeval character and has been influenced primarily by the forces of nature, with outstanding opportunities for primitive recreation or solitude. Protection of these wilderness characteristics is largely consistent with the current management framework for these lands. We would like the opportunity to work with the bill sponsor and the Committee on some modifications to the map and the legislation.

The BLM also recommends that the legislation include language directing the Secretary of the Interior to manage the BLM portion of the current Wild Rogue Wilderness. When the Wild Rogue Wilderness was established in 1978, the legislation called for the Secretary of Agriculture to manage all of the lands within the wilderness boundary. With this expansion we would like to correct that previous oversight and ensure that both the original and the additional BLM-managed lands within the Wild Rogue are managed by the BLM. Management of this area would be a cooperative exercise with the U. S. Forest Service and involve many of the same staff that jointly manage the Rogue's successful river program.

The bill excludes over 500 acres of BLM-managed lands on the north side of the river within the external boundaries of the wilderness addition from designation as wilderness. This could leave these lands open to future development and potentially complicate management of the surrounding lands as wilderness. These lands show visible effects of past logging activities and existing primitive roads that do not meet the naturalness criteria of the Wilderness Act. The BLM would like to discuss the possibility of designating them as "potential wilderness" (as was done, for example, to California's Elkhorn Ridge Potential Wilderness Area through the Northern California Coastal Wild Heritage Wilderness Act—Public Law 109-362). If these lands were to be actively or passively restored to wilderness conditions in the future, they could then be formally added to the Wild Rogue Wilderness.

The BLM would also like to work with the Oregon delegation on boundary modifications of the wilderness expansion to improve manageability. There are portions of the proposed wilderness where minor modifications to follow a road would allow for a more recognizable and manageable boundary. In addition, a few areas identified for wilderness designation on the southeast side of the proposed expansion may raise manageability concerns. Specifically, the inclusion of areas south of Bailey Creek and east of the Rogue appears to present conflicts with existing uses. The BLM would like the opportunity to discuss these conflicts further with the Committee and the bill's sponsor.

In 1968, when Congress established the National Wild and Scenic Rivers System, it designated the Rogue as one of the original eight rivers included in this system. Section two of S. 2001 further enhances that initial designation by adding specific tributaries of the Rogue to the national system, thus conserving the greater Rogue River watershed. In general, the proposed stream segments are located in steep sloped canyons with mature and structurally complex forest stands that have high conservation values. We support maintaining and enhancing those conservation values through this designation.

Finally, S. 2001 (Section 5) prohibits FERC from licensing the construction of any new water or power projects along 50 miles of 20 Rogue River tributaries. Additionally, the bill would withdraw land for one-quarter mile along either side of these tributaries from operation of the land laws, mining laws and mineral leasing laws. This withdrawal will protect valid existing rights but would prohibit the sale or exchange of any of these federal lands; the location of new mining claims; new mineral or geothermal leases; and sales of mineral materials. These withdrawals will provide additional protections to this important watershed, and the Department supports these provisions.

Conclusion

One of the earliest masters of the American western novel, Zane Grey, proclaimed the historic beauty of this area, and made it his home. "The happiest lot of any angler" wrote Grey "would be to live somewhere along the banks of the Rogue River, most beautiful stream of Oregon."

S. 2001 seeks to preserve and protect the beauty Zane Grey saw for generations to come. This bill is the product of many years of discussions and collaboration with the local community, stakeholders, and other interested parties by the Oregon Congressional delegation and we would like to be part of those continuing discussions. The Department urges swift passage of S. 2001 and looks forward to welcoming these important conservation additions into the BLM's National Landscape Conservation System.

ON S. 2015

Thank you for the opportunity to present the views of the Department of the Interior on S. 2015, the Powell Shooting Range Land Conveyance Act, which conveys an isolated 322-acre tract of public land to the Powell Recreation District (District) in northwestern Wyoming. The Bureau of Land Management (BLM) supports S. 2015.

Background

Powell, Wyoming, is a town of approximately 5,000 people in northwestern Wyoming. This region of Wyoming is generally irrigated farmland with scattered BLM-managed public land parcels.

In 1980, the Bureau of Reclamation (BOR) granted the District a Special Use Permit (SUP) for a 25-year period to construct and operate a shooting range on this isolated tract of public land southeast of the town of Powell. The District constructed the facilities and infrastructure for the shooting range over 30 years ago, and has operated the range ever since. The District is a local entity created under state statute for the purpose of providing public recreation programs. It is funded from local property taxes and has authority to acquire land and facilities appropriate to carry out its recreational purposes.

The SUP for the shooting range expired in 2005. That year, the District filed an application for a Recreation and Public Purposes Act conveyance of this land to continue the shooting range operations. The BOR extended the SUP pending transfer of the land to the District. In 2010, the BLM discovered that, as a result of a 1950 land exchange with the state of Wyoming, the parcel is actually under the BLM's jurisdiction and not the BOR's jurisdiction as was previously understood. The BLM has used the authority of a Special Recreation Permit to temporarily authorize the use of the existing shooting complex until long-term resolution of the land use issues could be achieved. BLM authorities for conveyance of land under the Recreation and Public Purpose Act do not permit the transfer of this land administratively to the District under its current use as a shooting range.

S. 2015

S. 2015 requires the BLM to convey an isolated 322-acre tract of public land southeast of Powell, Wyoming, to the Powell Recreation District. The bill requires that the parcel of land be transferred subject to valid existing rights, and be used only as a shooting range or for any other public purpose consistent with the Recreation and Public Purposes Act.

If the land conveyed to the District ceases to be used for its intended purpose then the land shall, at the discretion of the Secretary, revert to the United States.

S. 2015 requires the Powell Recreation District to pay administrative costs to prepare the patent and transfer title as well as costs necessary to complete environmental, wildlife, cultural, historical studies, and NEPA review prior to the transfer. The bill also releases and indemnifies the United States from any claims or liabilities that may arise from uses carried out on the land on or before the date the Act is signed.

The BLM supports the bill as it represents an opportunity to resolve land use issues on an isolated tract of public land that has been used as a shooting range for over 30 years and is identified for disposal in current land use plans. The legislation facilitates a reasonable and practicable conveyance of lands to the Powell Recreation District.

Conclusion

Thank you for the opportunity to provide testimony in support of S. 2015.

ON S. 2056

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the Administration's views on S. 2056, legislation to authorize the Secretary of the Interior to convey certain interests in Federal lands acquired for the Scofield Project in Carbon County, Utah. The intent of the legislation is to resolve certain issues associated with decades-long encroachment on Federal lands in the Scofield Reservoir basin. If the revisions described below are made, the Department would not oppose an amended S. 2056.

The Scofield Project is located on the Price River about 85 miles southeast of Salt Lake City, Utah. It provides irrigation and municipal and industrial water to Carbon County, Utah. The reservoir is a popular fishing destination. Under contract with Reclamation, the State of Utah operates a state park at the site.

At Scofield Reservoir, the vertical distance between the normal water surface elevation of the reservoir and the flood surcharge elevation (the level to which the

water level may rise in a flood event) is approximately 19 feet. Given the sloping sides of the reservoir basin, this flood surcharge capacity translates into a wide band of land around the perimeter of the reservoir above the normal water surface elevation and below the flood surcharge elevation. The United States owns in fee most of the lands within this band.

In the 1950s, an individual purported to subdivide and sell some of these flood surcharge lands—in spite of United States' ownership. The purported "owners" (referred to in the Scofield Land Transfer Act as "claimants") began locating mobile homes and building cabins on these lands. There are over sixty encroaching cabins and trailers today. These encroachments pose a dam safety issue because a flood event may float debris or structures into the spillway, reducing its capacity and threatening the dam.

In 2000, Reclamation initiated a quiet title action on lands within the band on the east side of Scofield Reservoir and was joined in that action by 15 claimants. A 2009 decision by the Tenth Circuit Court of Appeals affirmed ownership by the United States. Reclamation has removed the encroachments on the lands that were the subject of the quiet title action. Because of similar underlying facts, quiet title actions associated with the remaining encroachments would likely affirm United States' ownership.

The bill proposes to resolve these encroachments on Federal lands by authorizing the Secretary of the Interior to transfer a fee interest or life estate to those who claim ownership of United States' lands within the Scofield Reservoir basin in exchange for fair market value. Claimants have a period of five years during which they may seek a fee interest or life estate. If a claimant does not elect to acquire a fee interest or life estate, Reclamation will remove the encroachment under existing law and policy, including the removal of encroaching structures.

Although the bill addresses in part key objectives for Reclamation, the ideal scenario for Reclamation is for no structures or dwellings to fall within a facility's flood surcharge elevation. Having said that, the bill does address concerns such as: improved protection of public safety and resolving certain issues of encroachment on United States' lands. In addition, the bill imposes conditions on transferred lands. First, it limits the number and types of structures to those in place on the date of enactment. Second, it requires that structures be anchored to foundations to prevent displacement during a flood event and the associated potential for compromising the dam and causing harm downstream. Third, it requires Reclamation to retain the ability to store flood flows on the transferred lands without liability to the United States.

While Reclamation supports, in general, some specific provisions in the bill, the legislation perpetuates occupancy within the flood surcharge elevation, which poses public and dam safety concerns. Reclamation believes it would be prudent to conduct an assessment of the risk to the safety of the dam imposed by structures that would remain within the flood surcharge elevation. In addition, the bill's language raises a number of technical concerns:

Cost of Implementation—The proposed legislation does not provide any monies to fund Reclamation's work in surveying, appraising, and transferring fee interest or life estates to claimants. The legislation furthermore does not provide any monies to conduct environmental compliance, provide notice to Claimants of existing trespasses or encroachments on Federal lands, or to enforce deed restrictions. These costs should not be absorbed by the Federal government.

Cost of Administration—After the legislation is fully implemented, Reclamation will likely face a patchwork of ownership (private fee interest, private life estates, and Reclamation fee interest) at the reservoir in the band between the normal water surface elevation and the flood surcharge elevation. On the transferred lands, Reclamation will be required to monitor construction and the retrofitting of structures to ensure that they are properly secured. In addition, Reclamation will be required to preserve public access to Reclamation fee lands that are not encumbered by life estates. The administration costs and enforcement obligations pursuant to any conveyance restrictions are best left to the local government, subject to oversight by Reclamation.

Scofield Reservoir Fund—The proposed legislation calls for revenues from the sale of fee interests and the sale of life estates to be deposited into a "Scofield Reservoir Fund." The fund would be used to finance "enhanced recreation opportunities at Scofield Reservoir." Because the costs and administrative burdens associated with the conveyance would be redirected toward the beneficiaries of the conveyance through the Scofield Reservoir Fund, the Department of the Interior has serious concerns about the establishment and use of the Scofield Reservoir Fund.

Precedent—On one level, the proposed legislation amounts to rewarding encroachment with an opportunity to purchase or acquire private exclusive use of Federal lands. The Department of the Interior is concerned about the bill setting a precedent or expectation that there can be a path from encroachment to ownership. However, the Department finds merit in amicably resolving encroachment issues on the Scofield Reservoir without embarking on protracted litigation,

Report to Congress—Reclamation believes the bill's objectives can be accomplished consistent with Congressional intent and with support from the local community. Because of the proliferation of required reports to Congress, and the demand on finite budget resources, the Department in general does not support new and narrow reporting requirements.

In addition to those issues raised above, Reclamation has a number of technical concerns:

Life Estate—The definition of life estate creates a reversion "on the date of death of the claimant."The legislation assumes that all claimants will be individuals. Claimants may claim joint ownership or may be partnerships, corporations, or other entities.

Securing Structures—Ensuring that any remaining structures are fully secure is critical to public safety. For this reason, Reclamation is concerned that the conveyance requirements do not adequately ensure that structures will be secured against inundation. One approach to correcting this would be to add the word "and" between (3)(b)(2)(C)(i) and (3)(b)(2)(C)(ii).

Land Disputes—Among claimants there are disputes about the boundaries of their claims. The resolution of these claims would likely erode the five years that the claimants have to decide whether to submit notice of a desire to acquire a fee interest or life estate. The legislation could direct claimants to accept the result of the Reclamation survey required under (3)(a)(1).

Spillway Crest—In referring to the normal water surface elevation, the proposed legislation refers to the "lip of the spillway." This term is ambiguous and should be replaced with "crest of the spillway."

Hold Harmless Clause—The life estate option requires the claimant to hold the United States harmless for damages due to "design, construction, operation and replacement." The list of causes from which damages may arise should also include "maintenance." In addition, there is no requirement for claimants seeking fee interest in claimed land to hold the United States harmless. Reclamation recommends that a hold harmless requirement be added to the fee interest option.

Payments in Lieu of Taxes (PILT)—The proposed legislation should explicitly state that PILT payments will be discontinued for lands transferred in fee to claimants.

Mineral Rights—The proposed legislation should state that there will be no conveyance of subsurface or mineral rights.

Water Rights and Sewer System—A number of the claimants have developed wells that are also part of their encroachment. To the extent these wells are supported by valid State of Utah water rights, the legislation should address the fate of these wells under conveyance in fee or life estate.

The sewer system serving encroachments is included in a Reclamation license agreement for the State Park. The license agreement is with the Scofield Special Service District for which Carbon County has oversight responsibility.

Sunset—The proposed legislation requires claimants to submit notification to the Secretary of their interest in a fee interest or life estate in the claimed portion of the Federal land within five years of the date of enactment of the proposed legislation, in order to stay enforcement proceeding on the Federal land. This could allow claimants to submit notice of their intent to receive a fee interest or life estate, without requiring affirmative action to effectuate the transfer. The proposed legislation should contain a sunset provision, whereby notice and transfer must occur within a reasonable timetable.

In closing, Mr. Chairman, Reclamation recognizes that, in spite of its serious concerns, the proposed legislation does offer a relatively acceptable five-year solution to a problem Reclamation has wrestled with for many years. In light of this, the Department of the Interior will not oppose S. 2056 if appropriate clarifying language and revisions are added.

Senator WYDEN. Thank you.

Ms. Weldon.

STATEMENT OF LESLIE A.C. WELDON, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Ms. WELDON. Thank you very much, Senator Wyden and Ranking Member Barrasso. I will work on summarizing my remarks.

I will just say as it relates to the S. 1129 we share that perspective of the value and importance of grazing lands as ecosystems, as important parts of our landscapes from an economic and cultural and traditional standpoint. Value the relationships we have with our grazers.

What I'll do is just let you know that S. 1635 to convey the lands as wilderness in Colorado as well as the Rocky Mountain Front Conservation Management Act, 1774 and the S. 1687, to adjust the boundary of the Carson National Forest. We are supportive of those. As it relates to the Rocky Mountain Front Conservation Management area in the Lewis and Clark National Forest we'd like to work with the committee on some of the timeframes that have been put in place for developing the non-motorized recreation plan as well as the noxious weeds plan.

On the bill to create wilderness, S. 1635, in Colorado, we would like to work with the committee on the Hard Rock 100, this long established event that will, with the designation of wilderness actually cross into wilderness area by about two miles. We want to ensure that we're able to meet the intent of wilderness values as well as to have this long standing and popular, important event continue to occur.

The Grazing Improvement Act of 2011, we would like to work with the committee. There are many portions of it that we support and share some of the same concerns as expressed by the Bureau of Land Management. In particular as it relates to the definition we would like to have in place in defining minor modifications for categorical conclusions. We would prefer our rangers, decisionmakers, have an option to use a categorical exclusion rather than making that a requirement within the act with the intent of ensuring that we're able to make the most appropriate decision as to what the landscape prevents for us in the specific conditions on the ground.

We are also concerned about and would like to work with the committee on the proposal for a new appeals process. The Forest Service and the Department feel we have a process in place. A process that we're developing that will also help streamline and keep in place a fair review process when challenges do come to permits in through our appeal process.

The Cabin User Fee Act of 2011, S. 1906, we're very happy to have worked with the Association and with the committee in coming up with solutions over the last few years for this bill. We feel very comfortable with the proposals. However there are a couple of areas that we would like to continue to work with the committee.

One of those has to do with the tiers that were set up. There were several levels of tier for assessing fees. We'd like to work with the committee on whether or not those suite of tiers are appropriate or if one additional tier may be needed to be added in that situation.

In addition other minor things have to do with our desire when a challenge does come up to have that challenge reviewed in the

area where the cabin actually exists rather than where the cabin owner lives. We look forward to working with the committee on getting through these last points of resolution and getting a bill in place that will greatly make our process more efficient and reduce the undue burdens that are on our cabin fee owners.

That's it.

[The prepared statement of Ms. Weldon follows:]

PREPARED STATEMENT OF LESLIE A.C. WELDON, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ON S. 1129

The Department appreciates the opportunity to provide its views on S. 1129, the "Grazing Improvement Act of 2011". The Forest Service enjoys a cooperative relationship with the vast majority of the over 6,800 individuals who hold permits for grazing authorizing at total of approximately 8.3 million animal unit months on over 94 million acres of National Forests and Grasslands. Grazing permittees have helped provide for the effective stewardship of our public lands for many decades. The Forest Service's grazing program not only helps support the economies of rural communities across the west, but it also helps maintain open space on private lands. Most permittees utilize and need both public and private lands to graze livestock economically. The loss of grazing on public lands can result in the loss of grazing on private lands that may lead to the conversion of private open space to other uses such as subdivision development.

The Department understands and shares the Committee's desire for increasing administrative efficiencies for both the Forest Service and the permittee and while the Department supports certain provisions, we cannot support S. 1129 as written. Specifically, the Department has concerns with: requirements and definitions in the use of categorical exclusions, suspension of agency decisions until appeals are resolved and use of a different appeals process than is currently being developed. The Department is willing to work with the Committee to see if these differences can be resolved.

S. 1129 would revise the permitting process for grazing in the Federal Land Policy and Management Act of 1976. Specifically, the bill would extend the duration of the permit from 10 years to 20 years. It is intended to make permanent the language used in annual appropriation riders which has required expiring permits to be renewed with existing terms and conditions if NEPA has not been completed on allotments associated with the permit. It would establish and require the use of legislated categorical exclusions from the requirement to prepare an environmental analysis under the National Environmental Policy Act (NEPA). The categorical exclusions would be used if the decision continues the current grazing management on the allotment and if only minor modifications are needed to the permit. Consistent with the appropriations rider, the bill also would provide the Secretary with the sole discretion to determine the priority and timing for completing the environmental analysis of a grazing allotment, notwithstanding the schedule in section 504 of the Rescissions Act. Finally it would create a new process for appealing Forest Service decisions relating to grazing permits.

The Department understands and shares the Committee's desire for increasing administrative efficiencies for both the Forest Service and the permittee. The Department supports the concept having the flexibility to issue a longer term permit where allotments are meeting Forest Plan standards. The Department also supports making the annual appropriations language permanent as long as the extension is of a limited duration until the completion of the NEPA process. While we support providing the line officer with the option to use a categorical exclusion category where the parameters of what constitutes a minor adjustment are narrowly defined, we do not support requiring use of categorical exclusions. We would appreciate the opportunity to work with the Committee on specific language regarding what constitutes minor modifications that would qualify for categorical exclusions. We have completed NEPA analyses on three-fourths of our grazing allotments and would note that whether we ultimately utilize a categorical exclusion or an environmental assessment, the upfront analysis work in determining the conditions of the range, is similar.

The Department does not support the language in S.1129 that provides for a new appeal process. The Forest Service is currently completing the revision of appeal regulations in an effort to provide for a more streamlined and efficient process (36 CFR 251, subpart C, "Appeal of Decisions Related to Occupancy and Use of National Forest System Land"). We are in the process of incorporating public comments re-

ceived. We believe these regulations, which will be designated 36 CFR 214 will provide for the most appropriate and effective means to address administrative decisions. We would also like to work with the Committee to consider language which would increase the responsibility of the permittees to ensure some level of self-monitoring of allotments to assist in ensuring the long-term health of these watersheds and landscapes.

The Forest Service is also concerned that S. 1129 would require the Forest Service to suspend a decision, if a permittee appeals a grazing permit or lease decision, until the appeal is resolved. While there are situations which can wait for the conclusion of the appeals process, there are others that may require more immediate action; e.g., unauthorized use of an allotment, significant impacts to other allotments, non-payment, unacceptable resource damage, etc.

While the Department does not support the bill as written, the Department supports the intent of the bill and would like to work with the Committee on specific language and concerns as noted. We do not want to increase efficiencies at the expense of good land stewardship. While the majority of the grazing permittees are excellent stewards in caring for the range resource, we also have examples where permittees need to take action to improve range conditions.

We welcome the opportunity to work with the Committee on the legislation to develop a bill that both increases efficiencies and protects the long-term health of our National Forests and Grasslands. Thank you for the opportunity to appear before you today and would be happy to answer any questions you may have.

ON S. 1635

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding S. 1635, the "San Juan Mountains Wilderness Act of 2011". I am Leslie Weldon, Deputy Chief for the National Forest System.

The Department supports S. 1635 and would like to offer minor modifications to the bill that would enhance wilderness values, clarify the special management area designation, and improve our ability to manage resources in the area. We thank Senator Udall for his collaborative approach and recognize the local involvement that has contributed to the wide support in Colorado for this bill.

The Department defers to the Department of the Interior in regard to the proposal to designate approximately 8,600 acres of Bureau of Land Management (BLM) lands as the McKenna Peak Wilderness.

S. 1635 would designate nine parcels of the Grand Mesa, Uncompahgre and Gunnison National Forests as wilderness under the National Wilderness Preservation System. These areas, totaling approximately 24,400 acres, encompass some of Colorado's most majestic, remote landscapes with many abundant wildlife species including elk, deer, bighorn sheep, bears and a variety of birds. Several world-class trout streams are also found in the areas. These areas also provide opportunities to experience solitude and primitive recreation use for members of the public seeking areas to connect with nature.

These parcels would be additions to two existing wildernesses: Lizard Head and Mount Sneffels. In addition, S. 1635 would designate the Sheep Mountain area as a Special Management Area to be managed to maintain the area's existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Also, S. 1635 would provide for a mineral withdrawal within a portion of Naturita Canyon.

Lizard Head Wilderness Additions

The Lizard Head Wilderness lies astride the spectacular San Miguel Mountains, 10 miles southwest of Telluride, Colorado on the Uncompahgre and San Juan National Forests. Elevations in the area range from 9,500 to over 14,000 feet. The wilderness is evenly split between the two national forests and is 41,200 acres in size. The proposed wilderness additions include five parcels, encompassing approximately 3,150 acres of National Forest System lands adjacent to the existing wilderness. Though neither of the Forest Plans recommends these areas for wilderness designation, wilderness designation would be consistent with current management of the area. No summer motorized recreation is currently allowed and effects to winter motorized recreation will be minimal as there is very little snowmobile use of the area.

Mount Sneffels Wilderness Additions

The Mount Sneffels Wilderness comprises more than 16,500 acres on the Uncompahgre National Forest between the communities of Telluride and Ouray, Colorado. Elevations range from 9,600 to 14,150 feet at the top of Mount Sneffels.

The proposed wilderness additions include four parcels that encompass approximately 21,250 acres of National Forest System land adjacent to the existing wilderness. As with the Lizard Head Additions, even though this area was not recommended as wilderness in the Forest Plan, designation is generally aligned with forest plan direction and will have minimal effects on summer and winter recreation.

We would like to work with the subcommittee to address some technical aspects of the bill. We recommend changing the wilderness boundary near Telluride to provide for a more definitive boundary by following a cliff formation. This would exclude the commercial foot race from the wilderness and follow a more recognizable topographic feature for the wilderness boundary.

Sheep Mountain Special Management Area

S. 1635 would also designate an area of about 21,600 acres of NFS land that lies south of the town of Ophir, Colorado as a special management area. About 10,850 acres are within the Uncompahgre National Forest and about 10,750 acres are within the San Juan National Forest. This area contains some lands purchased recently with funds provided by Congress as part of the Ophir Valley Land and Water Conservation Fund project.

Elevations in the area range from 10,200 to almost 13,900 feet at the top of Vermillion Peak. The area is dense with spruce and fir trees at the lower elevations. Above timberline are high alpine valleys with numerous lakes, tarns and waterfalls beneath dramatic 13,000-foot peaks and serrated ridges. The Forest Plans identify half of the area to be managed for semi-primitive non-motorized recreation and the other half for other recreation purposes.

The Department recognizes the desire of the bill sponsors to preserve the characteristics of Sheep Mountain as a Special Management Area for potential designation as wilderness. With respect to water rights and water development, Section 4(d)(3) would prohibit new water development projects in the special management area. This provision is more restrictive than section 4(d)(4) of the Wilderness Act under which the President of the United States may exercise discretion to authorize such facilities within designated wilderness areas if they are determined to be in the public interest. We support amending this provision so that it is consistent with the discretion authorized by the Wilderness Act.

Naturita Canyon Withdrawal

S. 1635 would also provide for a withdrawal on approximately 6,600 acres of National Forest System lands within Naturita Canyon on the Uncompahgre National Forest, about five miles south of the community of Norwood, Colorado. Naturita Canyon is a relatively low-elevation river drainage (7,000 feet) with steep canyon walls that tower 1,000 feet. There are no current leases within the area proposed for withdrawal. Impacts on available oil and gas resources for this withdrawal are unknown. Further exploration information would be needed for a conclusive assessment.

This concludes my prepared statement. I would be happy to answer any questions you may have.

ON S. 1687

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding S. 1687 the "Carson National Forest Boundary Adjustment Act of 2011". I am Leslie Weldon, Deputy Chief for the National Forest System.

S. 1687 would modify the boundaries of the Carson National Forest in the State of New Mexico to include approximately 5,000 acres of private land known as "Miranda Canyon" that is adjacent to the existing National Forest boundary. The Department supports the adjustment of the boundary because it will create an opportunity for the acquisition of Miranda Canyon property as part of the Carson National Forest.

The Miranda Canyon Property is currently owned by Weimer Properties and is located approximately four miles south of Taos, New Mexico. Weimer Properties spent several years proposing to develop a subdivision and seeking to acquire approval from the Taos County Board of Commissioners. Approval of the subdivision was not granted and the Taos County Commissioners requested the New Mexico Congressional delegation consider placing this land under the stewardship of the U.S. Forest Service.

The Miranda Canyon Property is an expansive piece of property that ranges in elevation from 7,200 ft. to 10,800 ft. The property has various vegetative types from low elevation sagebrush and pĩnon-juniper to high elevation mixed conifer forest in-

cluding large aspen clones. The landscape has numerous ridges and peaks that provide breathtaking views of the Rio Grande Gorge to the west and of Wheeler Peak (highest peak in New Mexico) to the north. The property contains historical features such as the Camino Real Trail and unique geologic features such as a small volcano and Miranda granite-1.7 billion year old rock outcrops that rival the age of rock found at the bottom of the Grand Canyon. There are also numerous meadows and riparian vegetation that provide excellent habitat for wildlife.

The proposed boundary adjustment has wide grass roots support from the local residents, the Taos County Board of Commissioners, the Village of Taos, and local Native American Tribes and Pueblos. To date, there has been no opposition voiced to adjusting the boundary of the Carson National Forest. The adjustment of the Forest boundary would open the door to potential federal acquisition of Miranda Canyon from a willing seller. The cost of acquiring the Miranda Canyon property would be approximately $10,500,000, and amount that would be subject to the availability of appropriations. The Weimar Properties has agreed to a conservation sale to the United States through an agreement with a 3rd party non-profit organization. This agreement keeps the property from being developed or sold on the open market until funding is appropriated. The acquisition would provide additional recreation opportunities for hunting, sightseeing, camping, hiking, interpretation, and horseback riding for the public.

Thank you for the opportunity to testify in support of S. 1687. The Department supports the acquisition of the Miranda Canyon property because it would make an outstanding addition to the National Forest System.

ON S. 1774

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding S. 1774, the "Rocky Mountain Front Heritage Act of 2011". I am Leslie Weldon, Deputy Chief for the National Forest System.

The Department supports S. 1774 and would like to work with the Committee to define and clarify questions of scope and timing for the noxious weed management and the non-motorized recreation opportunities.

The Rocky Mountain Front area of Montana on the Lewis and Clark National Forest lies just to the south of Glacier National Park and the Blackfeet Indian Reservation. It is an area where the plains meet the great continental divide. The area is marked by spectacular scenery and lush grasslands and that is home to a broad range of Montana's fauna and flora. The west side of the area is adjacent to the 1.5 million acre Bob Marshall Wilderness Complex most of which was designated by the original 1964 Wilderness Act. The east side of the area is bordered by vast private ranchlands that have helped define Montana's western heritage.

S. 1774 would designate approximately 195,000 acres of Federal land managed by the Forest Service and approximately 13,000 acres of Federal land managed by the Bureau of Land Management as the Rocky Mountain Front Conservation Management Area (CMA). The bill would also designate additions to the National Wilderness Preservation System of approximately 50,400 acres to the Bob Marshall Wilderness and approximately 16,700 acres to the Scapegoat Wilderness; both areas would be managed by the Forest Service.

The Department defers to the Department of the Interior on the designation of lands managed by the Bureau of Land Management (BLM).

The Rocky Mountain Front Conservation Management Area would be managed to conserve, protect, and enhance its recreation, scenic, historical, cultural, fish, wildlife, roadless, and ecological values. Within the Conservation Management Area, S. 1774 would permit the use of motorized vehicles only on existing roads, motorized trails and designated areas. S. 1774 would allow for the construction of temporary roads as part of a vegetation management project in any portion of the Conservation Management Area not more than ′ mile from designated roads. The bill also would authorize the use of motorized vehicles for administrative purposes including noxious weed eradication or grazing management. Livestock grazing would continue within the Conservation Area and Wilderness Areas where established prior to the date of enactment.

S. 1774 would require the Secretary to prepare a comprehensive management strategy for the Rocky Mountain Ranger District on the Lewis and Clark National Forest to prevent, control, and eradicate noxious weeds. The Secretary also would be required to conduct a study to improve non-motorized recreation trail opportunities.

For decades, the Forest Service has worked in partnership with landowners to protect the economic and social value of the land considered for designation as the

Conservation Management Area. There are 21 Federal land grazing allotments in the CMA. The landscape also provides some of the best backcountry recreation experiences in the world. Because of the popularity of the area, Federal and private land managers have realized that there must be specific management emphasis placed on how the lands are used and protected. As more people enjoy and use this area, influxes of noxious weeds have occurred that could change the native ecosystem structure and function and seriously impact the private ranches. S. 1774 calls for measures that would direct federal agencies to work with state and private organizations to implement projects that concentrate on the prevention, control and eradication of invasive plants such as spotted knapweed (Centaurea maculosa Lam.) that are threatening to change the ecosystem. The Lewis and Clark National Forest routinely works with other agencies and land owners to address weed concerns. The Lewis and Clark National Forest is in the process of developing a memorandum of understanding with the U. S. Department of Agriculture Natural Resources and Conservation Service (NRCS) that will addresses how the agencies will work together regarding noxious weed control measures on the interface between private and Federal lands. The Department supports the intent described in the bill to address noxious weeds.

The Department also supports the National Forest System lands identified for motorized and non-motorized recreation use, including mountain biking, in the conservation areas. The provisions in S. 1774 are consistent with the current travel management plan for the Rocky Mountain Ranger District. The travel management plan was approved by the Lewis and Clark National Forest Supervisor in October of 2007 after extensive public participation. Approximately 67,000 acres of land are identified in the forest plan for the Lewis and Clark as either recommended to Congress for wilderness designation or for further study for their potential as wilderness. The Department supports the wilderness designations included in this bill.

The Department recognizes the management of vegetation along current motorized forest roads is an important component of this bill. Public safety is an important consideration in an area that is impacted by mountain pine beetle, which has created physical risk to the roadways and possible increased fire risk due to ignitions from road users. The Beaver-Willow Road, a previously established road, crosses through the Bear-Marshall-Scapegoat-Swan inventoried roadless area. As we understand the bill, the road's location in an inventoried roadless area would not preclude timber harvest within ′ mile of the Beaver-Willow Road.

The bill also calls for a study to identify opportunities to improve non-motorized trails in the proposed Conservation Area. The Department would like to work with the Committee to further define the scope of this part of the proposed legislation.

All of the measures called for in this bill fall within the administrative authority of the Forest Service except for Wilderness designation and as stated, are consistent with current Forest Service management goals for the area. Several of the components such as comprehensive weed management strategies, treatment of vegetation and recreation opportunity studies are needs that exist throughout the Northern Region and Forest Service. The managers of the National Forest System must prioritize this work based on workforce capacity and other resources. Extending the required timeframes for the comprehensive noxious weed management strategy from 1 to 3 years and the study to address improved non-motorized trails from 2 to 3 years would allow more time for the required consultations and manage workload and resources.

Thank you for the opportunity to testify on this bill today and I will be happy to answer any questions from the Committee.

ON S. 1906

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding S.1906, the Cabin Fee Act of 2011. I am Leslie Weldon, Deputy Chief for the National Forest System. The Department appreciates the cooperative relationship between the Forest Service and the over 14,000 cabin owners, their representatives and the recreational experiences they enjoy on the National Forests.

S. 1906, which would replace Cabin User Fee Fairness Act of 2000 (CUFFA) on National Forest System (NFS) lands reserved from public domain, would revise the procedures for determining the amount an owner of a cabin on a National Forest must pay to lease the underlying federal property. There are advantages to S. 1906 from an administrative perspective. It would reduce the agency's cost of performing appraisals, and it would provide certainty for cabin owners in terms of anticipated fees. However, S. 1906 also presents challenges as currently written. The Forest Service has had constructive dialogue with the National Forest Homeowners Asso-

ciation and the Committee in attempting to resolve the issues we are raising in this testimony. The Forest Service welcomes the opportunity to work with Congress to create a bill that is fair to cabin owners, other users of the National Forests, and the taxpayers, and that can be administered without undue burden on the agency or cabin owners.

Before describing the challenges of this bill, it is important to consider the history of this program. In the early part of the twentieth century, the Forest Service began introducing Americans to the beauty and grandeur of their National Forests. One way to accomplish this objective was to permit individuals to build cabins for summertime occupancy within the National Forests. Cabin owners were permitted to occupy NFS land during the summer months in exchange for a fee. In 1915, the agency began to issue permits of up to twenty years for occupancy of NFS land. At that time, there was relatively little recreational use of the National Forests. Today, the National Forests host over 175 million visitors per year. When this recreational cabin program began, there was limited interest in building and owning a remote cabin on NFS land. Today, similar land at ski resorts, near lakes, and remote mountain settings are highly prized. In the early years, fees were nominal, but since the 1950's, the Forest Service has been mandated to obtain fees approximating market value and therefore provide a fair return to the American people for the use of NFS land. Increasing fees have led to controversy and have resulted in enactment of multiple fee moratoriums and caps over the years. CUFFA was the latest attempt to achieve an equitable fee for the use of NFS land.

CUFFA prescribes parameters for the appraisal process. Fees under CUFFA are based on five percent of the appraised market value of the lot under permit. The agency began the appraisal process pursuant to CUFFA in 2007, and plans to complete the remaining appraisals and resolve the appraisal appeals by the end of 2013. Some cabin owners raised concerns and requested relief. In some instances there were dramatic increases because the old fees were based on appraisals completed ten to thirty years ago. In response, appropriations acts have included limits on fee increases.

The bill would replace CUFFA on National Forest System (NFS) lands reserved from the public domain. It would create nine payment tiers, or categories, and provide for an additional payment on the sale or transfer of the cabin. It would require the agency to place cabins in the nine categories utilizing the most recent appraisals. All appraisals are scheduled to be completed by 2013. CUFFA would remain in place for cabins on acquired NFS lands.

Here are our concerns with the bill as written:

Cabin Transfer Fees—S.1906 requires the Department to obtain payment based on a percentage of the amount of the cabin sale. The Department is concerned about the administrative challenges of obtaining accurate sale information. Also we have concerns that the U.S. Government would be receiving proceeds tied to the value of the privately owned structure. The U.S. government has no stake in the value of the structure, only the lease value of the public land. The Department is not opposed to collecting a standard fee when the permit is transferred.

Fee Amounts—Our analyses indicate that many of the proposed fees, particularly for the higher valued lots, would be less than those which would be paid under current law and which results in fees being below market value. As previously noted, fees below market value can lead to substantial profits when cabins are sold, as the sale prices will reflect the value of the locations more than the value of the cabins. To reduce the likelihood of these profits, the proposed fee schedule should be more closely tied to market value.

Judicial Review—The Department recommends that the venue for any action brought before the U.S. District Court be in the judicial district in which the cabin is located and not where the permit holder resides. While we do not anticipate a significant number of legal challenges, the administrative costs could otherwise be a significant burden for the agency.

Different Fee Systems based on Land Status—The bill applies to cabins on NFS lands reserved from the public domain which is the status of NFS land in much of the western U.S. However, the NFS also consists of lands acquired from other ownerships. Most of the eastern and mid- western National Forests are comprised of acquired lands. We estimate that seven to ten-percent of the estimated 14,000 cabins nationwide are located on acquired NFS lands and would be subject to a different fee system. It would be burdensome to administer two separate fee systems. To simplify the

process and reduce the administrative burden, the Department recommends that the same fee system apply to all cabins on all NFS lands.

Technical Changes—Additionally, there are a number of additional technical suggestions which we would like to share with the Committee.

Several years ago, the Forest Service conducted a study that estimated that the annual cost of administering the Recreation Residence Program. In California the administration of this program was estimated to account for over fifteen percent of the total recreation budget. On the El Dorado National Forest in California, the Forest Service estimates that one third of the recreation budget is spent administering this program. While there are some 14,000 cabin owners, there are 175 million visitors to the National Forests each year. S.1906 would reduce that administrative burden by reducing appraisal needs. This would increase the availability of funding in the recreation budget for the Forest Service to provide a quality recreational experience and protect the environment for all who use the National Forests.

We welcome the opportunity to work with the Committee to complete legislation that is fair to the taxpayer, the cabin owner, and other users of the National Forests and Grasslands, and can be administered without undue burden on the agency or cabin owner. Again, we appreciate the recent forthright and productive discussions regarding these concerns. We can support this legislation if these concerns are addressed.

Senator WYDEN. Alright. Does that conclude your remarks?

Ms. WELDON. That concludes my remarks.

Senator WYDEN. Alright. Very good.

My colleague from Washington State has been very patient. Would you like to make any remarks, Senator Cantwell?

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

Senator CANTWELL. Thank you, Mr. Chairman. I'm sorry I'm getting to the hearing late here. But I thank you for holding this important hearing.

I'm pleased to see that the committee is considering the San Juan Island National Conservation Area Act that I've worked so closely on with many people in San Juan and obviously with my colleague in the House, Congressman Larson and my colleague here, Senator Murray. I'm very pleased that the Bureau of Land Management is here today.

You probably know that last month the Acting Director and the Secretary were out in the Northwest for a community listening session and had a lot of input from residents of the area. I would also like to welcome Mr. Doug Gann of Kirkland, Washington, who is here to discuss the Cabin Fee Act. It is good to see that we have people here talking about legislation that Senator Tester and the Forest—that we're all working together to make sure that there are not unreasonable fees on those cabins.

The San Juan Island legislation is truly important. I think I'll wait to my questions to go into more detail. But the fact remains for such a pristine and unbelievable area of our country there is no long term comprehensive management plan in place.

Since we just went through a process in 2005 with the State Department of Natural Resources, when a unilateral decision was made to divest a property in San Juan County including Mitchell Hill, which is a very popular and scenic hiking trail in San Juan Island. While these lands were actively pursued by private, out of State real estate developers, we were proud to work with the local community to make sure that these areas were protected. But like this situation there's no protection for permanent protection for the

Bureau of Land Management on these lands and these are very, very special places. So that is why we have introduced this legislation.

If enacted, it would designate all 1,000 acres of the BLM land in the San Juan Island area as a National Conservation Area ensuring that they would remain a national treasure. So I look forward to hearing more testimony specifics today from Mr. Pool. But thank you very much for being here.

We certainly want to make sure that I think from our listening session in the community, I could tell you that everybody wants to make sure that the land continues in its current status. The question is how best to do that. We think this provides a very positive step forward.

So thank you, Mr. Chairman. I'll wait for my questions.

Senator WYDEN. Thank you, Senator Cantwell. I note that you have put your usual due diligence to this cause and that your bill has the support of the relevant agencies. So thank you and appreciate your good work.

Let me start with you, Ms. Weldon, if I could with a question about cabin user fees. Your testimony suggests that the proposed fee schedule, in your view, ought to be more closely tied which you describe as the market value of the land used for cabin sites. How do you envision this actually working? I heard you say something about tiers or something.

I think as much as anything, you know, folks in our part of the country want to get a sense of how you all envision something like this actually working.

Ms. WELDON. You know, the most distinct way to say that is that there's been great work done, I think, to establish the set of tiers. Which generally correlate with what we see as a fair way of looking at the different land values that are associated with cabins. You know, that may occur in high value, high value recreation in real estate areas compared with others that might not be that way.

We're simply saying that there's an opportunity for us to look at adding one additional tier on the high end that would assist in rounding out what we would see as fair as it relates to the some of the higher end valued, land values associated with the cabins.

Senator WYDEN. Alright.

Question for you also on grazing. Mr. Pool testified that the Bureau of Land Management has an estimated backlog of 4,200 unprocessed grazing permits. Ms. Weldon, does the Forest Service have a similar backlog and if so, can you give us any sense of the numbers of unprocessed grazing permits on Forest Service land?

Ms. WELDON. Thank you for your question, Senator. At this point the Forest Service does not have a backlog of unprocessed grazing permits.

Senator WYDEN. Alright.

One last question deals with S. 1129 and particularly, so I can understand your thoughts on this, you know, categorical exclusion issue. Both of you offer in your statements concern about that provision that categorically, S. 1129, categorically excludes a grazing permit renewal or transfer from the NEPA statute if the decision continues the current grazing management of the allotment. Now, it's been my understanding that you all essentially have the au-

thority to, administratively, establish categorical exclusions under NEPA for specific activities.

Do you all use that now? Let's just get for the record your agencies, you know, position about whether you're using categorical exclusions for grazing management activities.

Mr. POOL. We do on certain, I would call them custodial type actions whether it be fence replacement, fence repair, emergency feeding, replacement of a cattle guard. It's the day to day things that a rancher carries out to maintain his allotment.

Senator WYDEN. Ms. Weldon.

Ms. WELDON. What I would add is similar situation. We don't have a category right now that fits as far as reauthorization and renewal decisions more for the operational side.

Senator WYDEN. OK.

Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Ms. Weldon, first I appreciate the Department's support of the intent of the grazing bill. I just wanted to know if you'll commit to working with my staff to address the specific language in the concerns that you've addressed?

Ms. WELDON. Yes, we're committed and we really appreciate your assistance with this bill.

Senator BARRASSO. Thank you.

I want to ask one other question of you. The groups such as Western Watershed Project and the WildEarth Guardians repeatedly sue to put family farms and small ranchers out of business. Recently the Oregon Natural Desert Association requested, I think, nearly a million dollars of taxpayer money to reimburse their attorney's fees from suing the Forest Service to shut down grazing in Eastern Oregon.

What's the impact on an agency budget such as yours on an agency's time and personnel when it comes to defending against these types of, what I believe to be, extreme anti-grazing lawsuits?

Ms. WELDON. Thank you for your question, Senator.

The—we don't formally track the impact as it relates to cost in resource time. We, as part of our current process, you know, have gotten to the point where we anticipate and plan base on our analyses have gone to see where there may be challenges. Our goal is to do as much as we can through a new process to—of objections to resolve those up front.

We know that the more agreement we have up front than the more successful we can be with having sustainable economically beneficial activities such as grazing occurring on public lands. Equal Access to Justice Act is something that we're required to follow. The payments that we make do come out of our appropriated programs to do that.

Senator BARRASSO. So while you haven't specifically tracked the specific dollar figures in terms of the budgets, the time and the personnel, there is clearly an impact and it does affect other programs.

Ms. WELDON. That's correct.

Senator BARRASSO. Thank you.

Mr. Pool, with respect to S. 2015, I appreciate the BLM being supportive of this land conveyance. So thank you.

I did want to ask about section 123 of the Consolidated Appropriations Act of 2012. It provided flexibility when considering NEPA analysis for trailing or crossing permits. With the spring turnout approaching for permit holders, how's the BLM interpreting and implementing the law?

Mr. POOL. Thank you for that question, Senator.

First of all the 2-year rider was welcome relief for the Bureau as has been the case with previous riders. We're currently—the rider did emphasize and grant BLM the discretionary authority to use CXs for trailing permits. So we've offered that to the discretion and judgment of our managers in the field.

Trailing permits can vary in size and duration and proximity to other values. So we're allowing our managers to address local conditions and then make a determination as to what appropriately NEPA coverage should be applied.

Senator BARRASSO. OK. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. OK. I thank my colleague.

Senator Cantwell, any questions?

Senator CANTWELL. Yes, thank you. Thank you, Mr. Chairman.

Mr. Pool, I wanted to ask you about I mentioned this Mitchell Hills situation that happened on the San Juan Islands. The Department of Natural Resources made a decision to get rid of that land and then a challenge into whether we were going to be able to preserve it or not. So is there anything in current law that prevents a future administration from deciding to divest itself of the BLM lands on the San Juan Islands?

Mr. POOL. Not if in fact they've been specially designated as being proposed under this bill as a National Conservation Area. That would be exceedingly difficult if the Congress elects to designate the 1,000 acres rocks and islands.

Senator CANTWELL. Unless they do, you're saying there's nothing that protects them in the future?

Mr. POOL. I think, well, currently we're managing them for their conservation value. Portions of the rocks and islands have an administrative designation. We call that an area of critical environmental concern.

But it does not carry the weight as a Congressional designation would in terms of long term protection and preservation.

Senator CANTWELL. OK. If this legislation was passed, obviously, the management plan and implementation is critically important to the local community. How would the Bureau of Land Management commit to fostering a, kind of, community environment on the management, you know, an advisory plan or drafting or implementation or management. How would that function work?

Mr. POOL. I think it would include all of the above which we've done on similar type designations. We would develop a plan for the area. Obviously in close concert with the affected citizens.

We have other conservation templates out there. State of Washington and Fish and Wildlife Service, Park Service, they're all represented in the providence. So we're kind of the new kids on the scene here. Obviously we're going to respect some of the conservation strategies and principles that they've also adopted and be very similar to that.

Senator CANTWELL. OK. What do you think that those kinds of plans would affect? I mean, I heard some concerns by local land owners that maybe it would affect lands outside of the area such as adjacent properties.

Mr. POOL. The rocks and islands primarily constitute the 1,000 acres that's under consideration for NCA management designation. They have been protected and conserved for many, many years. They're——

Senator CANTWELL. I'm trying to get at the point would you have any effect on private landowners?

Mr. POOL. No.

Senator CANTWELL. OK, thank you.

Mr. POOL. No, ma'am.

Senator CANTWELL. Would you have any effect on if we came up with this plan, would that have any effect on boating and fishing activities?

Mr. POOL. Only as regulated by other State entities. We would respect that.

Senator CANTWELL. OK. Then any property that was adjacent wouldn't be impacted?

Mr. POOL. No, ma'am.

Senator CANTWELL. OK.

So basically if we move forward on this legislation we could come up with something that's more concrete for the future, work with the community, and would that be a continued process?

Mr. POOL. It would be. Yes, the development of a plan, plan implementation and then we usually use a community based planning type initiative. We want the public to participate and help the BLM identify how these rocks and islands should be better protected and conserved.

Senator CANTWELL. OK. Alright. Thank you, Mr. Chairman.

Senator WYDEN. I thank my colleague.

Mr. Pool, before we want to wrap up I also want to tell you how much I appreciate your comments about my Rogue legislation. In our State there's a tradition of bringing stakeholders together to protect special places. President Obama signed a number of our bills early in 2009 that came about because all over Oregon folks got together and tried to work and find common ground.

You look at a lot of these, you know, protected landscapes. The fact of the matter is these landscapes are just magnets for recreation. They're incredibly valuable to the economy.

That's why when a group of citizens can come together and protect a treasure and also do it in a way that folks did on the Rogue with scores of businesses, you know, supporting it, I think you're showing that, particularly, right now in a tough economy, people see recreation really is a path to some jobs and economic vitality that's much needed, often in rural areas that are hard hit. So we thank you for your favorable comments.

If my colleagues don't have any other questions at this point, we'll excuse both of you and go to our next panel. Thank you both.

Our next panel.

Mr. David Strahan of Grants Pass, Oregon.

Mr. Jim Magagna, Executive Vice President of Wyoming Stock Growers Association.

Mr. Doug Gann, National Forest Homeowners of Kirkland, Washington.

Mr. Dusty Crary, I hope I'm pronouncing this right, Choteau, Montana.

Mr. Andy Kerr, Advisor to the World Earth Guardians in Washington, DC.

If you all will come forward.

Dusty, did I do too much damage to your hometown?

Mr. CRARY. Nope, you didn't.

Senator WYDEN. OK. Pretty good for government work. OK.

Mr. Strahan it is a long trek from beautiful Grants Pass to Washington, DC. We really appreciate your coming.

We'll make your prepared remarks a part of the record. If each of you could take 5 minutes or so and just summarize your main concerns. I know everybody just, as I indicated earlier, just almost feels this and only Dr. Barrasso would probably understand almost a physiological desire to actually read all the words. But all the words are going to be part of the hearing record. That will offer the most time for colleagues to ask questions.

So, Mr. Strahan, thank you and go ahead.

STATEMENT OF DAVID STRAHAN, GRANTS PASS, OR

Mr. STRAHAN. Honorable Chairman Wyden and fellow members of the Subcommittee on Public Lands, thank you for inviting me to testify regarding S. 2001, a bill to expand the Rogue Wilderness and add additional wild and scenic river designations to tributaries along the lower Rogue corridor in the State of Oregon. It is truly an honor to be here today to speak in favor of this legislation.

As Honorable Senator Wyden said, my name is Dave Strahan. I live in Grants Pass, Oregon, where I was born. Grants Pass is a city that straddles the Rogue with a population of around 35,000 people in a region of over 300,000 people.

The Rogue has long been an international draw for tourists. It has also provided sanctuary for notable celebrities over the years. Our river has provided inspiration for George Foreman, Zane Grey and countless other river lovers. Zane Grey proclaimed the historic beauty of this area and made it his part time home. "The happiest lot of any angler," wrote Grey, "would be to live somewhere along the banks of the Rogue River, the most beautiful stream of Oregon."

Growing up the Rogue and its watersheds provided my family and me countless hours of outdoor recreation and enjoyment. Family camping, fishing, hunting and boating is what we did when I was growing up as was the case with most of my peers. Many of my fondest memories include times spent on or near our river. I continue to create those memories today with my own family.

When I graduated from high school in 1972 the majority of my friends moved to larger cities to take advantage of more varied education and employment opportunities. My love of the Rogue, its watersheds and all they have to offer compelled me to stay in the Rogue Valley and create a life for myself and to raise my family. My oldest daughter will make me a grandfather in May and my youngest graduates from high school this spring. When I die, I hope to leave a Rogue River that my kids, my grandkids and their

peers can continue to build memories around for generations to come.

While attending college in Ashland, Oregon, another Rogue basin community, I began selling sporting goods as a retail clerk, part time in 1975. Since that time I have made my living and supported my family selling outdoor recreation equipment in the sporting goods industry. I had the best job in the world selling the tools for the activities I so enjoy and have been such a large part of my life in one of the most beautiful and bountiful regions of our great Nation.

Since 1995 I have proudly been a territory salesman for Big Rock Sports. Big Rock Sports is the largest distributor of sporting goods in the Nation. Big Rock Sports, headquartered in Morehead City, North Carolina, provides well paying jobs all across our country with facilities in North Carolina, Pennsylvania, Minnesota, Montana, California and Oregon. We partner with and help thousands of small family businesses throughout the country and proudly present the values and culture that are such an important part of our country's heritage and quality of life.

But my passion for being here today is not just about me, my career and my love of the Rogue and all it has to offer. I am also here today representing 110, the 110, Oregon businesses and organizations that support expansion of the Wild Rogue Wilderness. I also speak for the Northwest Sport Fishing Industry Association, a Northwest industry group made up of approximately 300 outdoor recreation businesses in the Pacific Northwest.

A 2009 economic study by Econ Northwest, an economic analyst group, estimates economic benefits generated from fishing, white water rafting and hiking along the Rogue River brought in an annual income of over 18.1 million dollars to our region. The Rogue basin's local economy, culture and heritage is based on the Rogue River and its supporting watersheds. With all this in mind it is with great passion and a great deal of empathy for the hundreds of businesses in our region, as well as our quality of life in the Rogue basin and the entire Pacific Northwest, that I urge you to advance Senate, S. 2001 and work to ensure that our irreplaceable Rogue River and its supporting watersheds are protected for future generations.

Thank you for your time. Once again, I thank Senator Wyden and all of you for the opportunity to speak on something that is so important to me. Thank you.

[The prepared statement of Mr. Strahan follows:]

PREPARED STATEMENT OF DAVID STRAHAN, GRANTS PASS, OR

Honorable Chairman Weldon and fellow members of the Subcommittee on Public Lands and Forests of the Senate Energy and Natural Resources Committee, thank you for inviting me to testify regarding S. 2001, a bill to expand the Wild Rogue Wilderness Area in the State of Oregon, and to provide additional protections for Rogue River tributaries via additional Wild and Scenic river designations in the lower Rogue River area. It is an honor to have this opportunity to speak in favor of this legislation.

My name is Dave Strahan. I was born, raised and still live in Grants Pass, Oregon. Grants Pass is a city with a population of around 35,000 people in a county of roughly 83,000 people. Grants Pass straddles the Rogue River in the heart of the Rogue Basin in Southern Oregon. The Rogue Basin is home to several other cities, larger and smaller, creating an area population of approximately 300,000 people.

The Rogue River's headwaters begin near Crater Lake, a national treasure in its own right. It then flows 215 miles through the mountains and valleys of southwestern Oregon, eventually emptying into the Pacific Ocean near the town of Gold Beach.

The steep, rugged basin, stretching from the western flank of the Cascade Range to the northeastern flank of the Siskiyou Mountains varies in elevation from 9,485 feet at the summit of McLaughlin in the Cascades to sea level, where it meets the ocean.

The Rogue has long been an international draw for tourists. It has also provided sanctuary for many notable celebrities over the years. I have my mother's 1943 Grants Pass High School year book with Clark Gable's autograph in it. Our river has provided inspiration for George Foreman, Zane Grey and countless other river lovers. Zane Grey proclaimed the historic beauty of this area, and made it his part time home. "The happiest lot of any angler" wrote Grey "would be to live somewhere along the banks of the Rogue River, the most beautiful stream of Oregon."

The Rogue has been an integral element in my family's life for generations. In the late 1800's my great grandparents on my father's side homesteaded on a tributary of the Rogue, just a few miles south of Grants Pass. My grandparents on my mother's side moved to Grants Pass in 1927 and built Kamp Kathleen, a motor court named after my mother that catered to salmon fishermen, as well as other tourists.

Growing up, the Rogue and its watershed provided my family and me with countless hours of enjoyment and outdoor recreation. Family camping, fishing, hunting and boating is just what we did when I was growing up, as was the case with most of my peers. Many of my fondest memories include time spent on or near our river, and I continue to create those memories today, with my own family. As a sort of rite of passage, I made my first raft trip down the lower Rogue canyon as a 16th birthday present in 1969 with my older brother Mike. Since then, I have made hundreds of trips down our river and have had the pleasure of introducing many, many awestruck visitors to our special place.

When I graduated from high school in 1972, the majority of my friends moved to larger cities to take advantage of more varied education and employment opportunities. My love of the Rogue, its watersheds and all that they have to offer, compelled me to stay in the Rogue valley to create my life and raise my family. My oldest daughter will make me a grandfather in May and my youngest graduates from high school this spring. When I die, I hope to leave a Rogue River that my kids, my grandkids and their peers can continue to build memories around for generations to come.

While studying business administration and marketing for four years at what is now Southern Oregon University in Ashland, Oregon, another Rogue basin community, I began selling sporting goods as a retail clerk part time in 1975. Since that time, I have made my living and supported my family selling outdoor recreation equipment in the sporting goods industry. I have the best job in the world, selling the tools for the activities I so enjoy and that have been such a large part of my life, in one of the most beautiful and bountiful regions of our great nation.

Since 1995 I have proudly been a territory salesman for Big Rock Sports, the largest distributor of sporting goods in the nation. Big Rock Sports, headquartered in Morehead City, North Carolina, provides well—paying jobs all across our country with facilities in North Carolina, Pennsylvania, Minnesota, Montana, California and Oregon. We partner with and help support thousands of small family businesses throughout every state in our country, and proudly represent the values and culture that are such an important part of our country's heritage and quality of life.

But my passion for being here today is not only about me, my career and my love of the Rogue and all it has to offer. I am also here today representing the 110 plus Oregon businesses and organizations that support expansion of the Wild Rogue Wilderness and Wild and Scenic protections on the Rogue. I also speak for the Northwest Sportfishing Industry Association, a northwest industry group made up of approximately 300 outdoor recreation businesses in the Pacific Northwest. Additionally, I am on the Stream Restoration Alliance of the Middle Rogue's board of Directors. The Stream Restoration Alliance, a watershed council dedicated to restoring urban streams through volunteer efforts, is also a supporter of the proposed legislation.

Other organizations representing thousands of people across southwest Oregon and throughout our region—such as the Middle Rogue Steelheaders, the Native Fish Society, the Oregon Council of Trout Unlimited and the Pacific Coast Federation of Fishermen's Associations—have thrown their support behind our Rogue River and the proposed legislation.

Besides just the business and outdoor recreation communities, a recent poll conducted in rural southwestern Oregon by Moore Polling showed that 77% of those polled support protection of Rogue River tributaries. Even when told the details of the proposal and what it would disallow, the majority still support expansion of the Wild Rogue Wilderness. Pollster Bob Moore observed: "The majority of voters clearly favor additional protection . . . "

Also, as part of an unprecedented agreement negotiated by conservation organizations and the American Forest Resource Council (AFRC), a timber industry association, AFRC agreed not to oppose this legislation. Tom Partin of AFRC was quoted in the Grants Pass Daily Courier on May 25, 2010, "The area you view from the Rogue River is not going to be (logged). A lot of it is too rugged and wild. There is not a lot of timber value that we would be giving up if it went into wilderness values."

Bear in mind that the Rogue River is the largest producer of Pacific salmon in Oregon outside of the Columbia River, with historically 100,000 salmon and steelhead returning from the ocean each year. Rogue River salmon and steelhead travel great distances along the Oregon and northern California coasts and support a significant portion of our ocean salmon fisheries. With that, they also provide the backbone for sport and commercial fishing economies worth billions of dollars annually to our west coast. The very tributaries under consideration in this piece of legislation are essential to the future of these fish and the sustainable economy they support. Salmon and steelhead need and thrive on the clear, cold water that these tributaries provide.

A 2009 economic study by ECONorthwest, an economic analyst group, estimates the economic benefits generated from fishing, white water rafting, (just over 13,000 people floated the lower Rogue in 2007) and hiking, (5,000 people hike along the Rogue River in the proposal area on average), occurring entirely within the proposal area to be $18.1 million in economic activity and nearly 300 full and part-time jobs annually. When one considers the economic ripple effect in terms of restaurants, gas stations, grocery stores and motels, it is clear that the outdoor recreation industry is a very substantial contributor to our economy. While tourism may not support our entire economy, the diversity it brings certainly adds to the stability of our economy.

There are millions of dollars more in benefits associated with the quality of life in the region provided by a clean, attractive river corridor with healthy fish runs and intact watersheds. My Rotary group, Gateway Rotary, recently heard a presentation from the CEO of Three Rivers Hospital in Grants Pass. He explained to us how when recruiting doctors and other health care professionals, our river and the wild areas around it are important elements in luring these folks to our community. In my eight years serving on the Three Rivers School District Board of Directors, I was a part of many hiring committees for Administrators, and our outdoor quality of life was a very large factor in attracting applicants. These professionals all contribute to our economy, often with more discretionary income than others. An investment in our Wild and Scenic Rogue is an investment in the stability of our economy.

The Rogue Basin's local economy, culture and heritage is based on the Rogue River and its supporting watersheds. With all of this in mind, it is with great passion and a great deal of empathy for the hundreds of business people in our region, as well for our quality of life in the Rogue Basin and the entire Pacific Northwest, that I urge you to advance S. 2001 and work to insure that our irreplaceable Rogue River and its supporting watersheds are protected for future generations.

Thank you for your time. And once again, I thank Senator Wyden and all of you, for the opportunity to speak on behalf of something so profoundly important to us all.

Senator WYDEN. Thank you and thank you for a very helpful statement.

Mr. Magagna, thank you and we're glad to hear from the Wyoming Stock Growers and Public Lands Council.

STATEMENT OF JIM MAGAGNA, EXECUTIVE VICE PRESIDENT, WYOMING STOCK GROWERS ASSOCIATION, PUBLIC LANDS COUNCIL, CHEYENNE, WY

Mr. MAGAGNA. Thank you, Mr. Chairman. It's a pleasure to be here today and certainly with Ranking Minority Member, Senator Barrasso, a good friend of mine. I appreciate this opportunity.

I've been a public land grazing permitee for over 50 years both with the Forest Service and until just recent years—with the BLM and until recent years with the Forest Service. I've watched the evolution of grazing on public lands, the evolution of the livestock industry and the evolution of the science of range management on public lands. I view S. 1129 as a response to that evolution and therefore something that's critically important to us and certainly one that the public land livestock industry supports as essential because they're essential to restoring a stable business environment to our industry.

As a representative of Public Lands Council, Mr. Chairman, for the record, I'm also speaking on behalf of the National Cattlemen's Beef Association, the—or the American Sheep Industry Association and the Association of National Grasslands, all of whom are affiliates of the Public Lands Council.

Historically grazing was viewed as one of the multiple uses, the earliest multiple use, in fact, of our federally managed lands. Today it's also come to be recognized, as was noted I believe in the previous testimony from the two land agencies, as an important tool for the management of these lands. It's really more than just managing a piece of land. It's a tool for managing Western ecosystems or watersheds as you may prefer to term them.

In our case approximately 40 percent of the beef cattle in the West and half of the Nation's sheep spend some time on public lands. So it's critical as well to our industry. Today we have a lot of threats to that industry, mostly could all be summed up by uncertainties brought on by competing demands at much higher values for the private lands that are associated with these public lands via State taxes, by government regulation and certainly by a lack of certainty in our grazing permits. Together these create a business environment that's less promising and less certain than I've known in any time in my over 50 years involved in the Public Land Livestock industry.

Long term grazing permits are really at the foundation of not only a stable industry, but the evolving science of rangeland management. It's become—grazing has come to be recognized by range scientists, land management agencies and ranchers as an important tool in achieving resource management objectives. For a long time we looked at grazing in terms of what do we this year different than we did last year.

That hasn't lost some of its importance. What the science of rangeland management has taught us is that it takes a long term look. You're able to change grazing systems and thereby change the resource itself to a more favorable State by long term commitments.

So certainly a 20-year grazing permit based on that science alone just makes sense today. It will provide more ability to apply rangeland science. Of course it will provide certainty and agency efficiency. I would emphasize that agency efficiency.

So much of what the Federal land agencies do today in addressing livestock grazing is done superficially, not through any fault of these agencies. But through a lack of resources and the hurriedness that comes from having to renew permits in a timely fashion

every 10 years from having to do a standards and guidelines assessments in the short term.

Second, the proposal to codify the language simply takes something that Congress has been doing and we appreciate it, for each of the last 10 years. Finally puts that in a permanent form so you're not having to deal with it.

Finally I would turn to the provisions applying Administrative Procedures Act to livestock grazing and particularly emphasize the Forest Service. I was pleased to hear them state today that they're looking at some changes. Whether those changes are what's contained in this bill today or something else, our industry has stocked for over 35 years to bring some changes to the Forest Service process so that an appeal is not simply being decided by the next line officer who is a supervisor of the individual who issued the original decision.

Finally we can't ignore the public benefits that come from livestock grazing. Preventing land fragmentation of private lands, protecting wildlife habitats, scenic vistas and keeping these land ecosystems together. There are certain times when small actions can produce great results. I view S. 1129 as being one of those times and urge the committee to support this bill and to move it forward with it in an expeditious manner.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Magagna follows:]

STATEMENT OF JIM MAGAGNA, EXECUTIVE VICE PRESIDENT, WYOMING STOCK GROWERS ASSOCIATION, PUBLIC LANDS COUNCIL, CHEYENNE, WY, ON S. 1129

I am Jim Magagna, Executive Vice President of the Wyoming Stock Growers Association, the 140-year-old voice of the Wyoming cattle industry. I am also a lifelong sheep producer and former president of the American Sheep Industry Association (ASI) and the national Public Lands Council (PLC). I appreciate the opportunity to appear before you today to share the western livestock industry perspective on S. 1129, the "Grazing Improvement Act of 2011".

Today I am representing both the Wyoming Stock Growers Association (WSGA) and PLC. WSGA has approximately 1000 members, of which over fifty percent graze livestock on Bureau of Land Management (BLM) or U.S. Forest Service lands. Affiliates of PLC include the National Cattlemen's Beef Association (NCBA), the American Sheep Industry Association (ASI), the American National Grasslands Association (ANG) and sheep and cattle organizations from thirteen western states.

Livestock grazing represents the earliest use of federally managed lands (public lands) as our nation expanded westward. Today it continues to represent a multiple use that is essential to the livestock industry, wildlife habitat, open space and the rural economies of many western communities. While grazing was historically viewed only as a "use" of the public lands, today it has also come to be recognized as an important "tool" for the management of these lands.

The latest available data show that there were over 8.7 million animal unit months (AUMs) of grazing authorized on BLM lands in fiscal year (FY) 2010. This grazing was administered through 17,740 permits and leases.[1] The Forest Service in the fifteen western states permitted 6.1 million AUMs on National Forests and an additional 2.2 million of National Grasslands.[2] While data is often cited showing the relatively small amount of beef or lamb that is produced on public lands, such statements ignore the importance of these lands in an integrated ranching operation. Approximately 40% of beef cattle in the West and half of the nation's sheep spend some time on federal lands. Without public land grazing, grazing use of significant portions of state and private lands would necessarily cease, and the cattle

[1] Fact Sheet on BLM Management of Livestock Grazing, September 2011, Table 3-8 pc. Fiscal Year 2010.

[2] USDA—Forest Service, Annual Grazing Statistical Report, Grazing Season 2009.

and sheep industries would be dramatically downsized, threatening infrastructure and the entire market structure.

The public land livestock industry seeks and supports the essential legislative changes incorporated into S. 1129 for one primary reason-they are essential steps in restoring a stable business environment to our industry.

Today's public land livestock industry is not the industry of the early 20th century. Private ranchland values in the West have skyrocketed based on competing uses—primarily rural subdivision development. Increasing land values render the estate tax-from which we have failed to secure permanent relief-a bigger threat than ever, making succession planning an ominous prospect for future generations of ranching families. Enhanced livestock genetics and current market prices for sheep and cattle have combined with the rising land prices to dramatically increase the need for operating capital. Burgeoning government regulation demands ever-greater investment of both financial and human resources. Agricultural lenders are demanding greater long-term certainty that the operation, including public land grazing permits, will be kept intact. Altogether, these and other factors create a business environment that is less promising and less certain than ever.

Long-term certainty of grazing permits is also at the foundation of the evolving science of rangeland management. Over the past forty years, livestock have become recognized as an important tool for rangeland management on both public and private lands. While appropriate levels of utilization remain important, timing and intensity of grazing have become key management tools. Sophisticated analytical systems allow livestock grazing to be utilized to bring about significant changes in forage composition over long periods of time. One example of such a system is the State and Transition Model (STM), which has been embraced in recent years by both BLM and Forest Service. These approaches demand a long-term commitment to a grazing system.

When I began my career in ranching in the 1960s, renewal of my term grazing permits every ten years on both BLM and National Forests was little more than an administrative exercise. The permit renewal routinely arrived in the mail. I signed and returned it and shortly thereafter received a signed copy for my files. Any on-the-ground issues regarding management were addressed during the many opportunities that the agency range personnel and I had to spend time together in the field.

Today my permit renewals are subject to compatibility with a Resource Management Plan or Forest Plan, prior environmental analysis under the National Environmental Protection Act (NEPA), a potential need for consultation under Section 7 of the Endangered Species Act and the likely appeal by an anti-grazing organization that has been granted "interested public" status by the agency and standing by the courts. The opportunities that I once appreciated to spend time in the field with range personnel have become scarce as agency personnel are inundated by process, Freedom of Information Act requests and appeals. The NEPA analysis now deemed necessary is seldom completed in a timely manner. As a result, the public land rancher has, for the past ten years, been at the mercy of the annual congressional appropriations rider to allow permits to be renewed in a timely manner. It just makes sense to codify language that has been approved annually by Congress for over a decade.

From the perspective of livestock production, modern range science and land agency work load, a longer-term approach to the permitting of public land grazing is needed today. Section 2 of the Grazing Improvement Act of 2011 directly meets this need by extending term permits to 20 years. This critical change will bring needed certainty, improved range management and greater agency efficiency.

In the context of this change to a 20 year permit, it is important to note that the ability of the agency to make needed management adjustments through the annual authorization to graze (BLM) or annual operating plan (Forest Service) is not diminished. In addition, the agencies retain the authority to issue shorter term permits under special conditions.

Section 3 of S. 1129 takes an additional important step in providing certainty and stability to the industry by incorporating into statute language that makes permanent the protection that has been provided by the appropriations rider on permit renewal. It recognizes that the renewal, reissuance or transfer of a permit does not, per se, have a resource impact so long as there is no change in the grazing management. By categorically excluding these actions from the requirement to prepare an environmental analysis, this section restores the role of environmental analysis to its proper function-an analysis of the potential impacts of a commitment of resources (changes to an RMP or Forest Plan) or a new on-the-ground activity. This section also takes a practical approach by properly acknowledging that minor modifications torenewed, reissued or transferred permits are acceptable, so long as they

do not interfere with the achievement of or progress toward land and resource management plan objectives, and so long as extraordinary circumstances do not indicate a need for further analysis.

Over the past ten years, the agencies have operated under pressure to produce environmental analyses on permit renewals either under a schedule imposed by Congress, or under self-imposed schedules. These timelines have seldom been met. Nevertheless, the time pressures have led to NEPA analysis that is frequently either substantively or procedurally inadequate and is therefore subject to successful administrative and judicial challenge. Reducing the requirement for perfunctory environmental analysis will enable the agencies to be more thorough when analyzing actions that actually impact the resource. It will also help reduce the opportunity for litigation by extreme anti-grazing groups who, by virtue of fee-shifting statutes such as the Equal Access to Justice Act, have made a cottage industry out of process-based litigation, draining agency budgets and reaping taxpayer dollars to the tune of hundreds of thousands, annually.

Taken together, Sections 2 and 3 represent a major step toward returning the focus of public land grazing to on-the-ground activities including management plans and range improvements. The resource, the land agencies and the grazing permittees all stand to benefit from these adjustments.

The stability of individual ranching operations will be further assured by the passage of Section 4 of S. 1129, which requires that all appeals of grazing permit decisions be conducted "on the record" in accordance with the fundamental principles of the Administrative Procedures Act (APA). This is a particularly critical provision as applied to the Forest Service. The Forest Service currently lacks an independent body to hear administrative appeals similar to the Interior Board of Land Appeals (IBLA) that adjudicates BLM appeals. As a result, permit appeals within the Forest Service are decided by the next level line officer. Most often the deciding officer is the immediate supervisor of the author of the decision being appealed. It is understandable that research shows 85% of appeals under this structure are upheld. Frankly, I most often advise Forest Service permittees that an administrative appeal of a permit decision is little more than a necessary procedural step to set the stage for a judicial appeal.

While BLM appeals are conducted through a less prejudiced system, these permittee appeals nevertheless place a tremendous burden on the appellant. Strict adherence to the APA will properly place the burden of proof on both federal agencies to show that their decisions are correct in law and in fact. Because there is no current provision for a stay of a decision pending appeal, the permittee can be faced with making significant and costly adjustments to the ranching operation based on a decision that may be overturned through the administrative appeal. Section 4 will assure that the decision is suspended and that current grazing is allowed to continue until the appeal is resolved. There is, appropriately, an exception where failure to implement the decision would result in an immediate deterioration of the resource.

To this point I have focused my discussion on the benefits to the ranching industry, the resource and the agencies that would accrue from passage of the Grazing Improvement Act of 2011. I will now turn my attention to the benefits that will be derived by the public.

All but the most ardent of opponents of public land grazing acknowledge that the continuation of grazing on public lands is essential to maintaining the integrity of landscapes in the West. Given the mosaic pattern of land ownership in most public land areas, a majority of ranches in these areas are not economically viable ranching operations without access to forage on public lands. These associated intermingled private lands will often readily find a market as rural subdivisions. The resulting land fragmentation results in a loss of wildlife habitat, open space and scenic vistas, and public access. This can diminish the value of the public lands themselves for recreational use. Keeping ranchers in business is good policy for conservation of both private and public land.

Most public land ranchers do not want to develop their private lands. It is not in the public interest to drive them to do so by increasing the uncertainly that they face in continuing public land ranching. Over ten years ago, WSGA established the Wyoming Stock Growers Land Trust. Our sole reason for doing so was to provide another tool to keep private ranchlands in ranching. To date, we have succeeded in placing over 160,000 acres of Wyoming lands under conservation easements. However, as we visit with public land ranchers, we often hear, "I would be very interested in placing an easement on my private land if my grazing permit were more secure. If I lose the permit, I will have little choice but to subdivide my land."

There are certain times when small steps can produce large results. In S. 1129, Senator Barrasso takes those small steps. The results will include greater stability

for the livestock industry, a renewed focus on long-term resource management, enhanced agency efficiency and continuation of the broad public benefits provided by both public and private lands in the West. On behalf of the Wyoming Stock Growers Association, Public Lands Council and its affiliates and, most significantly, the over 22,000 families dependent on public land grazing, I urge your support for this legislation. Thank you for your consideration of my testimony.

Senator WYDEN. That was very helpful.

Mr. Kerr, welcome.

STATEMENT OF ANDY KERR, ADVISOR, WILDEARTH GUARDIANS

Mr. KERR. Thank you, Senator Wyden and Senator Barrasso for inviting me today. I'm here today testifying on behalf of WildEarth Guardians.

S. 1129 would double the length of a term grazing permit on Forest Service and BLM lands from 10 to 20 years. Congress has directed that the two agencies revise their management plans every 15 years. I would suggest that term grazing permits should not be longer than the life of the resource management plan that it's based on.

Moreover, the environmental conditions change and public values evolve and the grazing permit renewal process is the way that Congress has established for the management agencies to review, to see how the agency's permitees are doing in meeting the terms and conditions of their permit. As importantly how the lands, soil, water, wildlife and other resources are faring under these grazing allotments.

The second thing the bill would do is waive or truncate long established processes intended to protect and restore public lands and resources. NEPA is the process that Congress has established for the agency to take a hard look at management decisions. It can sometimes be inconvenient. Congress hasn't, in my opinion, funded enough money for the agency to do their job in this regard.

In terms of categorical exclusions if there is no environmental impact the categorical exclusion is a good idea. It's fine. But there is environmental impact from livestock grazing, very serious environmental impacts.

The third thing the bill would do would be to create a special track for administrative review available only to grazing permitees, a track that would favor the permitees and be against the public interest. This separate track would not apply to anybody but grazing permitees. So that provision also tries—it would change the burden of proof for the process, the appeals process that the agency would have to prove that it was right rather than requiring the affected permitee to prove a decision is wrong.

Jurisprudence in this country and Public Land law and administrative review of Federal agency decisions has given great deference to the agencies in terms of making decisions. Only if a court finds that an agency actually was "arbitrary, capricious and abusive discretion or otherwise not in accordance with law," I'm quoting the Administrative Procedure Act, will a court remand a decision to the agency to reconsider that decision. Switching the burden of proof from appellants to the agency would be a radical change to administrative and judicial review.

The theory of NEPA and the National Forest Management Act and the Federal Lands Policy Management Act is that good process will result in good decisions. The process is not working. Congress has been granting riders the agency is behind. The agency is not taking a hard look. So that's the process that the reason there is litigation.

By the way, you know, to win a lawsuit the agency really has to screw up. You know, it's a hard burden for a plaintiff to prove to a judge that the agency acted in an arbitrary and capricious manner. I think what gets lost in this debate about raising permit renewal is the impact, the consequences of livestock grazing on endangered species, on ecosystems and watersheds.

Most permits allotments are not meeting rangeland health standards. Many have water quality limited streams. Many are habitat for listed species on the Endangered Species Act.

Despite how some seek to portray conservationists, lawsuits are not our preferred method of engagement on public land grazing. Instead most of the conservation community strongly favors voluntary grazing permit retirement. Instead of the if the permitee wants to retire the permit, the option should be available to them for a third party, like a conservation organization, sporting organization to come in and offer them money to equitably end their livestock grazing in controversial areas.

Grazing permit buyout is economically rational. It's economically imperative. It's fiscally prudent. It's socially just and politically pragmatic.

The recent Congresses have extended voluntary grazing permit retirement option on certain lands such as the Cascade-Siskiyou National Monument in Oregon, the Owyhee Wilderness Areas in Idaho and the California Desert Conservation Area and others. So we would rather be buying Federal grazing permits from willing sellers than constantly having to take the Forest Service and the BLM to court for flawed decisionmaking. Not that the court overturns their decision, but says in the process they made usually was not followed. But Congress hasn't given us the choice to use permit retirements except in very limited circumstances.

So I would suggest that extending voluntary permit retirement options on all public lands would be a win/win/win for public lands, for the ranchers, for public land users and taxpayers as opposed to S. 1129 which I think wo uld surely be a loser for public lands and healthy watersheds and native wildlife.

Thank you.

[The prepared statement of Mr. Kerr follows:]

STATEMENT OF ANDY KERR, ADVISOR, WILDEARTH GUARDIANS, ON S. 1229

My name is Andy Kerr[1] and I testify today as an advisor to WildEarth Guardians,[2] an environmental conservation organization based in Santa Fe, New Mexico, with additional offices in Tucson, Arizona and Denver, Colorado. WildEarth Guardians works to protect and restore wildlife, wild places and wild rivers in the American West. I also consult for several other conservation organizations working to designate additional wilderness areas, wild and scenic rivers and national monu-

[1] andykerr@andykerr.net, www.andykerr.net
[2] www.wildearthguardians.org

ments on public land, conserve and restore Pacific Northwest old-growth forests, and conserve the greater sage-grouse and their habitat.

I thank the Chairman and the Ranking Member for inviting me to testify today. S. 1129 would change federal public lands grazing policy in three major ways:

> 1. Double the length of a term-grazing permit on Forest Service and Bureau of Land Management lands from 10 to 20 years.

Congress has directed that the Forest Service and Bureau of Land Management revise land management plans not less than every 15 years. A term grazing permit should not be longer than the life of the plan upon which it is based. Moreover, environmental conditions change and public values for public land management evolve. The grazing permit renewal process is an opportunity for land management agencies to review how the permittee has done in fulfilling the terms and conditions of their permit and how the land, soil, water, wildlife and other resources are faring on the grazing allotment. It is also the time to ensure that the new grazing permit comports with the current land use plan and to consider alternatives to current management. Reducing the frequency of review reduces the oversight of the agency and the public, limits the ability of managers to adapt to changing conditions, and takes away opportunities to correct improper grazing management on 260 million acres of public land.

> 2. Waive or truncate long-established processes intended to protect and restore public land and resources.

The permit renewal process is the chance for the public to participate in public lands grazing management in accordance with the National Environmental Policy Act (NEPA), the Federal Lands Policy and Management Act (FLPMA) and National Forest Management Act (NFMA). S. 1129 would legislate new categorical exclusions under NEPA for grazing permits under which most would never be subject to any environmental review.

Council on Environmental Quality regulations already allows the use of categorical exclusions for decisions that have no environmental impact. If a federal action has no environmental impact, a categorical exclusion is appropriate. However, the grazing of livestock on public lands has environmental impact.[3] NEPA requires the agencies to take a "hard look" at the activities it permits, and the impacts of livestock grazing should be subjected to this scrutiny. S.1129 would result in even fewer grazing permits receiving environmental review than do now.

> 3. Establish a special track for administrative review available only to grazing permittees and weight that process in favor of permittees and against the public interest.

S.1129 would establish two tracks for administrative review of agency decisions regarding grazing permits: one for the public and one for permittees. This is fundamentally unfair. The rules for administrative review should apply to all parties equally.

It also unfairly changes the current appeals process by automatically halting agency decisions until the agency can prove itself right rather than requiring the affected permittee to prove the decision wrong. It allows existing management to continue until appeals are resolved, effectively preventing necessary management changes while an appeal winds its way through the administrative process.

According to an attorney who advocates for public lands grazing interests:

> [S.1129] "changes" the current appeals system by requiring the BLM [and the Forest Service] to prove its decision is legally and scientifically correct; rather than forcing the permittee to prove why the decision is legally and scientifically wrong.[4]

The jurisprudence that has developed on public land law-and administrative review of federal agency decisions—upholds agency deference in decisionmaking. Only

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[3] On public land across the West, millions of non-native livestock (including cattle, sheep, goats and horses) remove and trample vegetation, damage soil, spread invasive weeds, despoil water, deprive native wildlife of forage and shelter, accelerate desertification and even contribute to global warming. See Mark Salvo. 2009. Western Wildlife Under Hoof: Public Lands Livestock Grazing Threatens Iconic Western Species. WildEarth Guardians. Santa Fe, NM. Former Secretary of the Interior Bruce Babbitt has written that federal public lands livestock grazing "is the most damaging use of public land." Bruce Babbitt, B. 2005. Cities in the Wilderness: A New Vision of Land Use in America. Island Press. Washington, DC: 148.

[4] Karen Budd Falen. "Leveling the Playing Field: Support for the Grazing Improvement Act of 2011, "May 23, 2011. Available at www.klamathbasincrisis.org/Grazing/grazingimprovmntactintro053111.htm.

if a court finds that an agency's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"[5] will it remand a decision to the agency to reconsider its decision. S witching the burden of proof from appellants to the agency would be a radical change for administrative and judicial review.

If Congress decides to legislate such a radical change to current law, it should apply to all parties engaged in public lands grazing management, not just federal grazing permittees.

The chief sponsor of S.1129 has articulated three basic arguments for this legislation:

1. [E]xtreme environmentalists have hijacked the permitting process with endless lawsuits aimed at eliminating livestock from public lands.[6]

Conservationists don't file litigation over federal grazing permits just because we are troubled with the massive environmental impacts of public lands grazing. We are, but we don't litigate unless there is evidence that the law has been violated. In most cases, federal judges have agreed with the conservation community. Congress should address federal agencies long history of flagrantly and routinely violating the law, rather than finding ways to protect a few poorly managed livestock operations from having to operate under the same rules that apply to others.

2. These irresponsible tactics overwhelm permitting agencies and leave ranchers at risk of losing their grazing permits.[7]

Federal agencies wouldn't be overwhelmed by public participation in grazing permit renewals if they would just follow the law. The framework of NEPA and the bases of NFMA and the FLPMA are that good information and good process will result in good decisions. What federal courts generally find in our litigation is not whether the decision was good or bad, but that it didn't use the best information or was produced using improper process. Congress could improve the decision-making process by appropriating more funds for it.

3. [The] bill gives ranching communities the certainty and stability they desperately need.[8]

Congress has tolerated a grazing fee based on an archaic formula that results in nearly free grazing on the federal public lands in the West.[9] Congress spends at least six times as much to facilitate public lands grazing as permittees pay for the privilege.[10]

The public lands grazing industry faces major challenges on and off public lands that are not addressed by S.1129.

For one, increasingly more Americans are visiting their public lands and place a higher priority on wildlife, recreation, watershed and scenery than they do on the miniscule amount of the livestock forage it provides (less than 2% of the nation's forage supply comes from federal public lands).[11] Their preferred non-consumptive uses of public lands often conflict with livestock grazing, making the industry's instability a reflection of a cultural shift. Limiting public participation disenfranchises public lands users who value it for more than forage production. Second, the forage is better on private lands. The average acre of private grazing land in the East is 78 times more productive as the average acre of BLM public land in the West.[12] Where grazing is measured in acres per cow rather than cows per acre-as on public lands-it's a marginal economic activity even when livestock prices are high. This phenomenon cannot be resolved by limiting public or environmental review of grazing permit decisions.

What often gets lost in the debate over the renewal of public lands grazing permits are the consequences of livestock grazing on native species, ecosystems and watersheds. Most grazing allotments in the West do not meet the federal standards

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[5] Administrative Procedure Act of 1946, 5 U.S.C. §§701-708.

[6] Senator John Barrasso. "Barrasso Bill Helps Ranchers by Preserving Grazing Rights" (news release), May 27, 2011.

[7] Senator John Barrasso. "Barrasso Bill Helps Ranchers by Preserving Grazing Rights" (news release), May 27, 2011.

[8] Senator John Barrasso. "Barrasso Bill Helps Rangers by Preserving Grazing Rights" (news release), May 27, 2011.

[9] "BLM and Forest Service Announce 2012 Grazing Fee" (news release), January 31, 2012.

[10] Government Accountability Office. 2005. Livestock grazing: federal expenditures and receipts vary, depending on the agency and the purpose of the fee charged. GAO-05-869, Government Accountability Office. Washington, DC.

[11] USDI-BLM, USDA-Forest Service. 1995. Rangeland Reform '94 Draft Environmental Impact Statement. USDI-BLM, Washington, DC.

[12] WildEarth Guardians. "Economic Contributions of Federal Public Lands Livestock Grazing" (factsheet). Available at www.sagebrushea.org/pdf/factsheet___Grazing___Economic___Contributions.pdf.

for rangeland health. Most have water quality-limited streams listed under the Clean Water Act. Many are habitat for species listed under the Endangered Species Act. Streams are polluted and species are imperiled because of livestock grazing on public lands. And the federal taxpayers are paying for it.

For these and other reasons, the conservation community opposes S.1129.

Despite how some seek to portray conservationists, lawsuits are not our preferred method of engagement on public lands grazing. Instead, most of the conservation community strongly favors voluntary federal grazing permit retirement to resolve grazing conflicts. Permit retirement is ecologically imperative, economically rational, fiscally prudent, socially just and politically pragmatic.

With voluntary grazing permit retirement, ranchers choose if and when they want to retire their grazing permit. The conservation community would compensate ranchers to waive their permit, often at several times the fair market value. Ranchers could use their compensation to pay off debt, reconfigure their operations solely on private land, start new businesses or retire.

Recent Congresses have authorized voluntary grazing permit retirement on select public lands, including in the Cascade-Siskiyou National Monument in Oregon, Owyhee wilderness areas in Idaho, the California Desert Conservation Area, and areas in the West where domestic sheep grazing conflicts with native bighorn sheep recovery.

Ranchers across the West are interested in voluntary grazing permit retirement. The conservation community would rather be buying out grazing permits from willing sellers than constantly having to sue the Forest Service and Bureau of Land Management for flawed decisionmaking. But Congress hasn't given us the choice to use permit retirement except in very limited circumstances.

Extending voluntary federal grazing permit retirement to all public lands would be a win-win-win for public lands ranchers, other public lands users and taxpayers, as opposed to S.1129, which is surely a loser for public lands, healthy watersheds, and native wildlife.

Senator WYDEN. Mr. Kerr, thank you. We'll have questions in a moment.

Mr. Crary.

STATEMENT OF DUSTY CRARY, CHOTEAU, MT

Mr. CRARY. Chairman Wyden, Ranking Member Barrasso and members of the subcommittee, good afternoon. My name is Dusty Crary. I'm a rancher and an outfitter from Choteau, Montana. I'm also a member of the Coalition to Protect the Rocky Mountain Front.

Our working group developed the proposal resulting in S. 1774. I'd like to thank the Chairman and Ranking Member for having this hearing so we can have this opportunity to testify today. You've got my written testimony and I couldn't improve on Senator Baucus? superlative. So I'll just go right to the 3 components of this bill.

The first would be an addition of 67,000 acres of wilderness. These 5 parcels all fall within lands currently managed by the Forest Service as recommended for wilderness. They also adjoin current wilderness boundaries.

I'd like to assure everyone that the subject of wilderness in this process has been well vetted in the over 5 years that we've been working on this project. We reached out to and got feedback from those who could be affected by wilderness designation and made changes to address those concerns. We've also heard from advocates who felt there was not enough wilderness in this proposal and considered their thoughts as well.

We feel the parcels selected strike a good balance and are an appropriate addition to the Bob Marshall complex.

Although an iconic land use designation with a clear template to follow we knew that wilderness was not a good fit for most of the land within this proposal. But it's the multiple use land between wilderness and private ranches has provided livestock grazing, firewood cutting, cabin sites and a host of recreational opportunities for many Montanans and folks from even farther away than that.

People love the Front just the way it is. Keeping it the way it is is the intent of the second part of this legislation. It's what we came up with.

This is called a Conservation Management Area or CMA. The CMA would cover the remaining 208,000 acres of U.S. Forest Service and BLM land on the Front that's non wilderness. The CMA ensures current uses continue, protects against an uncertain future and provides land managers the flexibility they need and would not have with full designated wilderness.

The private ranchlands along the Front are one of the most vital, ecological aspects of the Front. These large blocks of land provide critical habitat and winter range for much of the wildlife in this area. Federal land grazing is an important element to many of these multigenerational operations.

Protecting these permits has been the highest priority throughout this process. This legislation will in no way jeopardize any grazing permit and in fact provides additional language emphasizing their importance and safeguarding their continued use. The CMA ensures the integrity of the entire system.

Noxious weeds, primarily Spotted Knapweed and Leafy Spurge are two invasives that threaten the Rocky Mountain Front. Native plant communities, wildlife and agricultural production are all at risk from these invaders. There's a high level of commitment among private landowners and agencies to reduce and contain infestations on State and private lands.

The third part of this bill would build on this foundation to ramp up efforts to control noxious weeds on Federal lands. Language in this bill would direct the Forest Service and BLM to develop comprehensive weed management plans and encourage increased efforts which is really needed. To protect property values and wildlife habitat the Forest Service and BLM must be fully committed to fighting noxious weeds on Federal lands.

In closing I want to personally thank Senator Baucus, not just for his political support in introducing this bill, but also for really, truly understanding and sharing the passion of the people on the Front and our love for this incredible landscape. If ever there was a start from scratch, kitchen table proposal. This is it.

We're just a small group of citizens, who realize if you want to keep your home range intact, you need to put it in writing. This bill does just what it needs to and not one thing more. My kids are the fifth generation to grow up and work on the ranch that my great grandfather started. This is our homeland security bill and it's our hope that you'll give it your favored consideration.

Thank you.

[The prepared statement of Mr. Crary follows:]

PREPARED STATEMENT OF DUSTY CRARY, CHOTEAU, MT, ON S. 1774

Chairman Wyden, Ranking Member Barrasso, and members of the subcommittee:

Good afternoon, my name is Dusty Crary. I am a rancher and outfitter from Choteau, MT. Along with my wife Danelle and three children, we operate Four Seasons Cattle and a backcountry outfitting business. I am also a member of the Coalition to Protect the Rocky Mountain Front. This working group developed the proposal resulting in S.1774. I want to thank the chairman and ranking member for holding this hearing and for the opportunity to testify before the subcommittee. I also want to thank Senator Baucus for his commitment to preserving this special place.

The Rocky Mountain Front (RMF) rises abruptly from the mixed grass prairies of North Central MT to take its place on the eastern edge of the Crown of the Continent Ecosystem. The outer peaks of the Front are the gateway and guardians of that celebrated centerpiece of North American conservation, the Bob Marshall Wilderness Complex.

There are 3 components to this legislation. The first would be an addition of 67,000 acres of designated Wilderness. These parcels are within USFS recommended wilderness lands and adjoin current Wilderness boundaries. Currently the USFS manages about 93,000 acres along the RMF for its wilderness characteristics. After much debate and discussion amongst our working group, all of whom are intimately familiar with the landscape, we arrived at the boundaries as shown. We feel these parcels selected strike a good balance, and are an appropriate addition to the Bob Marshall Complex. In the case of each of the five proposed Wilderness additions, we took a hard look at how people were using the land. For example, at the southern end of the Front there are several outfitters who routinely lead trail rides into these areas and rely on chainsaws to clear deadfall each spring. When we were working on the boundaries we talked to all the guides and livestock operators in advance to make sure that the Heritage Act would not hurt their ability to make a living off the land. The final version of the Heritage Act is better because of the input from the folks on the Front.

Although an iconic American land use designation with a clear template to follow, we knew that big "W", wilderness, was not a good fit for much of the land within the proposal. In fact, it is this land that lies between wilderness and private land that has been the focus of our efforts. This multiple-use land has provided firewood cutting, livestock grazing, and recreational opportunities for local residents and visitors from afar. In a survey conducted in 2002, respondents from Teton County differed on their opinions of wilderness, motorized use, and oil & gas development, but replied that they like the Front just the way it is. Our aim was to develop a proposal that does just that, keeps the Front the way it is. What we arrived at is the 2nd part of this bill, the Conservation Management Area (CMA). The CMA would cover the remaining, non-wilderness federal lands, comprising 208,000 acres. The CMA is flexible enough to allow the FS and BLM to effectively manage wildfire, grazing and recreational use and strong enough to protect the character of the land for future generations.

The private ranchlands adjacent to the federal lands are one of the most vital ecological aspects of the front. These large blocks of private land provide critical habitat and winter range for much of the wildlife in this area. This interface has been referred to as the American Serengeti and still has the complete compliment of species that were here when the Corps of Discovery traversed the area in 1805 and 1806, including bison, although in private herds. The riparian corridors hold the largest concentrations of Grizzly Bears in the lower 48. These ranches are not only ecologically crucial; they are culturally significant to the fabric of the region. Federal land grazing is an important element to many of these multi-generational operations. Protecting these grazing permits has been the highest priority throughout this entire process. It is paramount to the integrity of the entire system that these large ranches remain intact. Keeping them economically viable is the best way to insure that. This legislation will in no way jeopardize any grazing permit and in fact provides additional language emphasizing their importance and safeguarding their continued use. Many of these ranches are under conservation easement with various agencies and conservation organizations and there is strong interest to do easements among additional operations. With the addition of the Conservation Management Area, the integrity of the entire system would be insured. The CMA provides crucial balance that allows for the continuation of historical uses and protection for the future.

Invasive species is an oft heard term these days. It seems every region has an invasive plant or animal to deal with. Noxious weeds, primarily Spotted Knapweed and Leafy Spurge, are two invasives that threaten the RMF. Native plant communities, wildlife, and agricultural production are all at risk from these invaders. Fortunately there is a high level of commitment from landowners, agencies, and NGO's currently in place to contain and reduce infestations on state and private lands. The

third leg of this legislation would build on this existing foundation to ramp up the efforts to control noxious weeds on federal lands. We can have the best land protection in place but that alone is insufficient if noxious weeds create a monoculture across the landscape. Language in the Rocky Mountain Front Heritage Act (RMFHA) will direct the Forest Service and BLM to develop a comprehensive weed management plan with the input of private landowners, tribal members and the general public. To protect property values, wildlife habitat and water quality, we need the FS and the BLM to be fully committed to fighting noxious weeds on public lands.

In closing I would like to re-emphasize the intent of the Coalition to Protect the Rocky Mountain Front. This legislation was not generated at the federal level and sent down for comment. If ever there was a start from scratch, kitchen table proposal, this is it. We are a small group of ordinary citizens who are passionate about our landscape and have a thorough understanding of why it is important to keep it intact. And like most everyone else, we like it the way it is. We just realize that unless you put it in writing there is no guarantee that it will stay the same. We wanted this legislation to do just what it needs to and not one thing more. And that quite simply is the goal of the RMFHA. It is an insurance policy for the future. My kids are the fifth generation of Crarys growing and working on the ranch my great grandfather started. This is our Homeland Security Bill, and it is our hope that you will give the RMFHA your favorable consideration.

Thank you for the opportunity to testify.

Senator WYDEN. Thank you, Mr. Crary. We'll have some questions here in a moment.

Mr. Gann, welcome.

STATEMENT OF DOUG GANN, NATIONAL FOREST HOMEOWNERS, KIRKLAND, WA

Mr. GANN. Good afternoon, Mr. Chairman and members of the subcommittee. My family's cabin is located on the Wenatchee National Forest in the State of Washington. I'm speaking today on behalf of the National Forest Homeowners in support of the Cabin Fee Act.

More than 14,000 cabin owners have permits for recreation residences and all have a vital interest in this legislation. Over the last several years long time cabin owners of modest means, whose families have loved and maintained their cabins for generations have expressed deep concern their cabin stewardship is being jeopardized by sharply escalating and sometimes excessive and unfair fees. The use of fee simple land appraisals that set fees as mandated by the current statute, commonly known as CUFFA, fails to determine the actual market value because the highly restrictive nature of the permitted use is not considered in the appraisal process.

Interdependent equity interest, where the permitee owns the cabin while the government owns the land are difficult and subjective to separate. The lack of private recreation land suitable for appraisal comparisons also contribute to inconsistent appraisal results, sometimes resulting in fees that are well above market and in other cases potentially below market. The CFA addresses these challenges and offers needed reform.

We believe nearly 35 percent of the cabin owners will reach their affordability break point under CUFFA over the next couple of years. When these folks try to sell their cabin and some won't be able to because of above market fees. We estimate that 10 to 15 percent of the cabins will have to be torn down and removed at owner expense resulting in the permanent loss of Federal fee revenue, local tax revenue and other economic benefits.

It's important to note that the 10 to 15 percent of the cabins that will be lost will result in greater than a 20 percent loss of revenue because it's the permits with the highest fees that are lost, not your average fees. This act provides for a reasonable user fee indexed annually that will provide predictable fee increases while maintaining cabin value. CFA fees will range from $500 as a minimum to 4,500 where the highest fee is 9 times the lowest. Once implemented the annual CFA program revenue will be more than twice the fee revenue collected in 2008 and will have a budget neutral impact as determined by the Congressional Budget Office.

This new fee structure also compares favorably to the broader market of similar public and private cabin lease programs. A comprehensive study conducted for the NFH examined the market for cabin programs similar to the Forest Service program. While user fees varied by location, permit and lease terms, the average user fee of approximately 1,000 dollars was less than half the proposed average fee under the CFA. This further demonstrates the proposed fee structure provides more than a fair return and is supported by sound market principles and validates the use of public land for recreation resident's purposes.

An NFH survey found that 95 percent of the cabin owners were dissatisfied with the current CUFFA system. That 93 percent support the CFA as a replacement. While this bill does have broad support a recent discussion with the Forest Service has led us to support several changes to improve the bill further.

The CFA calls for a transfer fee of $1,000 to be paid when a cabin changes ownership and a new permit is issued, plus a surcharge of 5 to 10 percent of the cabin sale price if the cabin sells for an unusually high price. Concerns raised by the Forest Service suggest that this surcharge creates a bigger problem for them than the problem it was intended to solve. Therefore the cabin owners support removing the surcharge portion of this fee while retaining the $1,000 transfer fee.

To help mitigate a slight reduction of revenue from the transfer fee revision, as well as ensure user fees apply fairly to cabins with premium locations, the cabin owners support an additional fee tier of $5,000.

We also seek several technical language changes required to clarify the intent of certain aspects of the bill as well as satisfy other concerns raised by the Forest Service.

In short we support the changes mentioned by Deputy Chief Weldon a little earlier.

The strength of the CFA is its simplicity. The simple and straight forward fee structure provides a predictable and affordable fee for the cabin program, as well as significant administrative time and cost savings for the Forest Service. The bill appropriately balances the interest and needs of the cabin owner with the public interest by obtaining a fair return for the use of these public lands. The Cabin Fee Act will preserve a cherished program that's been a major source of outdoor recreation for thousands of American families for a century.

We ask for your support and urge the CFA be enacted into law.

Thank you.

[The prepared statement of Mr. Gann follows:]

PREPARED STATEMENT OF DOUG GANN, NATIONAL FOREST HOMEOWNERS, KIRKLAND, WA

Introduction

Good afternoon, Mr. Chairman and Members of the Committee.

My name is Doug Gann from Kirkland, Washington and my family's cabin is located on the Wenatchee National Forest in the State of Washington. I'm pleased to present this statement on behalf of the National Forest Homeowners and the C2 Coalition of Cabin Organizations in support of the Cabin Fee Act. More than 14,000 cabin owners have permits for recreation residences on the National Forests and all have a vital interest in this legislation.

Over the last several years, long-time cabin owners of modest means, whose families have loved and maintained their cabins for generations, have expressed deep concern that their cabin stewardship is being jeopardized by sharply escalating fees, some of which are excessive, above market, and unfair.

Problems with CUFFA

Since the passage of the Organic Act in 1915, the Recreation Residence Program has been a longstanding valid use of National Forest lands, but is now being threatened by the fee setting process specified in the Cabin User Fee Fairness Act of 2000, commonly referred to as CUFFA. (Note: We will refer to the more commonly used terms "cabin program" and "cabin owners" instead of the more technically correct "Recreation Residence Program" and "recreation residence permit holder"). The current use of a fee simple land appraisals to set fees as mandated by CUFFA, fails to determine actual market value because the highly restricted nature of the permit use is not valued in the CUFFA appraisal process. Also, both location and the cabin structure influence market value and sale prices. Interdependent equity interests where the permittee owns the cabin while the government owns the land are difficult and subjective to separate. The lack of private recreation land suitable for appraisal comparisons also contributes to very inconsistent appraisal results, sometimes resulting in user fees which are well above market value, while in other cases user fees are set potentially below market value.

The Cabin Fee Act (CFA) will simplify and improve the fee-setting process. It will encourage better relationships between the Forest Service and cabin owners and will reduce agency administrative workload and expenses. The CFA provides fair compensation to the U.S taxpayer, while recognizing that cabin owners convey value to the land and location at their expense. Cabin owners must maintain the site; remove dangerous trees and non-native vegetation. They often provide and pay for utility infrastructure including power, water systems, septic and sewer systems that become attached to the land and benefit all users of the forests.

Survey data, compiled by the National Forest Homeowners, indicates almost 35% of cabin owners will reach their affordability breakpoint in the current CUFFA appraisal cycle over the next few years. These cabin owners will attempt to sell their cabins when fees reach a level which is beyond what the cabin owner can afford, or is willing to pay for the benefit received. Some of the cabin owners may be able to sell their cabin to owners of greater means, while others won't be able to sell their cabin, at any price. When these folks can't sell, we estimate 10-15% of cabins (upwards of 2,000) will have to be torn down and removed at the owner's expense. Under CUFFA, U.S. Treasury revenue will decline approximately 20-30% from the total potential fee revenue since it's the highest permit fees which will be lost, not the average fees. In addition to Federal Government fee revenue loss, local governments and communities will also suffer tax revenue loss, loss of tourism dollars, and other related economic benefits derived from cabin owners. Cabin losses will also reduce volunteer labor, including substantial involvement in youth programs and first responder services, forest stewardship, and infrastructure support provided by cabin owners.

The Cabin Fee Act

This Act establishes an affordable User Fee, indexed annually, that provides predictable fee increases, while helping to maintain cabin value and not destroying the ability to sell the cabin if the current owner cannot, or chooses not to pay the fee. Instead of fees ranging from $125 to an astonishing $76,000 annually under CUFFA, annual User Fees under the CFA will range from $500 to $4,500 per year. The lowest tier of $500 is sufficient to cover the estimated cost to administrator this program, while the highest tier of $4,500 is supported by what the market will bear for premium cabin locations. The User Fee range was determined by balancing the rights and privileges that all permit holders share, regardless of location, while acknowledging that location does influence the value of the permitted use. This bal-

ance of common rights with differences for location yields a fee structure where the highest fee is nine times the lowest fee. This contrasts with fees under CUFFA where the highest fees are more than 100 times greater than the lowest fees.

The Cabin Fee Act requires the assignment of each permitted lot to one of nine fee tiers, based on the rank order of current appraised values. The lowest 8% of appraised lot values are assigned to the $500 tier. The highest 7% are assigned to the $4,500 tier. Following this process, User Fee revenue is projected to be about $32.5M when fully implemented, more than twice the $14M fee revenue collected in 2008 from this program.

User Fees are adjusted annually by a rolling average of the IPD-GDP index. This broadly-used Department of Commerce index provides for a reasonable, straightforward method for increasing fees annually, while ensuring that user fees keep pace with the market. The Transfer Fee is a $1,000 additional fee which is collected when a cabin changes ownership and a permit is issued to the new owner. Cabin marketability is not encumbered, because cabin owners will have full knowledge of the indexed annual User Fee and both a seller and buyer can factor the Transfer Fee into their negotiations at the time of sale.

Cost estimates by the Congressional Budget Office (CBO) show CFA fee revenue will be equal to CUFFA fee revenue over a 10-year period (2013-2022). In addition, elimination of the appraisal process under CUFFA will save nearly $1 Million annually, allowing these resources to be put to better use by the Forest Service. The complexity and expense of the appraisal process will be replaced with a cost effective fee system and greatly simplified program administration.

We can compare the CFA fee structure to the broader market of similar public and private cabin lease programs. A comprehensive study conducted for the NFH examined the market for cabin programs similar to the Forest Service Recreation Residence Program. The 11,000 cabins reviewed by the study validate the use of public forest lands for recreation residence purposes. While user fees vary by location, permit, and lease term considerations, the average user fee of approximately $1,000 was less than half the average fee of $2,250 under the Cabin Fee Act. We offer this as clear evidence that the proposed CFA fee structure provides a more than fair return to the U.S. Government and is supported by sound market principles.

With predictable and affordable fees under the Cabin Fee Act, we expect all 14,000 current permits to remain active, keeping the Forest Service Program within reach of the typical American family. By contrast, while CUFFA is expected to provide similar total revenue over time, we project that unaffordable high fees and uncertainty will result in a decline in the number of permit holders under CUFFA to less than 12,000 over the next decade, thus reducing the typical American family's participation in the Program. This same pattern of permit loss is likely to be repeated in future appraisal cycles under CUFFA, further eroding the Recreation Residence Program and producing less revenue than the proposed CFA fee system over a longer period of time.

The strength of the Cabin Fee Act is its simplicity. The simple and straightforward fee structure provides long-term predictability and affordability for the cabin program, as well as, significant administrative time and cost savings to the Forest Service. These cost savings allow for the redeployment of Forest Service resources away from managing appraisals, re-appraisals and permit fee appeals to a more productive delivery of programs and public services. The Cabin Fee Act provides a true win-win outcome for the cabin owner and the U.S. Forest Service.

In summary, the Cabin Fee Act ensures the long-term viability of the Recreation Residence Program and produces cabin permit fees that:

1) Are affordable as determined by the 'cabin market';
2) Are simple, understandable and predictable;
3) Are revenue neutral, maintaining current revenues and fair return to the U.S. taxpayer;
4) Impose fees for actual benefits received;
5) Maintain the ability to sell cabins.

Recommended Changes

Cabin owner support for this bill was confirmed by a NFH survey which found that 95% of cabin owners were dissatisfied with the current CUFFA fee system and that 93% supported the CFA as a replacement. While this bill has broad support, recent discussion with the Forest Service has led us to support several changes to improve the bill further, which we feel confident can be addressed during the mark-up of the bill. They are:

(1)Modification of the Transfer Fee—The bill calls for a fee of $1,000 to be paid when a cabin changes ownership and a permit is issued to the new owner, plus a surcharge of 5-10% of the cabin sale price if a cabin sells for an unusually high price. The intent of the surcharge is to discourage cabin owners from over improving cabins or buyers from paying a premium for choice locations, while collecting additional fees in these rare situations. Market surveys show only 3% of cabins sell each year and less than 7% of sales are for amounts that would trigger the transfer fee surcharge, so the total number of transactions subject to the surcharge is very small. Discussions with the Forest Service suggest the administrative burden placed on the Forest Service to implement this fee creates a greater problem than the problem this provision was intended to solve. The cabin owner's support removing the surcharge portion of this fee, while retaining the $1,000 fee.

(2)Additional fee tier—To help mitigate a slight reduction of revenue from the transfer fee revision, as well as to ensure that user fees apply fairly to cabins with premium locations, the cabin owners support an additional fee tier of $5,000. Slight changes to the percentage of permits assigned to each tier will be necessary to reallocate permits across the full $500-$5,000 range, while maintaining a reasonable distribution which places most fees in middle tiers, with fewer placed in the lower or higher end of the range.

(3)The cabin owners also seek several technical language changes—required to clarify the intent of certain aspects of this bill, as well as, satisfy other concerns raised by the Forest Service. Of significant importance is language pertaining to the 25% cap on annual fee increases during the transition from current fees to assigned CFA fees that provide for fee amounts to be "phased in" for those facing higher fee increases.

Summary and Conclusions

We appreciate the opportunity to present this testimony on behalf of the National Forest Homeowners, the C2 Cabin Coalition and nearly 14,000 cabin owners throughout the nation. We believe the cabin program is not only an invaluable source of multi-generational family outdoor recreation but that it makes a significant contribution to the health of the national forests and the economic vitality of local gateway communities. Unfortunately, as a result of the appraisal based fee system imposed by CUFFA, many cabin owners are facing a dramatic escalation in their fees and this historic program is threatened and its many contributions are in jeopardy.

The Cabin Fee Act will preserve a nearly century old, cherished program while continuing to provide a fair return to the Treasury. It is an equitable approach that balances the interests and needs of cabin owners with the public interest in obtaining a fair return on these public lands.

We ask for your support to pass and enact into law the Cabin Fee Act of 2012 (S.1906).

Thank You.

ATTACHMENT.—CABIN FEE ACT QUESTIONS AND ANSWERS

NATIONAL FOREST HOMEOWNERS & CABIN COALITION 2

Question 1. Aren't cabins on the National Forest a privileged use?

Answer. Participation in the Recreation Residence Program is not restricted. Until recently, cabins have been bought and sold with regularity and the program has been broadly available to all interested people. Congress has recognized cabins by law as an appropriate and authorized recreational use since at least 1915 and as one among the many multiple uses of the National Forests. Most cabin owners are middle class and have small rustic cabins that are used as family gathering places where their children and grandchildren can experience and develop an appreciation for the outdoors and good forest stewardship. The Recreation Residence Program provides an opportunity for members of the public to have cabins on the National Forest, but excessive and inconsistent fees for this opportunity using the procedures under CUFFA are undermining the very purpose of the Program. CUFFA does nothing to further the availability of the Program to the general public or maintain the long-term public interest and general affordability.

Question 2. If the fee determination system is changed for cabin owners won't other special use permit holders will want a change as well?

Answer. The Recreation Residence Program is a unique private/public relationship that is not for profit. Other special use permittees, such as, ski resorts, grazing rights and utility companies are intended to profit from their uses. It makes little sense to equate such commercial uses with non-commercial uses of the Cabin Program.

Question 3. CUFFA works fine, why are changes needed?

Answer. More than 95% of cabin owner respondents to the 2009 NFH Cabin Sales and Appraisal Survey said that they were dissatisfied with the appraisal process under CUFFA.[1] Even Forest Service field staff have recognized the concerns of cabin owners and suggested that we seek legislative change. Mr. James Sauser, USFS Region 6 Special Uses, has been quoted in news articles[2] about the failures of the appraisal process, "the appraisals are time consuming and result in fees that are either too high or too low". Finally, the 10-year appraisal cycle can take more than five years to implement. In fact, due to Forest Service budget deficiencies, the process in Region 5 is expected to take nine years to complete[3]. Even those involved with the creation of CUFFA recognize it does not produce results that make sense.[4] Change is needed!

Question 4. CUFFA determines 'market value' by appraisal. How does the CFA address 'market value' concerns?

Answer. CUFFA attempts to define 'market value' within the appraisal process. However, the process compares the permitted cabin lots to fee simple ownership of land, effectively ignoring the negative restrictions imposed by the permit and its inherent risks. This approach results in an inflated 'market price' for such a restricted use. The 5% fee factor, said by some to adjust appropriately for the restrictions, is much too high a factor. Simply changing the percentage will not produce fair results. A fee that is fair at the high end results in a low end fee that is too low. Conversely, a fee that is fair at the low end will result in a high fee that is unjust. It is all too common that the geographic proximity to resort areas unfairly results in high fees for modest cabin tracts. The Comparison of Recreational Land Lease[5] study clearly demonstrates that the CFA produces above 'average market revenues' for similar leased (or permitted) recreation land use and that CUFFA far exceeds 'market' rates.

Our ability to keep a cabin in place on public land is subject to the terms of a permit. We don't have any sort of leasehold or ownership interest in the underlying land, so we have no property interest and therefore a land value appraisal process is clearly inappropriate. The CFA establishes a fair market fee for our term special use permits now and into the future. The fee structure will maintain Program affordability for average Americans and ensure cabin marketability, while also providing the revenue due the U.S. taxpayer for the benefits received from the use of public lands. This will best help ensure the long-term viability of the Program.

Question 5. Only a few appraisals are very high. Why change the appraisal system based on a few outliers?

Answer. Current appraisal data show that over 20% of all fees are or will be $4,000 annually or higher. Survey data[6] suggests $3,000 to $4,000 is the point where most cabin owners question the value and affordability of owning a cabin. This implies that at least 20% of all cabin owners are at or above their breakpoint under CUFFA. This large segment of cabin owners is simply not an outlier. This overly generalized statement is inaccurate given the current appraisal data. These comments ignore the continued expansion of excessive fees in future appraisal cycles and the associated negative impact on affordability for average Americans.

Question 6. Don't cabin owners reap a 'windfall profit' when their cabins sell?

Answer. The Forest Service (FS) has cited high cabin sales prices where the sale price appears to be beyond the value of the cabin structure. The FS contention is that the location (i.e., the land which is not owned by the seller) was the major contributor to the sales price, hence the 'windfall'.

These cases are few and far between, so establishing a fee setting mechanism using such outliers is unfair to other cabin owners. The Sales Data and Appraisal Survey Report states a projected average sales price for all respondents of $163,525[7]. Plus, the review of actual cabin sales from 2000 to 2009 revealed an av-

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[1] Sales Data and Appraisal Survey Report, NFH & Cabin Coalition 2, November, 2009.

[2] The Seattle Times, Wednesday, September 9, 2009, Soaring Forest Service leases to drive families out of cabins they've had for generations.

[3] recreation Residence Assessment, Pacific Southwest Region, USDA Forest Service, June 10, 2009, Updated November 12, 2009, Pg. 9, First Paragraph.

[4] See Statement of Mary Clarke Ver Hoef, former National Forest Homeowners Board of Directors, now Executive Director.

[5] Comparison of Recreational Land Leases, National Forest Homeowners, January 2010.

[6] 'Breakpoint Data', from Sales Data and Appraisal Survey Report, NFH & Cabin Coalition 2, November, 2009.

[7] Sales Data and Appraisal Survey Report, NFH & Cabin Coalition 2, November, 2009, Item #16.

erage sales price of only $138,421[8], with 92% of all sales under $250,000. We adopted the Transfer Fee provision to address this concern in the few cases that it occurs. More importantly, cabin owners contribute to land and location values at their expense. In complying with the terms of the permit, cabin owners are responsible for removing near-by diseased or hazard trees, plus noxious and non-native vegetation. Utility infrastructure, provided by the cabin owner, becomes part of the land, including water systems, septic systems and sewer capital expenses and hook-ups. Plus, on many forests, cabin owner purchased water rights are being required to name the U. S. government as the owner with no compensation for the cost involved.

Furthermore, the location value contribution is minimal at the low and mid-range sale prices simply due to the cost of re-construction. The average 1,200 sq. ft. cabin built at a cost of $200.00/sq. ft. would be valued at $240,000. This acknowledges that many cabins are historic, rustic and include unique interiors. Supplies and contract labor must travel long distances and/or by unusual means (water or pack animal) to remote sites, substantially adding to the cost. No new cabin sites are being added to the Program, creating a scarcity that also artificially adds to the value of the cabins. This illustrates that there are a lot of factors that should be considered before the charge is made that cabin owners are reaping a 'windfall profit'.

When researching this issue, we identified a second reason cabins may sell for an unusually high price, that is where a cabin owner may have "over improved" a cabin. Adding on, or building a cabin which is significantly larger and utilizes superior materials compared to the typical cabin is out of character with the rustic cabin in the woods generally associated with this program. While this is the rare exception, it provides a deterrent to discourage cabin owners from over improving cabins.

Question 7. Isn't it only the wealthy cabin owners that have high fees under CUFFA?

Answer. This is an inaccurate and unfair characterization. The vast majority of cabin owners are middle class.[9] Survey data[10] confirms that there are many cabin owners with CUFFA fees starting at $5,000 and higher, who are not wealthy and very much fit the picture of average Americans. This mischaracterization diverts the discussion away from the real issue, which is the extreme variation in fees under CUFFA from $125–$76,000 for a recreation residence's restricted use of public lands. An individual's financial status or 'ability to pay' should not be the litmus test for determining a fair fee for a use.

Question 8. How many cabin owners are very upset over CUFFA appraisals? Isn't it just a relatively small minority?

Answer. No, it is not a small minority. In fact, a recently completed survey found that 95.3% of participating cabin owners were dissatisfied with the current appraisal process under CUFFA and that 92.7% supported the User Fee / Transfer Fee proposal that is contained in the Cabin Fee Act (CFA).[11]

Question 9. Isn't the average cabin permit fee under CUFFA actually quite reasonable ($2,500-$3,000) in view of the special privilege of having a cabin on a magnificent national forest?

Answer. Looking at an average fee confuses the overall issue. Under the current system, some fees are so low that they certainly fail to cover the costs to administer the Program. Some fees are so high that all cabin value is lost. In some states, for example, some are paying less than $500 while in other regions those with very similar amenities are paying over $6,000. Most cabin owners seriously consider selling their cabin (or even abandoning it) when their annual fee exceeds $3,000 to $4,000.[12] This is true particularly when use is limited by weather to three or four months a year. Many cabins become accessible only after July 4th and heavy snow can fly in September. Also, many cabins on lakes with dams face serious drawdown beginning in September resulting in a less desirable location and loss of access when it is by water only. Furthermore, the Forest Service provides no services or amenities and the cabin owner must provide his or her own structures and improvements, pay state and county taxes, in addition to the permit fee, and provide for his or her own maintenance and security. Please refer to the 'Comparison of Recreational Home Site Leases' for a more complete evaluation of average 'lease' fees on public and private lands.[13] Finally, the results from the current appraisals thus

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[8] Sales Data and Appraisal Survey Report, NFH & Cabin Coalition 2, November, 2009. Item #14.

[9] 2009 NFH Economic Impact Survey final Report.

[10] Sales Data and Appraisal Survey Results, Item 9, November, 2009.

[11] Sales Data and Appraisal Survey Results, Item 9, November, 2009.

[12] Sales Data and Appraisal Survey Results, Item 8, November, 2009.

[13] Comparison of Recreational Home Leases, National Forest Homeowners, Jan. 2010.

far show a vast range of fees based upon location that has no relationship with the cabin's use of the forest.

Question 10. Do cabin owners know what they really want?

Answer. Yes, cabin owners want to keep their cabins. They want to keep them affordable for their family using a fee determination method that is simple, understandable and relatively predictable. Through numerous communications and meetings, NFH and Cabin Coalition 2 have engaged, informed and polled cabin owners from across the United States. 92% support the Cabin Fee Act as the replacement for CUFFA.

Question 11. Cabin Owners supported CUFFA, so why did they wait so long to object?

Answer. Yes, CUFFA was supported. But what was supported and the end result were not the same. Key language was dropped from the final legislation under the premise that its purpose was addressed elsewhere. When adjustments for the permit restrictions were removed from inside the appraisal process itself, the "Fee Fairness" of the 2000 CUFFA legislation was gutted. A FS report published in July 2009 confirmed, "It is worthy of note that CUFFA, as drafted at the time of the hearings, included detailed language requiring significant adjustments in the appraisal process for permit restrictions as well as directing the appraiser as to appropriate weight to be placed on comparable sales."[14] (Emphasis added).

The concept that a fee simple value can be made equivalent to the value received in a special use permit, without the consideration of the many and varied use restrictions is clearly false. The restrictions have never been part of the appraisal and we continue to hear that the 5% factor adjusts for all the restrictions. Full adjustment for the fair market value of all the restrictions is what we sought in 2000. But, this is not what resulted. The long delay in implementing the Rules and Regulations meant that appraisals did not begin until 2007, at which time it became very clear that the CUFFA 2000 legislation was seriously flawed. It subsequently produced a range of annual fees from $125 to $76,000, an extreme range that is difficult to comprehend let alone justify. In fact, Congress, the Forest Service and the cabin community failed to understand fully the ultimate impact of the legislation (as passed) until it was applied on the ground. The primary sponsor of the CUFFA Bill, Senator Larry Craig, reaffirmed that the intent of CUFFA was to include all permit restrictions and limitations in the CUFFA appraisal process in his letter to Undersecretary Mark Rey on July 2, 2008.[15]

Question 12. How many cabin owners truly want and would support this sweeping change? How can Congress be confident that cabin owners will be satisfied?

Answer. As with any change there will inevitably be some who will not be satisfied; however, without change we believe the long-term viability of the Cabin Program is threatened. With that said, an overwhelming majority of cabin owners surveyed, more than 95%[16], want to see a change from the appraisal process. We have reviewed and considered all suggestions for changing the fee methodology. Eight cabin organizations and our sharpest minds have been engaged in an intensive review and formulation process. Professional, legal and appraisal consultation has informed the development of the User Fee / Transfer Fee proposal. Plus, cabin owner "Think Tanks" in several geographical areas have also reviewed and commented on the work. The result is solid support from cabin owners across the country for Cabin Fee Act of 2011.

Question 13. This fee proposal is too complicated. Won't it be just as hard to administer as CUFFA?

Answer. On the contrary, once fee tiers and transfer fee percentage thresholds are set, the implementation and administration of this system is easy and predictable and provides fee certainty into the future. In addition, this process saves the substantial costs in time and money that are spent on the appraisals. The current appraisal process may seem simple conceptually, but we clearly see now that 'the devil's in the details'. The appraisal process is very subjective, often requiring repeat appraisals. It is time consuming and expensive to implement and administer for both Forest Service and cabin community personnel alike. An excellent example of how complex this process can be has been demonstrated on the cabin tract at Lake Wenatchee, WA.[17]

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[14] Pacific Northwest Region Briefing Paper "Cabin Users Fee Fairness Act of 2000 (CUFFA)", July 17, 2009, pg. 5 last paragraph.

[15] Senator Craig letter to Undersecretary Mark Rey, July 8, 2008.

[16] Sales Data andAppraisal Survey Results, Item 9, November, 2009.

[17] Plampgam-Wenatchee N.F. Orders New Appraisal For Recreation Residence Fees, USDA Forest Service, News Release, Jan. 29, 2010.

Question 14. What is the purpose of the fee tiers anyhow?

Answer. The fee ranges were determined by balancing the permitted rights and privileges, which all permit holders share, with the recognition that location and associated amenities influence the value of the permitted use. The proposed CFA places the vast majority of annual user fees in the $1,000 to $3,000 range, which we believe represents the fair value of the permitted use.[18] Fewer permits are assigned to the $500 and $4,500 tiers, which recognize the lower and higher end outliers. In developing the proposal, long-term predictability was a key component, as was an affordable annual fee. The CFA provides for affordable, predictable fees going forward, unlike the current appraisal methodology which could have dire impact every ten years. Annual fee affordability helps maintain the marketability of cabins. Predictable fees and marketability of cabins will help ensure the long-term viability of the Program, which has been the focus of cabin owner leadership during development.

Question 15. Why should one pay a transfer fee for an intra-family transfer or opening of a trust?

Answer. In both these cases there is a transfer of value to another party (a family member or a trustee). To charge no fee under these circumstances would be to create a special and privileged group. The CFA applies a $1,000 transfer fee to all transfers, including when little or no money changes hands.

Question 16. What will be the fiscal impact of the Cabin Fee Act over the next 5-10 years? Will it generate net revenue comparable to that projected from CUFFA appraisals?

Answer. The Congressional Budget Office (CBO) has formally assessed the CFA bill in the U.S. House of Representative (H.R.3397) and informally reviewed Senate CFA Bill (S.1906). The CBO found the Senate CFA Bill will at least equal the future fees collected by the Forest Service under CUFFA. Net revenue neutrality will be maintained currently and over the long-term, because the projected CUFFA revenues are overstated. Cabins will be abandoned under CUFFA when the owner can't afford the high fee and also can't sell because of the high fee. This impacts net revenues under CUFFA, which will diminish over time, due to the gradual abandonment of cabins nationwide. Over a longer period of time, we believe the CFA will turn revenue positive for the U.S. Taxpayer by retaining all 14,200 cabins in the Cabin Program.

Question 17. Isn't it risky to change from a familiar appraisal process, however flawed, to a new, untried system? How can we be sure it will not be worse than the status quo?

Answer. There is a risk in any change we make in our lives. The simplicity of the Cabin Fee Act virtually guarantees stable and predictable fees for cabin owners and reliable revenues for the Forest Service and US taxpayer. It ensures lower administrative costs to the FS, reduces risk of unknown future financial events and provides certainty for all parties. There may be some administrative issues that must be addressed. That is why we have been trying to engage the Forest Service in meaningful discussions about issues relating to administration. Finally, for cabin owners across America, the status quo is not acceptable[19] and it should be a concern for the Forest Service, as administrators of the Cabin Program for the public. High annual permit fees will result in the eventual loss in revenue as fee payments decline and cabins are removed from the National Forest.

Question 18. Wouldn't the CFA just replace the current set of unhappy cabin owners with two new sets (those who would have to pay more and those who would pay a fee upon sale of the cabin)?

Answer. The User Fee/Transfer Fee proposal that the CFA embodies has been vetted nationwide and there have been relatively few complaints regarding the above concerns. If our proposal were enacted in its entirety, less than 20% of the permit fees would be subject to a minor increase. Does an increase from $250 to $500 seem unfair? We agree with the Forest Service that the $500 dollar first tier fee is the minimum required to administer the Program effectively. We believe the federal government should at least be compensated at this minimum level for their costs to run the Program, which include costs associated with issuing a new permit upon cabin sale.

Question 19. Have other alternative appraisal approaches been considered? Wouldn't it be better than the User Fee/Transfer Fee mechanism?

Answer. Many alternatives have been explored. Other approaches fail to provide simplicity, predictability, cost savings and revenue neutrality that the User Fee/Transfer Fee model offers.

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[18] Comparison of Recreational Home Leases, Jan. 2010. See average fees comparison.

[19] Sales Data and Appraisal Survey Results, Item 9, November, 2009.

Question 20. Are there other ways to reduce costs to the Forest?

Answer. Yes, greater responsibility by cabin tracts for self-inspections for compliance, work certifications, clearing land, trail and road maintenance could be considered and it should be noted that many of these commonly occur. In addition, elimination of the appraisal process under CUFFA will save nearly $1 Million annually, allowing these resources to be put to better use by the Forest Service. The complexity and expense of the appraisal process will be replaced with a cost effective fee system and greatly simplified program administration.

Senator WYDEN. Very good. I'm going to let my colleagues ask questions first.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Gann, I just want to make sure I got this right. If the bill is not passed and the Forest Service reverts to the last authorizing legislation, how many cabin owners did you say you believe will lose their cabins?

Mr. GANN. Approximately 35 percent will be forced or attempt to sell their cabins. We estimate 10 to 15 percent will be permanently lost.

Senator BARRASSO. Thank you.

Mr. Magagna, thanks so much for being here. I appreciate it. I know you've been very busy with the Wyoming legislature. It's good to spend time with you and the Wyoming Stock Growers there. I very much appreciated your testimony here today.

Your testimony to me clearly explains why long term stability is needed, not just for grazing permit holders, but for rural economies, for wildlife as well as for public access. So I was wondering that since the passage of the Taylor Grazing Act, BLM permits have typically been issued for a term of 10 years. Why are 20-year permit terms needed now?

Mr. MAGAGNA. As the Senate realized, I would say that there—from the industry's perspective as other uncertainties have been introduced into our business, we would benefit from at least having from greater certainty there. But let me emphasize, more importantly, I think it takes me back to the science of range management. As we've learned how these ecosystems function, how we can change them to meet whatever objectives may be.

Those are long term approaches. They involve ongoing monitoring of the rangelands. A 10-year permit does not provide the certainty to institute the types of rangeland and livestock management practices that will allow us to make those changes.

Senator BARRASSO. Yes, I think you used the word certainty in there. Is the marketability of public land dependent ranches affected by the uncertainties surrounding permit renewal.

Mr. MAGAGNA. Senator, very much so. I can just look at our own State of Wyoming. The ease with which a ranch in Eastern Wyoming that's primarily private and state lands can be put on the market and sold today.

In Western Wyoming where they're primarily public land ranchers they can't. Ranchers continually tell me I would like to sell my public land ranch if I could acquire a comfortable private land ranch.

Senator BARRASSO. You alluded to in the beginning you had spent time with BLM land as well as Forest Service land in your

long career. Tell me about you own experience with the Forest Service and with BLM appeal processes, if you wouldn't mind?

Mr. MAGAGNA. Senator Barrasso, I've not had personal experience as a rancher. I've never had to appeal any decisions that they've rendered. But in my capacity with Wyoming Stock Growers I've been involved in a number of those appeals and particularly in the case of the Forest Service it's been a sense of frustration.

Numbers that I've seen indicate that in 85 percent of the cases the line officer, who is the supervisor of the original decisionmaker, simply affirms those decisions. Until you finally go to the judicial system our permitees feel like they don't really have an avenue to get a fair hearing under the current Forest Service process.

Senator BARRASSO. You know, Congress recently passed an amendment to the budget bill to address the need for environmental analysis on trailing permits. Has that addressed your concerns?

Mr. MAGAGNA. Senator, I was very pleased to hear today from the BLM that apparently their local decisionmaker managers are to be given discretion to exercise that. Our concern was that while the language passed by Congress clearly exempted those training permits from litigation, it didn't necessarily exempt them from NEPA analysis. Apparently that discretion will be provided, if I understood correctly. I believe that has the potential at least to address that problem and address it in a timely fashion.

Senator BARRASSO. I have a question about fragmentation. I think about grazing permits when they're lost. Could you explain what happens to wildlife to open space and to public access as a result of that kind of fragmentation?

Mr. MAGAGNA. Certainly, Senator. It goes back to the concept of watersheds or ecosystems. The land pattern in the West is a mixed one. When the public lands are lost the livestock grazing in many, many cases the private lands associated with those do not lend themselves to being viable economic ranching operations.

The attractive alternative today is rural subdivisions which is a loss of—it causes fragmentation. It causes loss of wildlife habitat. It really diminishes the public value of the public lands when the associated private lands are developed.

Senator BARRASSO. So would you explain a little bit about how a longer grazing permit term will help provide ranch owners a stable business environment? Help them obtain the needed long term operating capital?

Mr. MAGAGNA. Certainly, you know, the banking community is reluctant, quite frankly, to make loans that are tied to an operation with the public land grazing permits because of the uncertainty of those permits. Another very good example, our association also manages a land trust to put land into conservation and protect it. What our experience has been that our public land ranchers are very reluctant to put their lands into a perpetual conservation easement because of the uncertainty associated with the public land grazing permit.

If they had greater certainty, they would do that. Without that, they said, but if I lose my grazing permit next year or in 10 years, I'm going to be forced to subdivide and develop those lands. So I'm not going to provide the permanent protection that they would like

to provide that I think all of us as citizens would like to see provided on those lands.

Senator BARRASSO. Yes, Senator Baucus was here a little earlier and he talked about Montana ranchers. I think, I want to make sure I have him accurately quoted here. He said, "Ranchers don't want to be jacked around."

Does that—do you think that is fair assessment of what you see in Wyoming as well, Mr. Magagna, from your——

Mr. MAGAGNA. He is more brilliant with those words than I would have been, Senator.

Senator BARRASSO. Thank you. Thank you very much, Mr. Magagna.

A question for Mr. Kerr, in your article, "Don't try to improve grazing, abolish it!" You state, "What should the environmentalist strategy be?" You said, "We must fight a war of attrition. We must pick our battle and our battlegrounds. Our battle must be no grazing. Our best battlefield is in the courts, not the Congress and the Administration, either in the White House or the Agencies."

To me this seems like an extreme position. It is why rural grazing and timber communities are suffering. I want to just clarify for members of this committee that your preference is to completely eliminate grazing on public lands. Is that correct? Yes or no?

Yes, is it a—my time is expired, a yes or no question?

Mr. KERR. That is not conducive to a yes or no question. I will answer later then if you're going to limit me to yes or no. Thank you.

Senator BARRASSO. Thank you. I'll ask for writing, your answer in writing.

Mr. KERR. I'd be happy to answer that in writing.*

Senator WYDEN. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Gann, thank you so much for being here today. I had a couple questions about your testimony.

Mr. GANN. Yes.

Senator CANTWELL. Do you—first of all, do you believe in this market based rate concept in general? Do you think that that's the way? I know it's part of our Federal system today to say it should be market based rates and then it wasn't really implemented until fairly recently.

But do you think that's the right model for this?

Mr. GANN. So if you look at the current system and while CUFFA was—became statute in 2000. It substantially did not change the practice that had been in place for the last 40 to 50 years. So the current appraisal system has not worked for the last 40 or 50 years.

CUFFA was an attempt, the last attempt to make it to work. It's failed. In simple terms, it does not produce a market based user fee.

If fees are driven beyond the point where any consumer will pay it, by definition it's not a market fee.

Senator CANTWELL. But you think the payment structure should be based on market rate? Is that right?

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*Answers are found in the Appendix.

Mr. GANN. I think if you look at the proposed CFA fee, it is based on the market, but the market is defined as other recreation programs in the public domain and what they charge. The proposed CFA suggests that that, the proposed fees, are actually a little higher than "the market." But "the market" is challenging to define and challenging to administer.

Senator CANTWELL. OK. If we implemented what you're talking about where do you think it would be in 10 or 15 years?

Mr. GANN. You would see a steady increase of fees based on the department of current index which essentially means, user fees go up at the rate of inflation, at the rate of cost of all goods and services year by year.

Senator CANTWELL. So you're——

Mr. GANN. So over a long period of time it will maintain market value over a long period of time.

Senator CANTWELL. So the fees wouldn't be flat?

Mr. GANN. The fees would go up every year with the index. If you look at the last 25 years that was two to two and a half percent a year.

Senator CANTWELL. OK.

Mr. GANN. So over a longer period of time it continues to go up.

Senator CANTWELL. OK. So you're supporting legislation with the changes outlined.

Mr. GANN. Yes. Yes, we've had a significant dialog with the Forest Service recently. They've raised several concerns that we have tried to work with them to address. We believe we're on the same page in terms of the needed changes.

Senator CANTWELL. OK. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Cantwell.

Just a few additional questions.

Mr. Strahan, you mentioned an economic study in your testimony. You have heard me refer a number of times this afternoon to, kind of, the economic value of the treasures, the economic value of the river. What can you tell us in terms of, kind of, flushing out what you all have found in terms of the economic benefits as a result of this legislation for businesses in your area?

Mr. STRAHAN. In 2000, excuse me, in 2008 Econ Northwest conducted a study of the economics of the Wild Rogue section. They determined that just within this section that's being addressed in your bill has brought to us over $18 million in economic benefits in Southern Oregon as well as 300 plus, full- and part-time jobs. Then one extrapolates that and looks further up river, which is also a Wild and Scenic River designation, but it's managed differently under the BLM, we found that there was a $30 million economic input to our region there and across the State of Oregon.

So clearly the Wild and Scenic and Wilderness designation has been paramount in the economics of Southern Oregon.

Then the neat thing that we need to remember about these sorts of—this sort of legislation and these sorts of resources is that these fish bring jobs wherever they go. As a territory salesman of sporting goods, I've witnessed, since 1975, the impact on the Southern Oregon coast. We're talking Brookings, Gold Beach, Coos Bay. Our

Rogue River fish provide ocean fisheries in that manner as well as when they migrate upstream.

We have a recreation income coming from Gold Beach, Grants Pass, Gold Hill, Rogue River, Medford, Oregon. Besides the direct impact to my industry and to what we do, we have restaurants. We have convenience stores. We have gas stations. It's just a very large encompassing economic benefit to the region.

Senator WYDEN. Alright.

Let me ask you, Mr. Kerr, with respect to—excuse me. Yes, Mr. Kerr, if a grazing permit renewal or transfer doesn't change the use or management of the land what is, in your view, the implications of a categorical exclusion from NEPA?

Mr. KERR. I think it's complicated by—I think the argument is that it's merely administerial. I can't make a strong argument to that. I do know that there is a, as was stated earlier by the BLM, quite a backlog. I know the Forest Service doesn't have a backlog.

So we want the agency to do their job, take a hard look and evaluate these permits. If there's an opportunity arises to—that the agency should take to do that, we want to have them do that. You know, it's better to get the agencies adequate resources to do these permit renewals in a methodical and thoughtful manner. But I think the language regarding a categorical exclusion would be applied much broader than the particular circumstance that you're asking about.

Senator WYDEN. Alright.

Mr. Crary, one question for you. With respect to S. 1774, what is your assessment of this legislation with respect to grazing operations?

Mr. CRARY. As far as it would impact this would have? Is that?

Senator WYDEN. Yes, yes. How your folks see it?

Mr. CRARY. The permitees?

Senator WYDEN. Yes.

Mr. CRARY. How do they see it?

Senator WYDEN. Yes.

Mr. CRARY. Most of them are not in favor of it. But when asked they'd have to say just because. As far as being able to point to any specific reason that this would jeopardize their permit in any way they're really not able to.

Senator WYDEN. Gentlemen, would you all like to add anything? It's been a long afternoon and you all have been patient. I always like to give our witnesses the last word.

I'm struck by, as I listened to my colleagues ask questions. It's not only is there a sense of protecting these special places. It's recognizing that there's economic benefit.

You've heard Senators say again and again they're looking at the kind of work and the kind of effort that goes into these. A bill that is going to be sustained with popular support, you know, in the West doesn't happen by osmosis. I mean, these are issues that can get people polarized and off in separate corners pretty darn quickly.

What you all have shown in a lot of these issues that we've dealt with and it's sort of a common, common theme is an ability to get beyond that. That, in my view, is making policy in the West at its best.

We thank you for your patience. We're going to have certainly additional areas we're going to have to follow up on, the agencies in a number of instances, desire some modifications. But I'm looking forward to working with all of you and my colleagues.

This committee does its work in a bipartisan basis. I think we can move forward expeditiously on today's agenda.

Do any of you have any last words that you'd like to offer up?

Mr. GANN. Mr. Chairman, I'd just like to thank you for holding this hearing. You are correct that our organization has worked very closely with the stakeholders, Forest Service as well as certain Members of Congress to really, thoroughly, vet this new fee system. It's really designed to last.

This is the second time in a decade we're back here promoting a new fee system. We assure you that this is one designed to last for decades and decades to come. Thank you.

Senator WYDEN. The end is in sight on this topic.

Mr. GANN. Yes. Thank you.

Senator WYDEN. Alright.

Mr. Strahan, I understand you'd like to say something.

Mr. STRAHAN. Yes, sir. Thank you for the opportunity.

Senator WYDEN. Only fitting that Oregon have the last word.

[Laughter.]

Mr. STRAHAN. I try too.

Senator WYDEN. Go ahead.

Mr. STRAHAN. Anyway, just to kind of play up on what you were saying in terms of collaboration of negotiation. I wanted to point out that this particular bill is not being opposed by the American Federal or—excuse me, the American Forest Resource Council to an unprecedented negotiation with conservation. They have agreed not to oppose this.

I think it plays into the importance of a diverse economy. We can't have a timber industry and we can't have a recreation industry. I think we'd all agree that a diverse economy creates a stable economy and I'd just like to leave you with that thought.

Thank you once again for the opportunity.

Senator WYDEN. We thank all of you.

Mr. Recorder, let's make Senator Lee's statement a part of the record as well.

Mr. KERR. Senator Wyden, may I say something?

Senator WYDEN. Mr. Kerr, please.

Mr. KERR. I would note, it did occur to me that I am the only public witness in opposition to any of the bills on the list today. I think it's indicative of the nature of S. 1129. It was not developed collaboratively. We were not consulted. The livestock industry did not reach out to us in any way.

That compares greatly to the other bills that are being heard today. Also as your bill compared to what happened with the Oregon Eastside Forest bill that you have done so much work on. You know, I think it's the difference of approach. So that puts us in opposition today.

We offer an alternative of voluntary grazing permit retirement that we think is a better way. You know, perhaps the conservation community will be consulted by the livestock industry on this and something could be worked out. But we haven't been so far.

Senator WYDEN. But just to finish that last thought, Mr. Recorder, let's make Senator Lee's statement a part of the record.

Just on your point, you know, Mr. Kerr, and I've worked very collaboratively with Senator Barrasso over the years. Of course, worked with you on a number of instances, so let's see what we can do to find some common ground here. There may be more to work——

Mr. KERR. We'd appreciate that, Senator.

Senator WYDEN. There may be more to work with than meets the eye. Two people that I've enjoyed working with over the years, Senator Barrasso and yourself, and of course, you played an absolutely key role in putting together the Eastside bill in Oregon and certainly in our state. When it comes to natural resources policy people will long remember that John Shelk, one of our most distinguished timber men over the years said he never could conceive of working with you on anything, let alone agreeing with you on anything.

Of course that's what you were able to do on the Eastside bill. As has been noted before in this subcommittee, that even before we've gotten that bill enacted into law the trust that has been developed between the timber industry and environmental folks has led the agencies to actually start living under that approach even before it is formally enacted into law. So I think that's an important note to wrap up with.

I intend to work closely with Senator Barrasso and you and other interested parties to try to find some common ground.

So with that the subcommittee is adjourned.

[Whereupon, at 4:17 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

WILDEARTH GUARDIANS,
March 31, 2012.

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

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

DEAR SENATORS WYDEN AND BARRASSO:

This letter follows up on my testimony before the subcommittee on Thursday, March 22, 2012. I request that it be included in the official hearing record.

I wish to address two issues.

Question 1. Livestock Grazing Damages Public Lands and Resources.

Answer. As I noted in my testimony, livestock grazing on federal public lands is not benign, but rather causes serious ecological and hydrological damage to western lands and watersheds. Following is a summary from the report by WildEarth Guardians (2009) entitled "Western Wildlife Under Hoof: Public Lands Grazing Threatens Iconic Species."

> Livestock have done more damage to the Earth than the chainsaw and bulldozer combined. Not only have livestock been around longer than developers, miners, and loggers, but they have grazed nearly everywhere. On public land across the West, millions of non-native livestock (including cattle, sheep, goats and horses) remove and trample vegetation, damage soil, spread invasive weeds, despoil water, deprive native wildlife of forage and shelter, accelerate desertification and even contribute to global warming. Former Secretary of the Interior Bruce Babbitt has written that federal public lands livestock grazing "is the most damaging use of public land."
>
> Livestock grazing has had a profound effect on arid landscapes in the West. Archeological and palynological (pollen, spores) evidence indicates that the introduction of domestic livestock has had a greater impact on the Great Basin than any event in the previous 1,000 years. More than 99 percent of remaining sagebrush steppe has been affected by livestock and approximately 30 percent has been heavily grazed. Research in southeastern Arizona has similarly found that grazing has probably had greater effect on the vegetation, soil, fire ecology, and the spread of nonnative weeds than any other land use in the region. Ubiquitous, constant grazing is deemed the most potent cause of desertification in the United States.
>
> The impacts from grazing are even more apparent in riparian areas. Western streams were historically viewed by the livestock industry and managed by the federal government as "sacrifice areas" for domestic livestock. Decades of heavy grazing in riparian zones has cost western ecosystems generations of willows and cottonwoods, eliminated American beaver from much of the landscape, burdened hydrological systems with millions of tons of sediment, and significantly reduced fish and other wildlife to a fraction of their historic range. Further, nearly all surface waters in the West have been fouled with livestock waste that produce harmful waterborne bacteria and protozoa such as Giardia. [citations omitted]

Omitted citations in the above quotation may be found among the 73 references in the report, most of which are of government reports or peer-reviewed scientific articles. The entire report may be downloaded at:

http://www.wildearthguardians.org/support__docs/report-WWUH-4-09__lowres.pdf.

Question 2. Answering Senator Barrasso's Question Regarding My Position on Public Lands Grazing.

Answer. In a question to me, Senator Barrasso insisted that I answer—with a mere "yes" or "no"—whether it was my "preference is to completely eliminate grazing on public lands." I refused to answer under such terms, but I did offer to submit a more informative answer for the record. He had made reference to an article I wrote for High Country News in 1994 entitled "Don't Try to Improve Grazing; Abolish It!" I have included the entire article below.* At the time I wrote the article I worked for Oregon Wild (then known as Oregon Natural Resources Council) and had no relationship with WildEarth Guardians.

I favor the end of abusive livestock grazing on public lands. The evidence is voluminous and compelling that grazing harms species, ecosystems, and watersheds (see above). Livestock grazing also conflicts with most forms of recreation. Approximately 2 percent of the nation's livestock feed comes from federal public lands. This miniscule amount of forage could easily be made up through increased production on private grasslands. I also object to the federal government subsidizing livestock grazing on federal public lands by spending many times more than it receives in grazing fees.[1]

Both my beliefs and actions have evolved on public lands grazing in the nearly two decades since I wrote the article the Senator Barrasso quoted. In that time, I have:

- Worked with Senator Wyden to enact the Steens Mountain Cooperative Management and Protection Act of 2000, which established-with the consent of local grazing permittees-the first legislatively designated livestock-free wilderness in the United States, covering approximately 100,000 acres.
- Worked with Senator Wyden to enact legislation to facilitate voluntary federal grazing permit retirement for grazing allotments in and near the Cascade-Siskiyou National Monument, with the support of affected grazing permittees.
- Advised conservation organizations on a voluntary grazing permit retirement provision that was included in legislation that designated new wilderness in Idaho's Owyhee canyonlands. Local grazing permittees agreed to the inclusion of the provision.

I am currently working with Senator Wyden to enact the Oregon Caves Revitalization Act, which includes a voluntary grazing permit retirement provision, which is supported by the affected grazing permittee.

When I reread the article that Senator Barrasso quoted, I discovered that:

- I called for compensating grazing permittees who lost their grazing privileges on public lands. I began advocating for compensating ranchers in 1994 when even the conservation community objected to the concept. Now, in 2012, voluntary federal grazing permit retirement has become the preferred method for equitably resolving livestock grazing conflicts on the nation's public lands.
- Some of my ideas in 1994 were good ones, while others were not.
- My position on public lands grazing has evolved.
- I misattributed the quote "You can get more with a kind word and a gun than just with a kind word" to Che Guevara. In fact, I later learned it was the character "Al Capone" (played by Robert De Niro) in a television episode of The Untouchables.

Thank you for the opportunity to testify before the subcommittee.

Sincerely,

ANDY KERR,
Advisor.

RESPONSES OF LESLIE A.C. WELDON TO QUESTIONS FROM SENATOR BARRASSO

Question 1. In your testimony you said the Forest Service doesn't track payments made under the Equal Access to Justice Act or other fee shifting statutes. Using

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*Article has been retained in subcommittee files.

[1] See Government Accountability Office. 2005. Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged. GAO-05-869. Government Accountability Office. Washington, DC.

the Oregon Natural Desert Association's (plaintiff) application for interim fees and costs against Secretary Vilsack (defendant) for almost $1 million dollars as an example, what do you estimate, on this one application, was the impact on the agency budgets, time, and personnel? The plaintiff's motion seeks fees between October 2001 and February 2012.

Answer. Oregon Natural Desert Association (ONDA) has filed a motion with the court seeking almost a million dollars for costs through June 2009. We've responded and are awaiting a ruling. Although we have been tracking Equal Access to Justice Act (EAJA) fees and other litigation fees paid to attorneys in natural resource litigation, we have not been tracking those other costs associated with litigation, such as Agency personnel costs. Forest Service employees generally do not track their time for specific projects or cases.

For over a decade, various Forest Service personnel in the Pacific Northwest Region, on various forests, have had to address a number of law suits filed by the Oregon Natural Desert Association. A considerable amount of time has been spent in this endeavor. There have been costs to the Malheur National Forest, Pacific Northwest Regional Office and the Washington Office as well as the Office of General Counsel to respond to the litigation at various levels, however attempts to estimate costs to the agency are speculative since there is no way to develop an accounting for that time. Also, the Forest Service doesn't track the cost of the litigation for the Department of Justice (DOJ). We would defer to the Department of Justice for an accounting of litigation costs.

For Endangered Species Act claims, plaintiffs are entitled to recover costs, but those come from the DOJ's judgment fund. For National Forest Management Act (NFMA) claims, the recovery is under EAJA and those are paid by the agency from its funds. The current request is for almost a million dollars. If the court awards fees in connection with Plaintiffs' NFMA claims, that t the Forest Service would only be required to pay the costs for litigating the NFMA claim.

Question 2. According to the FY 2013 budget, the Forest Service plans to complete NEPA decisions for 125 allotments, compared to a target of 250 in FY 2012 due to anticipated increase in NEPA analysis costs. With the costs associated with NEPA decisions, how important is codifying Rescissions Act flexibility to the agency's ability to determine the priority and timing of environmental analysis?

Answer. Codifying flexibility for the Forest Service in determining the priority and timing of environmental analysis documentation for livestock grazing activities on National Forest System lands is essential given limited agency budgets, fluctuating resource conditions on-the-ground and emergencies such as wildfires and post wildfire emergency rehabilitation. The flexibility is not found in the 1995 Rescissions Act, but first appeared in the 2003 Appropriations Rider. The Rescission Act itself didn't provide any flexibility and that was the problem because of the language requiring adherence to the schedule.

Question 3. In the last ten years, how many grazing permits have been reissued using current appropriation rider language while the NEPA process is still being completed?

Answer. From 2003 through 2011, 5,689 term grazing permits were issued under the recurring appropriation rider and the Rescissions Act.

Question 4. What impact would S. 2001 have on accessing possible rare earth deposits? What studies or inventories have been conducted to know what rare earth deposits may be deposited?

Answer. S. 2001 would withdrawal lands the land designated as wilderness from location, entry, and patent the mining laws subject to valid existing rights. Except where mining claims already exist and claimants can demonstrate valid existing rights, all new exploration and development of rare earth minerals would be prohibited.

The Forest Service has conducted no studies or inventories for the existence of rare earth minerals. The United States Geological Survey (USGS) is the federal agency tasked with conducting and publishing mineral resource assessments. The Forest Service defers to the USGS for the current status of mineral assessments.

RESPONSES OF LESLIE A.C. WELDON TO QUESTIONS FROM SENATOR MURKOWSKI

S. 1129

Question 1. Please clarify MS. Weldon's assertion that the Forest Service has no backlog of grazing permits. Did she mean to suggest that all of the existing or renewed grazing permits had NEPA completed before they were re-let?

Answer. Ms. Weldon did not mean to suggest that NEPA has been completed for all allotments before permits are renewed, but rather that the Forest Service does

not have a backlog of permits needing issuance, reissuance or transferal, awaiting the completion of NEPA because it issues permits under the authority of the recurring appropriations rider, as well as the Rescissions Act, pending the completion of NEPA. The Forest Service completes NEPA on grazing allotments, not grazing permits in accordance with the Rescissions Act schedule. NEPA is not based on the timing of permit expiration. It is important that the Agency is able to issue the permits so that permittees can continue their use uninterrupted as we work toward NEPA completion on the allotment.

Question 2. Please tell us how many grazing permit applications for renewal there were in each year since 2003.

Answer. The Forest Service does not track renewals as a subgroup of permits issued each year. The following data represent total permits issued each year for NFS lands, including renewals.

2003	416
2004	466
2005	520
2006	1003
2007	578
2008	563
2009	730
2010	658
2011	755

Question 3. Please tell us how many years passed before all the NEPA was completed on all of the grazing permits that were renewed in 1995?

Answer. As a result of changing priorities and funding levels from those used to develop the 1995 allotment NEPA schedule, the Forest Service has not completed NEPA analysis for all of the allotments with permits that were issued in 1995. Therefore, the need exists to continue the Secretary's authority and sole discretion in setting priority for the completion of allotment NEPA analyses.

Question 4. Please tell us how many grazing permit application for renewal will be renewed in 2012?

Answer. Local units manage and process the applications for term grazing permits, whether renewals, transfers or new applications and the agency does track how many total permits are issued each year. However, we are unable to provide the number of term grazing permits issued so far in 2012, because we compile the data on an annual basis.

Question 5. Please tell us how many years it will take the Forest Service to complete the NEPA work that will be needed to underpin the grazing permits that are renewed in 2012?

Answer. The 2010 Rescissions Act Schedule identified 3,605 grazing allotments that will need NEPA completed between 2011 and 2019. However, because conditions can and do change on our grazing allotments, that number is likely to change. Annually the Forest Service units will develop their NEPA needs; and in 2013, the Forest Service would again issue an agency wide updated schedule that would include any changes.

Question 6. If Congress does not renew Interior Appropriations special provision number 415 and S. 1129 is not signed into law, how many grazing permits would you be forced to terminate?

Answer. The Forest Service relies on the Rescission Act as well as the recurring appropriations rider to provide the authority to continue issuance of grazing permits where NEPA has not been completed on the associated allotment. Therefore, since we would continue to have authority to reissue permits under the Rescissions Act, there will be no forced terminations of grazing permits if section 415 is not renewed or S. 1129 is not enacted.

Question 7. Do you agree that Special Provision 415 relates to both the Forest Service and the Department of the Interior?

Answer. Yes, section 415 relates both to the Forest Service and the Department of the Interior.

Question 8. Can you provide data or an analysis on what the economic impact would be to the ranchers who hold these permits and the communities they live in if Sec. 415 or S. 1129 were not in place?

Answer. Under the Rescissions Act, there would be no economic impact to the permittee or the community. Because the Forest Service is required to issue, transfer, or renew permits under the authority of the Rescissions Act, there would be no break in use of the grazing permit. Grazing would continue, whether those provisions have been enacted or not because the permits would be issued with the same terms and conditions as the expired or transferred permit.

Question 9. Please explain how you are able to describe that only 25% of your grazing permit renewals currently do not have the required NEPA completed?

Answer. The Forest Service conducts analysis, documentation and disclosure pursuant to NEPA on grazing allotments and then issues the term grazing permits to the applicants. To clarify, approximately 1,700 allotments do not have the analysis, documentation and disclosure pursuant to NEPA completed. For these allotments SEC. 415 of the FY 2012 Interior Appropriations and Related Agency law and Section 325 of Public Law 108-108 (117 Stat. 1307), allow the issuance of 10-year term grazing permits to applicants who graze their livestock on the affected allotments.

Question 10. With a proposed 27% cut in the grazing program, please provide an estimate of the number of grazing allotment decision notices that will be completed in FY 2013 and please provide a detailed explanation of how you will accomplish that level if your estimate is higher than 142 permit decisions?

Answer. In the Forest Service FY 2013 Budget Request, the agency has requested a 27 percent reduction in spending on grazing management; proposing to drop grazing funding from $55.3 million down to $40.4 million dollars. Nevertheless, the FY 2013 President's Budget requests $13, 730,000 to complete livestock grazing NEPA analysis and decisions for 125 allotments.

S. 1906, a bill to modify the Forest Service Recreation Residence Program as the program applies to units of the National Forest System derived from the public domain by implementing a simple, equitable, and predictable procedure for determining cabin user fees;

Question 11. Can you describe the areas of potential agreement related to this legislative proposal?

Answer. It is my understanding that there have been productive discussions between the Forest Service and groups that represent cabin users who have leases within the National Forests. The bill would reduce the cost of administering the recreation residence program because there would no longer be a need for fully developed lot appraisals once lots are placed into their corresponding tiers. Representatives of the cabin owners' organization also agreed to add an additional tier on the upper end in order to better capture higher lot values. The representatives also have agreed to removal of the provision requiring the agency to assess a transfer fee that was tied to the sale value of the cabin. Because the agency does not have an interest in cabin values (only lot values) and because it would have required administrative resources to track those sales, we are supportive of removing that provision from the bill.

Question 12. Can you describe the areas of disagreement that still must be worked out?

Answer. The agency can support the most recent draft amendments to S. 1906 if changes are made as described in testimony and in the answer to Question 11, and if the provision requiring the agency to assess a transfer fee at the point of cabin sale is removed.

Question 13. Given this Administration's beliefs about global warming and the drying of the Intermountain West, does the Forest Service think it wise to impose these restrictions on water development in this bill?

Answer. Section 4(d)(3) of S. 1635 would prohibit the development of any new irrigation or pumping facility or other specified water structures in the covered land. No, it may not be wise to impose water restrictions because there are existing reservoirs in these areas. Also, in general, it is preferable to expand reservoirs at high elevations (all these lands are above 10,000 feet) because substantially less evaporative water loss occurs at these elevations. The Forest Service testimony on S. 1635 addressed water rights and water development in Section 4(d)(3) which would prohibit new water development projects in the special management area. This provision is more restrictive than section 4(d)(4) of the Wilderness Act under which the President of the United States may exercise discretion to authorize such facilities within designated wilderness areas if they are determined to be in the public interest.

We note, however, that the prohibitions on water develop in the Sheep Mountain special management area would consistent with the prohibitions in wilderness subject to the Colorado Wilderness Act of 1993, including the wilderness additions that would be designated by this bill.

Question 14. Is the Forest Service willing to forgo the opportunity to develop wildlife stock ponds or guzzlers within this Wilderness if climate change does result in seasonal drying in this area?

Answer. We see no need to develop wildlife stock ponds or guzzlers either in the Sheep Mountain SMA or in the wilderness additions that would be designated by S. 1635. The wildlife species of most concern at these high elevations is the bighorn sheep and water availability (or lack thereof) is not a limiting factor.

Section 5 (a) of this bill says the Secretary may continue to authorize the competitive running event permitted since 1992 in the vicinity of the Special Management Area and the Liberty Bell addition to the Mount Sneffels Wilderness designated by section 2(a)(21) of the Colorado Wilderness Act of 1993 (as added by section 3) in a manner compatible with the preservation of the areas as wilderness.

Question 15. Would you describe the restrictions the Forest Service has placed on these events in the past?

Answer. The Forest Service has not placed any non-typical restrictions through the special use permit on the competitive running event in the Special Management Area and the Liberty Bell addition.

Question 16. Would you describe the restrictions the Forest Service will likely place on these events in the future?

Answer. We would likely consider capping the total number at the organizer's current cap of 100 runners.

Question 17. Do you believe that this type of imprint by man conforms to the original 1964 Wilderness Act and the solitude that most users expect when they enter into and recreate in a Wilderness Area?

Answer. A competitive event is not consistent with Forest Service wilderness policy, which reflects the Wilderness Act prohibition against commercial enterprise. This type of imprint by man does not conform to the original 1964 Wilderness Act. The competitive foot race would not be in the proposed wilderness additions.

Section 4 on the Sheep Mountain Special Management Area Management Area says the purpose of the Special Management Area is to conserve and protect for the benefit and enjoyment of present and future generations of the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the Special Management Area. The Special Management Area would preserve options for later designation as Wilderness by the Congress, if the current uses would cease.

Question 18. If these uses are to continue, why is this area any different than any other parcel of developed or undeveloped recreation land managed by the Forest Service and why modify its purpose?

Answer. The difference is that this bill would allow for continuation of only the existing helicopter activities, which include heliskiing and helicopter access for a utility company's access for annual dam inspection. As compared to any other parcel of developed or undeveloped land, there would only be two such uses now and for at least the near future. The geographic impact of these uses, however, is not insignificant in that the heliskiing operation is authorized to use about 6,000 acres of the proposed SMA, which represents about 27 percent of the total acreage proposed for designation.

Question 19. In your mind, do the restrictions within the purposes make this more like a Wilderness Area or more like undeveloped recreation land allocations currently utilized in Region Two of the Forest Service?

Answer. The allowance of the helicopter uses makes this SMA more like undeveloped recreation land currently utilized by the Rocky Mountain Region. For this reason, we support designation of this parcel as a Special Management Area.

S. 1774, a bill to establish the Rocky Mountain Front Conservation Management Area, to designate certain Federal land as wilderness, and to improve the management of noxious weeds in the Lewis and Clark National Forest;

Question 20. Are there any oil and gas operations or potential oil and gas deposits within the areas to be designated Wilderness additions or the Conservation Management Area in this bill?

Answer. The lands identified in the Rocky Mountain Front Heritage Act were congressionally withdrawn from oil and gas entry in 2006 by Section 403(a) of Public Law 109-432. There are no leases remaining on these lands. There are no active oil or gas operations on the Lewis & Clark NF (L&C NF) lands being considered in S. 1774. The Rocky Mountain Front on the Lewis & Clark is part of the Montana Overthrust Belt. This area is structurally similar to areas that are highly productive for oil and gas in Canada, Wyoming and Utah. USGS has ranked it as highly prospective for hydrocarbons. Analysis in the 1997 L&C NF Oil and Gas Leasing FEIS ranked the entire area as "high" potential for the occurrence of oil and gas. Gas pro-

duction has occurred in and adjacent to the forest in the Blackleaf Field. One well in the field was located on the L&C NF. It was productive from 1981 to 1991.

Question 21. What are the known mineral deposits and potentially developable mineral deposits within the proposed Wilderness additions and the Conservation management area?

Answer. The mineral withdrawal in Section 403(a) of Public Law 109-432 also applies to locatable minerals and geothermal claims. The geologic setting contains rock formations that may contain (low to moderate potential) undiscovered copper and silver mineral resources.

Question 22. I am wondering if the Forest Service has any other land use designations that are analogous to the proposed Conservation management areas. It seems to me this is typically a land allocation used within the vernacular of the Bureau of Land Management. Does this land allocation title cause the Forest Service any concern?

Answer. The Northern Region of the Forest Service does not have a land allocation analogous to the term Conservation Area; however, the Forest Service does not have any concerns if Congress chooses to use that terminology.

Question 23. If not, how long will it take you to develop a plan for the management of the area and do you need additional specific direction on what is or isn't going to be allowed in this area?

Answer. S.1774 does not specifically require development of a new management plan for the area. National Forest lands encompassed within the area covered by S.1774 would largely continue to be managed according to existing management plans, policies, and regulations. Areas newly designated as Wilderness would be treated as additions to the adjacent Bob Marshall Wilderness Complex (BMWC) and would be managed consistent with other Wilderness lands lying within the complex (for example, current management plans and direction that apply to the BMWC include the Bob Marshall Wilderness Complex Guidebook for Wildland Fire, BMWC Recreation Management Direction plan, and special orders covering topics such as food storage and camping stay limits). Lands receiving the Conservation Area designation would be managed in accordance with the current Forest Plan direction. Additionally, the legislation creates two new planning mandates: developing a comprehensive weed management strategy and conducting a study to improve non-motorized recreation opportunities. We need a minimum of three years to develop a quality comprehensive weed strategy and to conduct the trails opportunity study. Attempting to complete the weed strategy or trail study in less than three years would require us to divert resources from important ongoing management tasks such as treating weeds and maintaining trails. Additionally, requiring the completion of the weed strategy in one year and the trails study in two years could have the undesired effect of limiting opportunities for other stake holders such as Indian tribes, State and local agencies, weed districts, or other members of the public from fully collaborating in the process.

RESPONSE OF MIKE POOL TO QUESTION FROM SENATOR BINGAMAN, ON S. 303

Question 1. Am I correct in my understanding that S. 303 provides that certain claims listed in the bill be considered to have received what is called a "first-half final certificate" before September 30, 1994, thus making the claimant eligible to receive a "patent"—or fee simple title—to these federal lands and minerals under the Mining Law of 1872 for $2.50 per acre?

Answer. Deeming a claimant to have received a first half first certificate before September 30, 1994, will allow the BLM to continue to process the pending patent application for the mining claims listed in the bill. To be eligible for a patent, the claimant would need to pay the purchase price, which is $2.50 per acre for a placer claim, and satisfy all the other requirements for patenting under the Mining Law of 1872, including demonstrating, and verifying the existence of a valuable mineral deposit as of the date the claimant satisfied all the requirements for patenting. If the applicant, satisfies these requirements, then the applicant would receive a patent.

RESPONSES OF MIKE POOL TO QUESTIONS FROM SENATOR BARRASSO, ON S. 1129

Question 1. What impact does litigation have on the BLM's resources and ability to issue grazing permits in a timely manner?

Answer. Litigation work associated with administration of the grazing program varies greatly by state and region across the Bureau. In some Field Offices there is little to no litigation workload, while in other offices it may account for a substantial amount of staff time. The timing of litigation can further influence the capa-

bility for on-the-ground range management. For example, if staff must prepare case files, prepare briefings, or offer testimony during the field season (usually spring and summer months) then their ability to perform monitoring, compliance checks, and NEPA work necessary to support fully processing permits becomes limited.

Question 2. In the last ten years, how many grazing permits have been reissued using current appropriation rider language while the NEPA process is still being completed?

Answer. Based on information readily available, the BLM has issued an average of 1,300 permits per year under the appropriation riders for the past 5 years. Actual annual numbers for the last five years are shown in the table below. The BLM rangeland administration databases do not include the number of permits issued under appropriations riders prior to 2007 but the number of permits issued annually is likely similar to the number of permits issued over the last five years.

BLM Grazing Permits & Leases Issued or Processed from 2007-2011					
Permit Status	2007	2008	2009	2010	2011
Issued using Appropriations Language Authority	1068	1333	1741	1286	1203
Issued after completion of NEPA Process	2011	2168	2554	1843	1945
Total Issued	3079	3501	4295	3129	3148

Question 3. Section 123 of the Consolidated Appropriations Act of 2012 provided flexibility when considering NEPA analysis for trailing or crossing permits. As mentioned in your response to my question about how the BLM is interpreting and implementing the law, will you provide documentation about how the local field offices will be determining or handling this issue?

Answer. The BLM has prepared guidance on administration of crossing permits and associated NEPA documentation. This guidance has been transmitted to the field as an instruction memorandum and is available at the following website: www.blm.gov/wo/st/en/info/regulations/Instruction__Memos__and__Bulletins/national__instruction/2012/IM__2012__096.html.

Question 4. The BLM budget proposes to cut $15.8 million from the Rangeland Management program for grazing administration. How do you justify cutting rangeland management programs when your agency has a backlog of NEPA allotments to complete, and is struggling to complete allotment management plans, rangeland health assessments, and process permits?

Answer. The FY 2013 budget requests a decrease of $15.8 million, which will bring the budget to the 2010 levels. The Budget includes appropriations language for a three-year pilot project to allow BLM to recover some of the costs of issuing grazing permits/leases on BLM lands. BLM would charge an administrative fee of $1 per Animal Unit Month, which would be collected along with current grazing fees. The budget estimates the administrative fee will generate $6.5 million in 2013, and that it will assist the BLM in processing pending applications for grazing permit renewals.

RESPONSES OF MIKE POOL TO QUESTIONS FROM SENATOR MURKOWSKI, ON S. 303

Question 1. On average, how many miners a year fail to submit their small miner waiver request applications and thus lose their mining claims for failure to file their applications on time? Are we talking a handful, dozens or hundreds? How many small miner waivers do you process each year and what is the total universe of miners who hold less than 10 claims and thus qualify for the waiver program? What is the total cost currently of sending a letter to a miner informing him that his application did not arrive in a timely fashion and that his claims are being revoked?

Answer. Currently, almost 30,000 claimants hold 10 or fewer claims. In 2011, a total of approximately 41,000 claims were forfeited by small miners and entities holding larger numbers of claims. Mining claims are forfeited for many reasons, and the number of claims forfeited can vary widely from year to year. Often, claimants voluntarily forfeit their mining claims because the claimant has evaluated the claim and found no mining opportunity worth pursuing at this time; however, the BLM has no way of knowing whether a forfeiture is voluntary or inadvertent. On an aver-

age for the last five years, the BLM has processed approximately 21,000 waivers annually. The BLM estimates that the total cost currently of sending a letter to a miner informing him that the BLM did not timely receive the statutorily required maintenance fees and that his claims have been forfeited by operation of law is about $41.50, including staff time.

Question 2. How many appeals of claim forfeiture caused by miners failing to meet the required filing deadlines are currently pending? What is the cost of an average appeals process to adjudicate such forfeitures?

Answer. The BLM tracks if an appeal is filed but does not track the action the mining claimant is appealing. Between October 1, 2010, and September 30, 2011, 71 appeals were filed involving 352 claims, but as stated, there is no consolidated record of the reason or reasons for the appeals. Without knowing the reason for the appeal or the number of claims involved, estimating the cost to adjudicate each appeal of a forfeited claim is not possible.

Question 3. The Department, in its testimony on the bill, objects to it because of the "enormous administrative burden" it would cause the Department to comply. The Department is apparently concerned that miners in great numbers would file their applications late should S. 303 pass. Would the Department's concerns be alleviated if a penalty would be added for late filings to provide a continued financial incentive for miners to file their forms on time, but not lose their claims as the automatic response to late filings, or in cases where the Department may have improperly processed filings? What might be an acceptable level of penalty to encourage on-time filing, a fine of $1 per claim per day for a late filing, a fine of $5 a day per claim for a late filing? How high would such a penalty need to be to likely make a modified process revenue neutral to the BLM?

Answer. Imposing a late fee or fine would not relieve the administrative burden to the BLM under S. 303, although it would recover some of the associated costs of the new administrative duties. For all claimants who submit an untimely waiver as well as for claimants who did not pay the maintenance fee or file a waiver at all, the BLM would still be required to check its records and determine whether the claimant was eligible for a waiver on the date the payment was due, and, if so, send a notice to those claimants and provide a 60-day period in which to cure by filing a proper waiver or paying the maintenance fee. If the claimant didn't respond to the 60-day cure notice, the BLM would then have to issue an appealable decision declaring the claim(s) forfeited. Imposing the late fee or fine would not remove the additional administrative steps of investigating the ownership of each claim and then sending out notices for which claims for a timely fee payment or waiver was not received.

The BLM estimates the cost of approximately $400,000 annually to implement the provisions of S. 303.

Question 4. Why does the BLM feel that the language which says that miners should have the ability to cure any "defect for any reason" doesn't apply to the primary potential defect, that of not having the application recorded as being timely received?

Answer. The Omnibus Consolidated and Emergency Supplemental Appropriations Act of October 21, 1998 (Pub. L. No. 105-277, 112 Stat. 2681-235) that created the 60-day cure period, codified the Department's existing regulatory practice of providing a cure period for timely filed but defective maintenance fee waivers. There is no evidence that Congress intended to alter the Department's regulatory interpretation that allowed a claimant to cure a defective maintenance fee waiver only if the waiver was filed on time[delete extra space]. Rather, the history of the Act indicates that the purpose of amending the United States Code was simply to extend the cure period from 30 days under BLM's regulations to 60 days. The Interior Board of Land Appeals (IBLA) has repeatedly affirmed this regulatory interpretation that allows a mining claimant to avoid forfeiture only where a timely, but defective waiver certification is filed, and the claimant thereafter cures the defect or pays the maintenance fee. The IBLA's reasoning is that the Secretary has no discretion to allow a cure because the claim becomes forfeited by operation of law when the deadline passes and the BLM has not received payment or a valid waiver. The IBLA's decisions on this issue represent the final decision of the Department, and have never been overturned in Federal Court.

Question 5. Can the Department suggest any changes in the allowable grounds for appeals that would solve the current issue that applicants have no effective appeals process to overcome the burden of "presumed administrative regularity" in the processing of small miner waiver applications by the government when they believe that the Department, by clerical error, did not credit arrival of their mining waiver request forms on time?

Answer. The Department's regulations at 43 CFR Part 4 allow any party adversely affected by a decision of the BLM to appeal to the IBLA. Mining claimants who believe that their mining claims were improperly declared void can appeal a decision under the Department's appeal regulations, and all decisions made by the BLM include specific instructions telling mining claimants about their appeal rights. If the mining claimant receives an adverse decision on appeal, the mining claimant can challenge the Department's decision in the U.S. District Courts. The BLM mining law adjudicators remind claimants that when they mail their documents, they should always send the documents by certified mail, return receipt requested, keeping a copy of what they sent. Additionally, BLM offices also remind claimants they should send duplicate copies to the BLM so the copies can be date stamped and returned to the claimant. The claimant should also make their filing well in advance of the September 1 filing date so that should a document not be received, there would be ample time to re-file the document if necessary.

S. 1788

Question 6. Given this Administration's beliefs about global warming and the drying of the Intermountain West, does the BLM think it wise to impose these restrictions on water development in this bill?

Answer. These restrictions only apply to BLM-managed lands within the proposed wilderness area and there are extensive BLM-managed lands in the surrounding area on which there are no restrictions on water developments. Similar language has been included in many wilderness designation bills.

Question 7. Is the Bureau of Land Management willing to forgo the opportunity to develop wildlife stock ponds or guzzlers within this Wilderness if climate change does result in seasonal drying in this area?

Answer. Section 10(d) of the bill specifically gives the BLM the authority to authorize new wildlife water developments including guzzlers (where appropriate) within the Pine Forest wilderness area.

S. 1559

Question 8. At this point in time, what is the Bureau's land management plan for these lighthouse reserves?

Answer. Of the approximately 1,000 acres of islands and rocks, most are currently withdrawn from mining. The lands are currently managed for their scenic, recreational, historic, cultural, and natural resource values. There is currently no land use plan covering the lands proposed for the San Juan Islands NCA; however, BLM would prepare a land use plan as directed by S.1559, if it is enacted.

Question 9. How would the designation called for in this legislation change the day-to-day management and use that is occurring on these lighthouse reserves?

Answer. While there would be very little change in the day-to-day management, the designation would provide a permanent, consistent management scheme allowing for the continued protection of the important natural, scientific, cultural and historic values of the public lands within the San Juan Islands. The bill adds a consistent overlay of permanent management protections of these resources while continuing to allow the current recreational uses.

Question 10. Can you assure me that recreational users such as people walking their dogs will not be harassed by DOI law enforcement personnel if this legislation is passed?

Answer. We have not had, nor do we anticipate having, any problems with dog walkers within the proposed San Juan Island National Conservation Area.

Question 11. Should we expect any new restrictions will be placed on access or use of these areas if this legislation is passed?

Answer. We do not anticipate any new restrictions on access.

S. 2001

Question 12. How many acres of suitable timber base will be lost if this bill is signed into law?

Answer. The BLM has not identified any "suitable timber" in the proposed areas. There is currently one past sale (sold, awaiting protest resolution) potentially affected by S. 2001 which covers 16 acres. There are four additional sales planned for future years. The total for all of these possible sales is less than 1,100 acres. The timing of the passage of this bill may preclude all of these timber sales.

Question 13. Approximately how much revenue could have been generated over the next five decades from this timber base on an annual basis assuming 2012 stumpage rates in the area?

Answer. Of the total nearly 60,000 acres being proposed for wilderness designation less than 1,100 acres, or 1.8 percent contain planned timber sales.

Question 14. There are several miles of wild and scenic river designations in this bill; do those designations cut off areas of suitable timber base from access?

Answer. Most of the wild and scenic river designations in S. 2001 are within the designated wilderness, therefore the wild and scenic overlay would have no additional affect. For those parts of the corridor outside of the designated wilderness, it would depend upon the specific designation (wild, scenic, or recreational). In "wild" segments the cutting of trees is generally not permitted except for protective purposes such as wildfire suppression. On "scenic" or "recreational" segments, designation is not likely to significantly affect timber harvesting or logging practices beyond existing limitations to protect riparian zones and wetlands which are guided by other legal mandates and planning direction.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH, ON S. 2056

Thank you, Senator Wyden. And I'd also like to thank Senator Baucus and the witnesses today for coming in to provide testimony on these pieces of legislation. At the outset, I'd like to speak in support of the Scofield Land Transfer Act, which, if passed, would resolve an issue that has existed for more than a decade.

The Scofield Land Transfer Act proposes to remedy a discrepancy between local residents in Carbon County, Utah and the Bureau of Reclamation by authorizing certain transfers to residents who claim ownership of Federal land within the Scofield Reservoir Basin in exchange for the fair market value of the land.

Many of these residents have invested time and money in these properties, and if this bill is passed, these Utahans will be able to enjoy the benefits of Scofield Reservoir in the future. The bill also addresses safety concerns raised by the Bureau of Reclamation and strikes a good balance between these concerns and the continued enjoyment of Scofield Reservoir. And while there may be further details to sort out, I believe the bill in general provides a sensible and satisfactory resolution to what has been a long and drawn out dispute.

I look forward to working with the Bureau of Reclamation and my colleagues here to bring this issue to a final resolution. Thank you and I look forward to the testimony on this and the other bills we have before us today.

PREPARED STATEMENT OF DEBBIE SEASE, NATIONAL CAMPAIGN DIRECTOR, SIERRA CLUB, ON S. 1635, S. 1774, S. 1788, S. 2001, S. 1559

On behalf of the Sierra Club's 1.4 million members and supporters across the country, I want to thank you and the Public Lands and Forests Subcommittee for your continued work to protect American lands, water, and wildlife.

Tomorrow's hearing includes four bills that would establish new wilderness areas as well as legislation that would establish a new national conservation area. Congress has not established new wilderness in three years and this hearing is a step in the right direction toward crafting a bipartisan bill that protects America's wild legacy. We thank you and all the members of your committee for working across the aisle to get the bills this far and look forward to seeing them move forward.

The Sierra Club urges you to support the following bills:

- S.1635, San Juan Mountains Wilderness Act of 2011—would protect nearly 55,000 acres in southwest Colorado, 33,000 of which would be wilderness. The bill would expand both the Lizard Head and Mt. Sneffels wilderness areas and establish the McKenna Peak wilderness area in western San Miguel County. It would provide further protections by creating the Sheep Mountain Special Management Area, where existing uses would be allowed to continue. This stunning corner of Colorado is worthy of protection and as such the bill is widely supported by local businesses, conservationists, hunters nd anglers, biking groups, and many other local stakeholders.
- S. 1774, Rocky Mountain Front Heritage Act of 2011—would designate over 67,000 acres of wilderness and create 208,000 acres of Conservation Management Areas in western Montana. The area is world-class wildlife habitat and has some of the highest diversity of animals and plants in the entire Rocky Mountain Range. This legislation would ensure protected and connected areas between summer and winter habitat, creating a refuge area prized by hunters and outdoor enthusiasts alike.
- S. 1788, Pine Forest Range Recreation Enhancement Act of 2011—would create the 26,000 acre Pine Forest Range Wilderness in northwest Nevada. The area

is key habitat for mountain lions, mule deer, sage grouse, pronghorn antelope, and California bighorn sheep. It is also renowned for providing some of the best hunting and fishing opportunities in the state. The legislation is the result of a long long collaborative process that involded more than 50 people representing a long list of relevant stakeholders. They successfully came to an agreement that provides permanent protection and provides a potential boost to the local economy.

- S. 2001, Rogue Wilderness Area Expansion Act of 2011—would add more than 58,000 acres of wilderness to the Wild Rogue Wilderness Area in southwest Oregon. It would also protect more than 90 miles of the Rogue River and its tributaries as Wild and Scenic and increase protections for another 50 miles from mining and dam building. The area is a world-class destination for recreation and fishing and provides habitat to key species such as cougars, salmon, steelhead, and bears.
- S. 1559, San Juan Islands National Conservation Act of 2011—would protect over 1000 acres in the San Juan Archipelago in Washington. The area includes dozens of small islands and reefs that are havens for nesting sea birds, harbor seals, rare plants and contains numerous cultural and historic sites. It also has an abundance of recreational activities such as kayaking, camping, bird-watching, hunting and fishing, boating, and wildlife viewing.

The Senate Energy and Natural Resources Committee has already reported out a long, bipartisan list of important land protection measures this Congress. This list includes legislation that would establish Wilderness Areas, Conservation Areas, and Wild and Scenic Rivers. All told the five bills highlighted above would protect more than 400,000 acres as wilderness or other designated protected areas. Four of them (S. 1635, S. 1788, S. 2001 and S. 1559) have also been identified by the Bureau of Land Management as areas deserving of protection in a report that was sent ot Congress in November 2011.

These locally-driven public lands protection bills would support jobs in local communities, assist wildlife adapting to changing conditions, and preserve unparalleled recreational opportunities for millions of Americans. They represent many years of on-the-ground work of conservationists, local elected officials, and Congress. Thanks to the diligent work of the Public Lands and Forests Subcommittee as well as the Energy and Natural Resources Committee there is an opportunity to pass meaningful lands protection bills before this Congress adjourns. We look forward to working with you to continue moving these forward.

STATEMENT OF HON. DEAN HELLER, U.S. SENATOR FROM NEVADA, ON S. 1473, S. 1788, S. 1492

Chairman Wyden and Ranking Member Barrasso, I want to start by thanking you for holding this hearing today. As you both know, 87 percent of Nevada's lands are controlled by the federal government—so the health of our communities is intertwined with our public lands and the actions of land management agencies.

I am pleased to have the opportunity to discuss the three bills for Nevada that are being considered today.

I authored S. 1473, the Mesquite Land Conveyances Act of 2011, to provide the City of Mesquite continued flexibility to grow in a smart and responsible manner in the future. The bill gives the City of Mesquite an extension of the deadline for the City to purchase federal lands set aside by previous legislation for the purpose of planning and sustainability. The City is not presently in a position to purchase the final sections of lands due to the severe economic conditions that continue to plague Southern Nevada. The City of Mesquite remains committed to ensuring that its growth is done in a positive manner, and this bill will allow them that flexibility. S. 1473 is very simple, has no cost associated with it, and is the right thing to do for the community.

S. 1788, the Pine Forest Range Recreation Enhancement Act, will resolve outstanding issues related to Wilderness Study Areas in the range. The Pine Forest Range is a popular destination for sportsmen and recreationists alike. It is the culmination of a two-year, locally driven process that was transparent and will result in enhanced recreation opportunities and better land management. I am pleased to support this bill and offer it as an example of how public land designations should be handled.

S. 1492, the Three Kids Mine Remediation and Reclamation Act, will provide a way to remediate the 1,260 acre abandoned manganese mine and mill site in Henderson at no cost to the federal government. The bill will convey the federal land within the project site to the Henderson Redevelopment Agency. This innovative so-

lution to a long-standing problem will allow the site to be fully reclaimed and subsequently developed.

I look forward to the testimony of our witnesses and urge my colleagues to join me in supporting these important pieces of legislation.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA, ON S. 1492

Thank you Chairman Wyden and Senator Barrasso for the opportunity to address your subcommittee about a bipartisan proposal to facilitate the remediation and redevelopment of a dangerous abandoned mine site near Lake Mead.

Last August, I introduced the Three Kids Mine Remediation and Reclamation Act of 2011 together with Senator Heller. A companion bill was introduced in the House, where it is backed by all members of the Nevada congressional delegation. Last month the House measure was successfully reported out of committee.

The onset of World War I nearly 100 years ago required the U.S. military to replace foreign natural resource imports with domestic supplies, including manganese needed for steel production. Therefore, the Three Kids Mine in Henderson, Nevada began producing manganese in 1917, and continued to support the building of warships and tanks through 1961, after which it was mostly abandoned and used occasionally as a storage site for federal manganese reserves. The Three Kids site was forgotten for decades, until the population explosion in southern Nevada put the mine right in people's backyards.

Today, the Three Kids Mine site is littered with hazards, including three large mine pits that are hundreds of feet deep, ruins from the mine facility, and a sludge pool of mine tailings made up of arsenic, lead, and diesel fuel.

As a result of how the mine was developed and managed, about three-quarters of the site is federal land managed by the Bureau of Land Management (BLM) and the Bureau of Reclamation, while the remaining portion is privately owned. Unfortunately, because of the complicated land ownership pattern and the immense cost of cleanup, the federal government was never able to initiate the reclamation process.

To turn the Three Kids Mine site into a job-creating opportunity while also cleaning up this public health and safety hazard, my legislation directs the BLM to convey the 948 acres of federal land on the site to the Henderson Redevelopment Agency at fair market value, after taking into consideration the cost of cleanup for the whole mine site. Upon conveyance, the U.S. would be released from liability for the contamination on the site.

The City of Henderson will then be able to take advantage of Nevada redevelopment laws designed to address blight conditions such as the Three Kids Mine. The land conveyance directed by S. 1492 would allow Henderson to work with local developers to finance and implement a plan to remediate the abandoned toxic mine site. The cleanup will be undertaken to meet stringent state and federal standards.

Local officials and developers will finally be able to turn this wasteland into safe, productive land for the local community.

The project will take decades from start to finish, but the City of Henderson and the developers are committed to the effort, and have worked hard to put together a viable plan to fix this old problem without costing taxpayers a dime for cleanup. Keeping our communities safe, healthy, and livable is critical. Removing this physical and environmental hazard from Southern Nevada is a high priority for the City of Henderson, and for our delegation.

I look forward to working with this committee to move S. 1492 through the legislative process.

Thank you again for the opportunity to be here with you today. I request that my statement be included in the record.

ON S. 1788

Thank you Chairman Wyden and Senator Barrasso for the opportunity to address your subcommittee about our bipartisan proposal to create 26,000 acres of new wilderness in northern Nevada.

Last November, I introduced the Pine Forest Recreation Enhancement Act of 2011 together with the rest of the Nevada congressional delegation.

The Pine Forest Recreation Enhancement Act of 2011 would designate 26,000 acres of public lands within the adjoining Blue Lakes and Alder Creek Wilderness Study Areas (WSAs) as the Pine Forest Range Wilderness Area, while releasing 1,500 acres of existing WSA lands. The bill also directs the Bureau of Land Management (BLM) to exchange federal lands near ranches in Humboldt County for private parcels within the existing WSAs. These exchanges will allow the BLM to more ef-

fectively manage the wilderness area, while at the same time increasing economic development opportunities for ranching operations by providing land for agricultural uses.

Protecting these untouched natural lands in Nevada is important to me and to the people of Humboldt County. Known as the "Pine Forest Range" it is one of the most beautiful and wild places in northern Nevada, with streams teeming with Lahontan Cutthroat Trout as big as your leg.

This bill was the product of a comprehensive local process that took into consideration the concerns of local landowners, sportsmen, conservationists, former state officials, and other interested parties in Humboldt County.

This diverse group of stakeholders came together from the ground up to develop a compromise proposal through a series of public meetings and field trips. The process was so successful that, for the first time that I can remember, a wilderness proposal was presented by the county commission to our delegation with almost unanimous support. The Nevada State Legislature also passed a joint resolution endorsing the work of the county commission and the Pine Forest Working Group.

With the partisanship that divides us on so many other issues in these times, it was heartening to see a disparate set of constituents with various interests come together for the common cause of preserving Nevada's treasured landscapes for future generations to enjoy.

Beyond the widespread state and local support, there is no question that the pristine natural lands and wildlife habitat in the Blue Lakes and Alder Creek WSAs should receive the strongest level of protection we can provide for public lands. Rising from the confluence of the Great Basin and Owyhee deserts, the foothills of the Pine Forest Range back up to the Black Rock Desert, and its peaks climb from over 5,000 feet to more than 9,000 feet. You will find there alpine lakes surrounded by granite spires that create a habitat far different from surrounding ranges.

The Blue Lake complex, including Onion Valley and Knott Creek reservoirs, is a destination for many anglers. The area is home to a variety of large trout, including rainbow, brook, cutthroat, tiger, and the Lahontan Cutthroat—which is native only to Nevada.

The thick forests of aspen and pine that blanket these mountains provide a stronghold for mule deer, pronghorn, and bighorn sheep. The area is also well known by sportsmen across the west for its world class chukar hunting—a favorite fall pastime for many Nevadans.

I look forward to working with the Senate Energy Committee to move this legislation forward.

Thank you again for the opportunity to be here with you today. I request that my statement be included in the record.

NATIONAL MINING ASSOCIATION,
Washington, DC, March 19, 2012.

Hon. LISA MURKOWSKI,
Ranking Member, U.S. Senator, Senate Dirksen 304, Washington, DC.

DEAR RANKING MEMBER MURKOWSKI,

On behalf of the National Mining Association (NMA), I write to express our support for the passage of S. 303, a bill to require the BLM to provide waivers for small miners. This is an important bill for small miners across the United States who mine minerals and metals vital to our economic success, but are sometimes overwhelmed with the myriad of paper work. The minor changes proposed will correct a problem that has resulted in unintended claim forfeitures by small miners over past several years.

S. 303 clarifies that the current cure, or opportunity to correct, provision applies to the failure to timely file a small miner waiver application or affidavit of annual labor. A question has arisen whether the original language of the statute included these situations. The bill will aid individuals who could lose their claims and their livelihoods by this type of clerical error, and cannot pursue a cure under the current inflexible interpretation of the law.

NMA thanks Sen. Murkowski for her leadership on the introduction of S. 303. NMA urges members of Congress to support this important legislation and oppose any amendments that would be detrimental to job growth and economic development.

Sincerely,

HAL QUINN,
President & CEO.

NORTHWEST MINING ASSOCIATION,
Spokane, WA, March 19, 2012.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.
Hon. LISA MURKOWSKI,
Ranking Member, Energy and Natural Resources Committee, U.S. Senate Washington, DC.

Re: S. 303—Small Miner Waivers to Claim Maintenance Fees

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI:

The Northwest Mining Association (NWMA) is writing in support of S. 303, which would clarify a cure provision already in law. S. 303 is an important bill for small miners with federal mining claims. The legislation clarifies the cure provisions already in law apply to the failure to timely file a small miner claim maintenance fee waiver and affidavit of annual labor. Current law provides:

> If a small miner waiver application is determined to be defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects by the Bureau of Land Management to: (A) cure such defect or defects or (B) pay the $100 (now $140) claim maintenance fee for such a period (emphasis added).

While the language seems straight forward, several of our members have lost their mining claims in cases where the waiver and affidavit were mailed in a timely manner, but due to clerical errors by BLM staff, mailing delays or unexplained reasons, the waiver and affidavit were not recorded as having been received in a timely fashion. BLM has then taken the position that the cure provision does not apply, and the claims are null and void.

In some cases, this has resulted in needless litigation and substantial expense. Many of the small miners adversely impacted by the current interpretation of the right to cure have substantial investment in their mining claims. We believe S. 303 clarifies the original intent of Congress that claim holders have a right to know their applications have not been processed, and time for them to cure application/claim defects.

NWMA is a 117 year old, 2,300 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 44 states, including 240 members in Alaska, and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

We urge you to support this important legislation. Thank you for your consideration. Sincerely,

LAURA SKAER,
Executive Director.

ALASKA MINERS ASSOCIATION, INC.,
Anchorage, AK, March 16, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy Committee, U.S. Senate, Washington, DC.
Hon. LISA MURKOWSKI,
Ranking Member, Senate Energy Committee, U.S. Senate, Washington, DC.

DEAR SENATOR BINGAMAN AND SENATOR MURKOWSKI:

I am writing on behalf of the Alaska Miners Association in support of Senate Bill 303, which would clarify a cure provision already in law.

The Alaska Miners Association is a non-profit membership organization established in 1939 to represent the mining industry in Alaska. The AMA is composed of more than 1400 individual prospectors, geologists and engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials. Many of our members have federal mining claims.

This is an important bill for small miners in Alaska who know how to mine but do not have an office staff that monitors the myriad of necessary filings. The minor

changes proposed will correct a problem that has adversely impacted a number of these small family mines over past several years.

Senate Bill 303 makes it clear that the cure provision, already in the law, applies to the failure to timely file a small miner waiver application or affidavit of annual labor. A question has arisen whether the original language of the statute included these situations. The bill also will aid two individuals who have lost their claims and their livelihoods by this type of clerical error and were not able to pursue a cure under the existing inflexible interpretation.

Thank you for holding a hearing on this matter. We urge prompt passage of Senate Bill 303 by the Committee.

Sincerely,

FRED PARADY,
Executive Director.

GRAND CANYON TRUST,
Flagstaff, AZ, March 29, 2012.

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

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

In re: S.1129

DEAR CHAIR WYDEN AND RANKING MEMBER BARRASSO,

Grand Canyon Trust respectfully requests this letter be included in the official record.

S. 1129 would fail the public, who are legitimate stakeholders in management of grazing, just as permittees are.

1. S. 1129 would extend the length of a term-grazing permit on Forest Service and Bureau of Land Management lands from 10 to 20 years.

Locking term permits into a once-every-20-year review will merely increase a growing sense of many that public lands livestock grazing may have to be eliminated because it is publicly unaccountable while so often directly and/or indirectly causing or exacerbating adverse environmental impacts to vegetation, soil, streams, fish, and/or wildlife.

The public must insist on accountability on their public lands. Reviewing the potentially adverse conditions associated with a given term permit once every two decades is patently unresponsive to the public, science, and climate trends.

2. S. 1129 would allow for a publicly unaccountable "categorical exclusion" from public review of conditions on an allotment.

The permit renewal process is one of the few chances for the public to participate in public lands grazing management in accordance with the National Environmental Policy Act (NEPA), the Federal Lands Policy and Management Act (FLPMA) and National Forest Management Act (NFMA). Under S, 1129, most term grazing permits would be exempt from any meaningful public environmental review.

The use of categorical exclusions is already allowed under NEPA regulations for decisions that actually have no environmental impact. It is telling that the federal agencies rarely even attempt to issue or renew a term permit under a categorical exclusion, knowing as they do that livestock grazing alone and in conjunction with other activities, e.g., oil and gas development and motorized dispersed camping, has multiple and often severe impacts to wildlife, fish, vegetation, soil, and water systems.

3. S, 1129 would establish a special track for administrative review available only to grazing permittees.

Livestock grazing is by its very nature a multi-stakeholder issue, because of livestock impacts so often documented and observed on water systems, fisheries, big game, birds, flowers, springs, aspen, streambanks, and other ecosystem services depended upon by downstream communities, hunters, anglers, campers, and wildlife-watchers. The application of particular appeal provisions in S, 1129 that apply only to permittees are discriminatory.

The review of allotment conditions as well as agency responses to allotment conditions that need improvement must be appealable equally by all stakeholders—permittee and non-permittee alike.

Grand Canyon Trust works closely with permittees, the Forest Service, BLM, conservationists, scientists, local residents, and local and state agencies in numerous

term permit decisions. The intent of S. 1129 to eliminate all incentives for such collaborative work through unaccountable term permit issuance and renewal is fundamentally arbitrary and hostile to the vast majority of stakeholders in the nation's federal lands.

Sincerely,

MARY O'BRIEN PH.D.,
Utah Forest Program Director.

STATEMENT OF JON MARVEL, EXECUTIVE DIRECTOR, WESTERN WATERSHEDS PROJECT, ON S. 1129

I. Introduction

The following comments are submitted on behalf of the staff and members of Western Watersheds Project,[1] an environmental conservation organization based in Hailey, Idaho, with additional offices in Boise, Idaho, Arizona, Montana, Wyoming, California, and Utah. Western Watersheds Project works to protect and restore western watersheds and wildlife through education, public policy initiatives and litigation with a primary focus on the negative impacts of livestock grazing on 250,000,000 acres of public lands. Western Watersheds Project includes a staff and active volunteer membership of scientists, former agency personnel, and citizens who have intimate first-hand knowledge and on-the-ground experience with the management and conditions of wildlife populations and the hundreds of millions of acres of public lands that are the subject of the legislation being considered at this time.

WWP's active involvement in public lands management includes public oversight of Department of Interior and Department of Agriculture federal regulation and rule-making efforts, federal landscape-level management plans, federal site-specific grazing decisions, and all federal actions involving the administration of livestock grazing on federal public lands. Our day-to-day activities involve reviewing, documenting and often challenging agency implementation of federal laws. It is with this interest and experience that Western Watersheds Project urges the Subcommittee on Public Lands and Forests to oppose S. 1129 in its entirety.

II. S.1129 Misses the Mark

Proponents of S. 1129 and Western Watersheds Project share a common recognition that there exist significant problems in the administration of the federal grazing program. It is true that the federal grazing programs need improving. However, the main problem with the federal public lands grazing program is not the permit length, the National Environmental Policy Act requirements, or the administrative review process that S.1129 seeks to remedy. The problem is that federal agencies' administration of public lands across the west has failed to meet very basic environmental standards as directed by Congress in the agencies' respective organic acts[2] and as established by other environmental statutes and direction. This failure to lawfully administer grazing on federal public lands is ubiquitous across the western landscape.[3] The current bill is designed less to improve conditions than to entrench them in spite of a great majority of Americans' clear interest in clean water, abundant wildlife, and healthy ecosystems.

Each substantive part of S. 1129 would change federal public lands grazing policy to the detriment of land managers' ability to properly manage, the public's interest, and the condition of the landscape itself. For example:

SEC. 2. Extends grazing permits and leases to last 20 years instead of the current 10-year terms.

- Grazing permits and leases would outlast the Resource Management Plans that guide them, making overarching changes harder to implement.

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[1] www.WesternWatersheds.org

[2] Federal Land Policy Management Act, National Forest Management Act, etc.

[3] GAO. 1993. Rangeland Management: BLM's Range Improvement Project Data Base Is Incomplete and Inaccurate. RCED-93-92. General Accounting Office. Washington, DC. GAO; GAO. 1992. Rangeland Management: Interior's Monitoring Has Fallen Short of Agency Requirements. RCED-92-51. General Accounting Office. Washington, DC. GAO; GAO. 1990. Public Rangelands: BLM Efforts to Prevent Unauthorized Livestock Grazing Need Strengthening. RCED-91-17. General Accounting Office. Washington, DC GAO; GAO. 1988. Public Rangelands: some riparian areas restored but widespread improvement will be slow. RCED-88-105. General Accounting Office. Washington, DC; GAO. 1988. Public Rangelands: More Emphasis Needed on Declining and Overstocked Grazing Allotments. RCED-88-80. General Accounting Office. Washington, DC.

- Limits opportunities for public and agency oversight, since most allotments only get evaluated and monitored in advance of permit or lease renewals, and limits opportunities to identify and address adverse impacts.
- Fails to address the need for change in response to changing public values, environmental conditions, and legal obligations in a timely fashion.
- This would affect thousands of permits that have already been reissued for ten years under Congressional riders that have endured decades of environmental degradation given agency inattention. In some cases, a 20 year renewal would mean up to 40 years without environmental oversight.

Backlog in the permit renewal process exists because the on-the-ground environmental conditions of allotments are problematic, thus environmental review and scientifically justifiable response is properly demanded of the agency under the law. Arbitrarily deferring attention and responsive management for an additional decade would sweep those problems under the rug and violate the public trust responsibilities of the agencies.

SEC. 3. SEC. 405. RENEWAL, TRANSFER, AND REISSUANCE OF GRAZING PERMITS AND LEASES.

(c) Terms and conditions continue until the permit or lease is reissued

- Where a permit was extended for 20 years, this proposed change would mean that agencies would not be able to incorporate new information based on overarching guidance such as that in a land use plan or for emerging science for nearly two decades.

(e) (1) Categorically excludes permit and lease renewals from the requirement to prepare an environmental analysis if the decision continues the current grazing management of the allotment.

- The determination to continue the current management of the allotment should be made in the context of a range of alternatives and only after taking a hard look in a full environmental analysis. The change proposed under S.1129 subverts NEPA by requiring the land managers to determine at the outset what the outcome would be. Without a full assessment of resource conditions, a review of the environmental context, an updated compilation of current management and public resources, there is no basis for determining to continue current management.
- Categorically excluding permit renewals disenfranchises public lands users by limiting their ability to participate in the full NEPA process. Without environmental review, there is no opportunity for the agency to solicit and consider new information and evidence that could help in decision-making.

OR, (2) If only minor modifications to the permit are required, a categorical exclusions will be applied when monitoring indicates conformance with Land Use Plan objectives and there are no extraordinary circumstances.

- Any modifications to a permit should be considered within the context of full NEPA. This subpart fails to identify who would be making the determinations about which modifications are necessary, fails to define "minor," and leaves the application of the categorical exclusion to manager discretion, with no public involvement.
- Monitoring results should be documented, disclosed and compared with Land Use Plan objectives in a way that is transparent and defensible, i.e. through a full environmental analysis.

Taken together, subparts 1 and 2 of this section would essentially allow nearly all management to be done without any public participation, contrary to the provisions of NEPA, the Federal Lands Policy and Management Act (FLPMA) and National Forest Management Act (NFMA).

(f) Allows Secretary the sole discretion to set the timing for grazing permit renewals where an EA does need to be completed under (e)(1) and (2), and the analysis to be scheduled with consideration of the environmental significance of the allotment and the available funding.

- Paired with § 405(c), this would allow grazing permit renewals to be deferred indefinitely on lands where an environmental analysis is required, i.e. the lands where monitoring does not support conformance with Land Use Plan objectives, where more than minor modifications are necessary, and where management changes are necessary.

- This incentivizes underfunding the range program, because without funds, no full NEPA analysis could be required and no changes would have to be made. Too much is left to Secretarial discretion that remain legally mandated instead.
- Basing environmental analysis on funding considerations allows congressional budgets to dictate the conditions of our public lands and undermines other regulations requiring oversight at regular and frequent intervals.

Ultimately, this section emphasizes maintaining the status quo on most allotments and limits the application of NEPA to very few permit renewals. Without full oversight and public participation, the non-livestock uses of these federal lands are de-prioritized and the current conditions and management will persist indefinitely.

SEC. 4. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT TO GRAZING APPEALS. (a) and (b) amend 16 USC 1612 and 43 USC 175 to establish permittee appeals in accordance with the APA.

- This section creates separate appeals processes for the permittee and the public, which is unfair since all Americans have equal stake in public lands management.
- Permittee appeals cause the decision to automatically be suspended pending resolution, creating a de facto automatic "stay" that could last years. (Unless the Secretary declares an "emergency regarding the deterioration of resources.") This is the reverse of the burden on the public, which requires the demonstration of likely irreparable harm if the decision is to go forward. The burden of proof to stay a grazing decision should be the same, no matter who brings the appeal.
- Appeals processes can last years, and under the proposed legislation, permittee appeals would automatically forestall agency-approved changes while the appeals are resolved, rather than the current process wherein a petition for stay must be granted in consideration of the facts of the appeal. Even frivolous appeals could thwart management for years.
- Permittee appeals would also be provided an evidentiary hearing, which would make FS grazing decisions subject to external review rather than line officer adjudication. This differs from the current public appeals process and will be very different if the appeals regulations are modified to the "objection process" as described under the Healthy Forests Restoration Act (HFRA).

None of these legislative changes to agency regulations would address the real problems of the public lands' grazing programs: the direct and indirect ecological impacts of this land use in the arid west and the mismanagement that has plagued the agency administration since the Taylor Grazing Act was enacted. Instead, S. 1129 effectively directs the land management agencies to turn a blind eye to the environmental impacts on the ground, reducing and outright eliminating the frequency by which those publicly supported environmental standards are monitored, considered and enforced pursuant to law.

III. S.1129 Ignores the Environmental Consequences of the Livestock Grazing Program

Public lands ranching is the most ubiquitous use of public lands in the country, occurring on over 250,000,000 acres of land, an area roughly the size of the states of California and Texas combined. Make no mistake, despite the unfounded claims of proponents of S.1129, researchers have suggested livestock grazing is "the most severe and insidious of the impacts on the rangeland" and that grazing is the "most insidious and pervasive threat to biodiversity on rangelands."[4] Wildlife and species populations have declined as direct conflict with livestock and shared habitats sustain a myriad of ongoing impacts from public lands ranching. Direct impacts associated with livestock includes the widespread pollution of water,[5] the removal of vege-

[4] Fleischner, "Ecological Costs," 629. Noss and Cooperrider, Saving Nature's Legacy, 221, 230, 258. See also generally Lauenroth et al., "Effects of Grazing on Ecosystems," 69.

[5] Nearly all surface waters in the West are fouled with livestock wastes that produce harmful waterborne bacteria and protozoa such as Giardia. Suk, T., J. L. Riggs, B. C. Nelson. 1986. Water contamination with giardia in back country areas in Proc. of the National Wilderness Conference. Gen. Tech. Rep. INT-212. USDA-Forest Service, Intermountain Res. Stn. Ogden, UT: 237-239. Livestock grazing is the single largest contributor to non-point source pollution in New Mexico, accounting for approximately 15 percent of the water quality impairments statewide. J. Rankin. Plan to take better care of water quality is earning accolades; conservationists disagree. Albuquerque Journal (May 15, 2005).

tation—i.e. direct competition with wildlife for food,[6] the alteration of complex habitat structures and composition including the most significant contributor to desertification of the western landscape,[7] the physical impairment of stream-bank (riparian) habitats[8] that a majority of wildlife depend on for survival in the semi-arid and arid west, soil disturbances which allow for displacement of native vegetation with exotic weeds,[9] the introduction and continued exposure of disease and a host of additional direct impacts.

A. Water Quality

Mismanagement of public lands ranching has resulted in the diminished quality and quantity of water originating from mountain springs and streams, many of which once ran clear and clean enough to drink from directly, a western American pastime. On several public land allotments in Wyoming, the Bighorn National Forest conducted water quality testing on streams running through permitted allotments and found levels of E coli so high that the water was unsafe to touch with exposed skin, let alone drink from as is the intent of state standards promulgated by Congress as established by the Clean Water Act. In 2010, the Journal of Water and Health published the results of an independent study that was conducted in the Sierra Nevada Mountains of California, the chief source of drinking water for as many as 20 million American citizens.[10] Researchers found livestock grazing on public lands to be the primary source of fecal coliform and E. coli contamination of drinking water. In addition, researchers found that livestock may be depositing enough Giardia-transmitting protozoa to infect the entire city of Los Angeles each day. The Forest Service refuses to appropriately respond by reducing livestock impact to California's drinking water supply. On a vast majority of waters originating on public lands grazed by livestock, agencies refuse to test, let alone adequately consider water quality impacts in their environmental reviews of permit.

B. Infrastructure

In addition, livestock grazing infrastructure, commonly bought and paid for by the American tax-payer, has quite literally tamed the once wild West. Hundreds of thousands of miles of fencing on public lands have obstructed natural wildlife movement and migration, and water developments built to facilitate livestock use of public lands have dewatered springs, seeps, and streams which serve as critical habitats for a variety of wildlife across the west.

In administering public land ranching, agencies have subjected public lands to widespread habitat alteration projects. One example took place on public lands just outside of Yellowstone National Park, a renowned public landscape celebrated by a

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[6] In one study, scientists found that domestic livestock grazing consumed 88.8 percent of the available forage (cattle and [domesticated] horses 82.3 percent, free-roaming horses 5.8 percent, sheep 0.7 percent), leaving 11.2 percent to wildlife species (mule ddder 10.1 percent, pronghorn 0.9 percent, bighorn sheep 0.1 percent, elk 0.1 percent). Cited in R.R. Kindschy, C. Sundstrom, and J.D. Yoakum, 1982, Wildlife habitats in managed rangelands-the Great Basin of southeastern Oregon: pronghorns, Gen. Tech. Rep. PNW 145, USDA-Forest Service; USDI-BLM, Portland, OR: 6.

[7] "Improving grazing . . . has been the most potent desertification force, in terms of total acreage [affecting 225 million acres or 351,562 square miles], within the United States." Chaney, E., W. Elmore, W.S. Platts. 1993. Livestock grazing on western riparian areas. Northwest Resource Information Center. Eagle, ID: 5 (fourth printing; produced for the Environmental Protection Agency). Council on Environmental Quality. 1980. The global 2000 report to the president of the United States: entering the twenty-first century. Pergamon Press. New York, NY.

[8] Livestock grazing has damaged 80 percent of the streams and riparian ecosystems in the arid West. Belsky, A.J., A. Matzke, S. Uselman. 1999. Survey of livestock influences on stream and riparian ecosystems in the western United States. J. Soil & Water Conserv. 54(1): 19 (citations omitted). "Extensive field observations int he late 1980s suggest riparian areas throughout much of the West were in the worst condition in history." Chaney E., W. Elmore, W.S. Platts. 1993. Livestock grazing on western riparian areas. Northwest Resource Information Center. Eagle, ID: 5 (fourth printing; published by the Environmental Protection Agency). In 1988 the General Accounting Office concluded that "poorly managed livestock grazing is the major cause of degraded riparian habitat on federal rangelands." GAO. 1988. Public Rangelands: some riparian areas restored but widespread improvement will be slow. RCED-88-105. General Accounting Office. Washington, DC: 11

[9] "At the community scale, livestock may be the major factor causing weed invasions." Livestock cause weed invasion by grazing and trampling native plants; clearing vegetation, destroying the soil crust and preparing weed seedbeds through hoof action; and transporting and dispersing seeds on their coats and through their digestive tracks. Belsky, A.J. and J.L. Gelbard. 2000. Livestock grazing and weed invasions in the arid west. Oregon Natural Desert Association. Bend, OR (citations omitted).

[10] Derlet, R.W., C.R. Goldman, and M.J. Connor. 2010. Reducing the impact of summer cattle grazing on water quality in the Sierra Nevada Mountains of California. Journal of Water and Health. 8(2): 326-333.

majority of Americans for its wildlife attraction and breathtaking beauty. On one grazed public landscape near the Antelope Basin/Elk Lake area of Madison Valley over 50 square miles of open, mountain sagebrush grassland habitat was subject to aggressive habitat manipulation, managers prescribed herbicide eradication of sagebrush and forbs, multiple prescribed burnings, and other impacts significantly diminishing wildlife habitat to provide more forage for livestock use of the public land. This type habitat manipulation to maintain and increase livestock use has occurred, and continues to occur, on millions of acres of western public lands that once teemed with wildlife and championed other recreational opportunities impaired by livestock that the Department of Interior recently found contribute an order of magnitude greater economic value to local economies than public lands ranching.[11]

C. Species and Habitat

As a direct consequence of agencies' continued prioritization of livestock use on public lands and the widespread failure of management to make "significant progress" toward improving public lands habitat conditions on the ground on a significant number of permits throughout the west, species endangerment continues to escalate at an alarming rate. Livestock grazing is a contributing factor to more than 175 threatened and endangered species,[12] twenty one percent of imperiled species considered for listing on the Endangered Species Act, an amount roughly equal to logging and mining combined.[13] Agencies have been unable or unwilling to adequately respond by reducing the duration of livestock use or the number of livestock permitted in order to curtail impact.[14] Political pressure ensures that livestock is always the unchanged factor in management decisions and managers spend reams of bureaucratic resources and time justifying status quo levels of use in light of the obvious impact on the ground. As habitat continues to diminish, species continue to decline and the administrative burden in response to clear Congressional intent to prevent species extinction, make significant progress toward habitat improvement, and protect environmental values continues to build.

IV. S.1129 Does Not and Cannot Solve the Problems of Public Lands Ranching

The livestock industry wants S.1129 to protect it from "instability," and industry testimony on the bill claimed 20-year permits are critical for securing bank loans and leveraging assets. Grazing permits are a privilege, not a right, and they can be withdrawn at any time. This was the intent of the Taylor Grazing Act (43 U.S.C. § 315b), has been articulated in agency regulations (e.g. 36 C.F.R. 222.3(b)), and upheld by the Supreme Court as recently as 2000.[15] The stability of a livestock operation comes from the operators' conformance with the applicable laws and regulations; if a grazing operation is in compliance with management parameters, the permit will be renewed. Current grazing operations have priority to renew on the allotment. We know of very, very few cases where grazing privileges have been revoked, and those instances involved long-term trespass or other legal violations. The industry has not been destabilized by ten-year permits and has not provided compelling evidence that a longer permit would do anything other than disenfranchise and diminish other public land users and the agencies' opportunities to review their operations impact on the ground and conformance with the law.

The livestock industry also claims that S.1129 will prevent fragmentation of western landscapes by preserving continuous open space. This is flatly unfounded. The sale of private lands is independent of grazing lease renewal; private land-owners sell for a variety of reasons, none of which are tied to grazing permit expiration dates.

Whereas pro-conservation litigation gets blamed for administrative difficulties, in reality, this litigation is brought in an attempt to improve the process. Conservation interests cannot win lawsuits unless the agency is found to be in violation of the law, which requires of conservationists that they demonstrate the lofty legal standard that agency has acted in an "arbitrary and capricious" manner in making their

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[11] Report: The Department of Interior's Economic Contributions—June 21, 2011

[12] USDI-BLM, USDA-Forest Service. 1995. Rangeland Reform '94 Final Environmental Impact Statement. USDI-BLM. Washington, DC: 26. See also B. Czech, P. R. Krausman, P.K. Devers. 2000. Economic associations among causes of species endangerment in the United States. BioSci. 50(7): 594 (table 1) (reporting that authors' analysis of several studies suggests that 182 species are endangered by livestock grazing) and USDA-NRCS. 1997. America's private land: a geography of hope. Program Aid 1548. USDA-Nat

[13] Wilcove, D. S., D. Rothstein, J Dubow, A Phillips, E. Losos. 1998. Quantifying threats to imperiled species in the United States: assessing the relative importance of habitat destruction, alien species, pollution, over-exploitation and disease. BioScience 48(8): 610.

[14] Candidate Species List-U.S. Fish and Wildlife Service http://ecos.fws.gov/tess____public/pub/SpeciesReport.do?listingType=C&mapstatus=1

[15] See Public Lands Council v. Babbitt, 529 U.S. 728, 741 (2000)e

decisions. S.1129 seeks to undermine this pro-active participation by eliminating opportunities for non-industry interests to weigh in. It allows the fox to guard the hen house and prevents the farmer from ever counting the flock. It is for these reasons that the conservation community opposes S.1129 and, presumably, why the agencies themselves have serious concerns and oppose the bill.

V. Conclusion

Because S.1129 does nothing more than promote administrative practices that would further degrade our public lands and deter public participation, the bill should be soundly rejected. It offers no remedy for the problems that do exist with the federal lands grazing programs, and instead guarantees that those problems will get worse. We strongly urge the Senate's Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources to reject S.1129 and acknowledge that the administrative problems with the federal public lands grazing program cannot be solved by entrenching special interests and removing the oversight and protection of federal laws.

Respectfully submitted this 28th Day of March 2012.

SAN JUAN COUNTY COUNCIL,
Friday Harbor, WA, March 20, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, 703 Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN:

We are writing to offer our views on S. 1559, a bill to establish the San Juan Islands National Conservation Area in the San Juan Islands, Washington, which will be the subject of the Committee's hearing on March 22, 2012.

The great majority of the locations comprising the proposed National Conservation Area are in San Juan County.

The San Juan County Council supports without qualification S. 1559 and sincerely thanks Senators Cantwell and Murray for their leadership on this issue and their ongoing dedication to protecting this nationally important area.

The lands in question include popular recreation areas, three historic lighthouses, a number of islands, headlands, and ecologically important areas. These BLM properties have clear historic, ecological, scenic and recreational value and many members of the community have invested a great deal of time and energy conserving these values.

As specified in S. 1559, the National Conservation Area planning process would allow citizens of the county to have considerable input into establishing management goals and practices for these areas. The NCA designation will provide a great degree of certainty in how these lands will be managed into the future.

For these reasons the San Juan County Council adopted a resolution of support for a National Conservation Area designation in November, 2010 [Resolution 48-2010]. Our support for a National Conservation Area designation remains undiminished and we urge the speedy passage of S. 1559. We ask that this letter and the attached copy of Resolution 48-2010 be made part of the hearing record.

Sincerely,

LOVEL PRATT,
Member, District No. 1.

RICHARD PETERSON,
Member, District No. 2.

HOWARD ROSENFELD,
Member, District No. 3

RICHARD FRALICK,
Member, District No. 4.

PATTY MILLER,
Chair, District No. 5.

JAMIE STEPHENS,
Vice-Chair, District No. 6.

ISLANDERS FOR THE SAN JUAN ISLANDS NATIONAL CONSERVATION AREA,
March 21, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, 703 Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN:

On behalf of Islanders for the San Juan Islands National Conservation Area, I am writing to offer our views on S. 1559, a bill to establish the San Juan Islands National Conservation Area in the San Juan Islands, Washington, which will be the subject of the Committee's hearing on March 22, 2012. Islanders for the San Juan Islands National Conservation Area is a group of citizens in the San Juan Islands that has worked for three years in pursuit of permanent protection for the BLM lands in the San Juan Islands and a strong community voice in the management of those lands. We strongly support S. 1559 (The San Juan Islands National Conservation Area Act) and urge its speedy passage.

The San Juan Islands National Conservation Area Act (S. 1559) would protect important lands

The bill provides permanent protection to lands that are treasured by our community. These lands provide recreation for residents of and visitors to our islands, are home to diminishing natural habitats, house historic lighthouses, protect sites of local cultural and archaeological significance, provide a natural classroom for our children and help make the San Juan Islands an attractive destination for visitors, residents and businesses. These lands are heavily used, with over 65,000 visitors a year. Our local economy is heavily dependent on tourism and that tourism is based on our unique and healthy natural landscape. The bill would permanently protect important parts of that landscape.

The San Juan Islands National Conservation Area Act (S. 1559) would only affect BLM lands

The bill only affects the BLM lands in the islands. As locals, we are particularly interested in assuring that the bill protects those lands without having impact on neighboring private property. The bill also ensures that any future acquisitions in the area would be only through exchange, donation, or purchase from a willing seller. We believe these aspects of the bill are in the best interest of the community.

The San Juan Islands National Conservation Area Act (S.1559) gives the community a voice

The community is strongly impacted by the way these lands are managed and needs to have a voice in that management. The bill directs the BLM to work closely with the community in developing the management plan for the National Conservation Area. This community voice in the management of these lands is an important goal of ours.

The San Juan Islands National Conservation Area Act (S.1559) has broad community support

The lands affected by this bill are currently cared for by the community. Volunteer groups monitor these lands, build and maintain trails on these lands, restore and interpret the historic lighthouses on these lands and conduct citizen science research on these lands. The BLM lands in the San Juan Islands make up less than one quarter of one percent of BLM lands in Washington State but attract more volunteer hours per year than the rest of the state's BLM lands combined. The groups that engage in that volunteer work are among the driving forces in our efforts to seek a National Conservation Area designation for these lands. The broader community is also strongly behind this protection. We have received support from over 300 local governments, businesses, organizations and individuals. From the governments of San Juan, Skagit and Whatcom Counties to the Samish Indian Nation and the San Juan Visitors Bureau, the community has come out strongly in support of a National Conservation Area designation for these lands.

The Islanders for the San Juan Islands National Conservation Area supports without qualification S. 1559 and sincerely thanks Senators Cantwell and Murray

for their leadership on this issue and their ongoing dedication to protecting this nationally important area.

We have attached a list of governments, businesses, organizations and individuals who have written in support of this effort as well as a description of some of the unique characteristics of these lands.

Sincerely,

ASHA LELA,
Chair.

STATEMENT OF THE WILDERNESS SOCIETY, SHEEP MOUNTAIN ALLIANCE, SAN JUAN CITIZENS ALLIANCE, RIDGWAY-OURAY COMMUNITY COUNCIL, SILVERTON MOUNTAIN SCHOOL, COLORADO MOUNTAIN CLUB, COLORADO ENVIRONMENTAL COALITION, COLORADO WILD, ENVIRONMENT COLORADO, CAMPAIGN FOR AMERICA'S WILDERNESS

ON S. 1635

On behalf of The Wilderness Society and its half million members and supporters nationwide, and the organizations listed above, we would like to thank the Committee for considering the San Juan Mountains Wilderness Act. This bill would not only protect some of Colorado's beloved scenic wild country, it is also the product of years of painstaking research and consultation with a myriad of interested and affected stakeholders in southwest Colorado. We would especially like to thank Senator Udall for his long-standing dedication to land protection, and commitment to protecting these deserving areas. We also want to thank Senator Michael Bennet, who is an original cosponsor of S. 1635.

Colorado has a long and rich tradition of wilderness protection, with nearly twenty bills enacted over the last 45 years. All of these have shared the characteristics of broad citizen and stakeholder support and cooperation among the State's delegation members. The San Juan Mountains Wilderness Act is carrying on this proud Colorado tradition.

This legislation had its genesis with the interest of San Miguel County citizens in adding deserving wild land areas to the already designated Mt. Sneffels and Lizard Head Wildernesses, and adding statutory protection to several other spectacular and qualifying backcountry landscapes. Residents of neighboring counties also advocated protection for deserving contiguous lands outside San Miguel County, and by the Spring of 2009, the proposal included lands in three counties (San Miguel, Ouray, and San Juan), and enjoyed nearly universal support in the region. More detail about that follows.

Colorado's San Juan Mountains offer a myriad of benefits and services to residents of Colorado and visitors from across the nation. Spectacular mountain vistas, clean water and air, ongoing ranching operations, healthy wildlife populations, and a wide variety of world-class recreational opportunities, from hunting and angling to skiing, hiking, and boating. In decades past, hard rock mining was a major force in the region's development; evidence of this history is scattered across the landscape in the form of weathered mill sites, mine shafts, and tailings piles. As the economic drivers in the intermountain West steadily evolved during the post-war 20th century, and outdoor recreation grew in popularity, local communities looked increasingly toward tourism and recreation as a significant part of their economic foundations. Visitors come to the region in large numbers to enjoy not only backcountry challenges, but also to experience the area's rich history. Thousands of tourists ride the original narrow gauge train from Durango to Silverton each year, to wander the town's historic main street or learn about the region's mining history.

As one measure of this modern economy, hunting and fishing alone brought in, in direct expenditures, $7.2 million in San Miguel County, $2.4 million in Ouray County, and $1.3 million in San Juan County in 2002. Hunting and fishing groups routinely emphasize the importance of protected lands as the basis for healthy game populations.

As the economy of the San Juan Mountains region has evolved into what it is today, and as more and more people visit to experience the natural and recreational values offered by the area's public lands, the protection of those lands has become increasingly valued by local residents, stakeholders, and elected officials. This phenomenon has occurred concurrent with our increasing knowledge of the importance of large areas of undisturbed land for a broad array of wildlife, both to maintain functioning natural systems, and for the human benefits that healthy wildlife populations provide. Protective designations also help to ensure the resiliency of these areas in the face of climate change.

Protected public lands provide a critical benefit to local communities in the form of clean water and air. Each of the areas proposed for permanent protection in this legislation contain portions of the watersheds that comprise the water supplies of Telluride, Ouray, Ridgway, and Silverton. Wilderness will keep those watersheds intact and ensure they are able to provide clean water to those communities in perpetuity.

Natural and Human Values of the San Juan Mountains

The San Juan Mountains, and pointedly the areas proposed for protection in this legislation, offer a rich array of natural and environmental values. The existing Mt. Sneffels and Lizard Head Wilderness areas are the headwaters of the San Miguel, Dolores, and Uncompahgre Rivers, and many of their tributaries, such as Deep Creek, Dallas Creek, Bilk Creek, and Wilson Creek. Areas in the legislation make up large portions of the municipal water supplies for towns in all three counties. These waterways also offer some of the West's finest fishing opportunities-anglers from across the country come to southwest Colorado to fish for many species, including the iconic Colorado Cutthroat Trout.

What wildlife of all kinds needs more than anything is space - large areas of land in which to feed, grow, and bear their young. The mountain areas in the legislation will expand the core habitat already protected in the Mt. Sneffels and Lizard Head Wildernesses, and increase the elevation range of existing protected areas by adding habitat rich down-slope areas. The Sheep Mountain designation would add another significant core habitat area, and improve the wildlife connectivity to protected areas on the San Juan National Forest, like the Weminuche Wilderness. These mountain designations will benefit existing populations of Black bear, elk, bighorn sheep, and bird species such as the white-tailed ptarmigan, and provide critical habitat for other wildlife such as Canada lynx and Northern goshawk.

Moving down from the higher mountain areas, the proposed McKenna Peak Wilderness and mineral withdrawal for Naturita Canyon would protect mid-elevation lands critical as winter range for deer and elk (North Mountain, which borders McKenna Peak, contains one of the largest deer and elk herds in Colorado), as well as habitat for such species as mountain lion, bald eagle, and peregrine falcon. The mineral withdrawal proposed for Naturita Canyon would protect more of these vital lands, benefitting not only the resident deer, elk, bobcat, raptors and rare birds like the Mexican spotted owl; but a rich riparian zone as well.

Ecosystem representation, or selecting areas for protection that represent a full range of habitats and vegetation types, is a way of ensuring protection of the species that rely on these various ecosystems for survival. The Nature Conservancy, which practices this "coarse filter" method, estimates that 85% to 90% of all species in a region can be protected via ecosystem representation. Protecting down-slope mountain landscapes, as well as mid-elevation areas like McKenna Peak and Naturita Canyon would expand ecosystem representation in the region; this helps fulfill the purposes not only of the 1964 Wilderness Act, but of conservation biology overall.

Agriculture has a rich history in the San Juan Mountains, and not only provides a long-standing livelihood for multi-generational families, but also forms an essential part of the cultural fabric of the entire region. There are nearly a dozen working ranches with allotments that overlap the areas in the legislation. These ranch operators were all consulted as the legislation was crafted. One, Ouray County rancher Liza Clarke, owner of the Ferguson Family Ranch, wrote:

> I was happy to learn that the proposed boundaries avoid any substantial conflict with existing uses and private property. I understand that grazing leases will continue under any new wilderness designation." "I respectfully request that you introduce legislation to expand the Sneffels Wilderness Area in Ouray County. This proposal has widespread support in our County and includes signature views, including Mount Sneffels itself which is currently only partially contained in its namesake Wilderness Area."

Recreation and tourism is the backbone of the San Juan Mountains regional economy. For visitors who come to explore the region's history, go on a jeep tour, or ride the Durango-Silverton train, the backdrop views of majestic mountain peaks is essential to the experience. Winter recreation is dominated by skiing, including the developed alpine resort of Telluride, the recently developed Silverton Mountain area, and Colorado's only heli-skiing operation. Backcountry skiing is hugely popular across the range.

In the warmer months, recreational users comb the mountains. Hikers enjoy thousands of miles of trails, whether to see the spectacular views of the Telluride valley from atop its enclosing cliffs, or through a multi-day backpack into the beautiful Ice Lakes Basin out of Silverton. Climbers challenge themselves against the iconic

14,150 foot Mt. Sneffels, the rock walls near Telluride, and the famous frozen waterfalls just outside of Ouray. The San Juan Mountains are a world class destination for mountain biking, and many trails skirt the edges of the areas in S. 1635. The famous Hard Rock 100 footrace-one of most grueling of its kind in the nation-courses through the heart of the region.

Outreach to Regional Stakeholders

The process of outreach for, and vetting of, the San Juan Mountains Wilderness proposal has been detailed and comprehensive. Thanks to the leadership of local citizens groups in the three counties - Sheep Mountain Alliance in San Miguel County, the Ridgway-Ouray Community Council in Ouray County, the Silverton Mountain School in San Juan County, and the San Juan Citizens Alliance for the McKenna Peak proposal-the original proposal was crafted with extensive and intimate familiarity of the landscapes of interest. Each of these local groups worked closely with their respective county governments in carefully considering the ramifications and benefits of protective designations. San Miguel County first expressed support for wilderness legislation in June 2007, followed a short time later by the Commission of Ouray County. San Juan County followed in 2009, with an endorsement of expanding the proposed Sheep Mountain Special Management Area.

Extensive outreach to stakeholders that could directly or indirectly be affected by the legislation was conducted for over two years before legislation was introduced, involving painstaking work to consult with, and respond to, anyone with a stake in these designations. Every livestock operator with a permit in the proposed areas was contacted, as were the owners of private land inside the areas (mostly patented mining claims), water right holders, recreation interests, State agencies, and local governments. Numerous adjustments were made to the areas in the bill to accommodate concerns of these parties. Just a few examples follow.

The Sheep Mountain area was originally proposed for-with strong local support-designation as wilderness. Early in the outreach process, wilderness advocates were approached by the helicopter-supported skiing company Helitrax, who informed us that Sheep Mountain was the heart of their operation, in which they land helicopters to drop off skiers. This particular use would not be allowed in a wilderness and therefore a compromise was crafted to accommodate this use while protecting the wild character of Sheep Mountain via a Special Management Area. This also includes a provision that would designate the area as wilderness if the company ever were to cease operations in the area.

Another example of efforts to make the legislation work for stakeholders is with the Towns of Telluride and Ophir. Both Towns had either historic or potential new water supply facilities in the proposed areas (Telluride in the proposed Liberty Bell addition to Mt. Sneffels Wilderness, and Ophir in the Sheep Mountain SMA); staff from both Towns were consulted with to adjust boundaries to make sure that designations wouldn't interfere with the development or operation of these water supplies.

Motorized recreation is an important piece of the recreational landscape in the San Juan Mountains, and thousands of visitors come each year to experience the Ophir Pass jeep road and Alpine Loop. Great care was taken to ensure that motorized routes would not be closed by the legislation, and boundaries were drawn or adjusted meticulously to achieve that. For example, the boundaries of McKenna Peak and Naturita Canyon were reduced significantly from what was originally proposed to eliminate known motorized routes. Similarly, the boundaries of the Whitehouse and Last Dollar additions to the Mt. Sneffels Wilderness were adjusted to provide for snowmobile access to backcountry huts operated by San Juan Huts for stocking and maintenance.

Although southwest Colorado makes important contributions to energy production, the areas in this legislation are not part of that. No existing oil and gas leases are affected by the proposed designations, and exploratory wells recently drilled near McKenna Peak have not discovered developable deposits.

A number of boundary adjustment recommendations were made to improve manageability or to eliminate specific potential conflicts. These changes assured a steadily increasing degree of support throughout the outreach and vetting process.

Support for the San Juan Mountains Wilderness Act

The result of the consultation with numerous stakeholders and adjustments made to the proposal is legislation that enjoys support both deep and broad. Written support for the legislation has been received from:

- San Miguel County Board of County Commissioners
- Ouray County Board of County Commissioners
- San Juan County Board of County Commissioners

- Town of Telluride
- Town of Ophir
- Town of Mountain Village
- Town of Ridgway
- City of Ouray
- San Miguel County Open Space Commission
- San Miguel Conservation Foundation
- Telluride Tourism Board
- Telluride Open Space Commission
- Rancher and grazing permittee Liza Clark
- Hidden Lakes Home Owners Association
- San Bernardo Home Owners Association
- Many adjacent landowners
- Telluride Helitrax
- Hard Rock 100 Endurance Run
- San Miguel County Sheriff
- Prominent members of the local mountain biking community
- Numerous local, regional, and national conservation and recreation organizations.

We hope that the information and history included here will be of help with Committee members as they consider the merits of S. 1635. The Wilderness Society along with all the other supporters of this legislation stand ready to help in any way, and we encourage the Members of this Subcommittee and the full Energy and Natural Resources Committee to support this legislation, and report it expeditiously for consideration by the full Senate.

We'd like to again thank Senator Udall for his excellent work in crafting this legislation, and also thank the Subcommittee for the opportunity to submit our views on S. 1635.

MONTANA WILDERNESS ASSOCIATION,
Helena, MT, March 19, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN,

On behalf of the Montana Wilderness Association, and our more than 5000 members, thank you for the opportunity to submit this written testimony in support of S. 1774, the Rocky Mountain Front Heritage Act. I also want to express my deep gratitude to Senator Baucus for sponsoring the Heritage Act. For the record, the Montana Wilderness Association strongly and enthusiastically supports the Heritage Act.

About the Montana Wilderness Association

The mission of the Montana Wilderness Association is to protect Montana's wilderness heritage, quiet beauty, and outdoor traditions, now and for future generations. Founded 53 years ago by Montana hunters, conservationists and small business owners, The Montana Wilderness Association was established to prevent further loss of Montana's wilderness heritage. Our founders were instrumental in the passage of the Wilderness Act of 1964, and the Montana Wilderness Association subsequently led the fight to win designation for virtually every wilderness area in the state, including the Scapegoat, Absaroka-Beartooth, Rattlesnake, Lee Metcalf, Great Bear, and Welcome Creek, as well as Wild and Scenic designations for the Flathead and Missouri rivers.

Our members view Montana's remaining wild country as a public trust that should be managed so Montanans will always have access to great hunting, fishing, camping under the stars, and quiet mountain trails.

The Rocky Mountain Front

Known as the place in Montana where the Great Plains meet the Rocky Mountains and where grizzly bears still venture out onto their native prairie habitat, the Rocky Mountain Front is a wild and rugged land that provides clean water for nearby communities and habitat for prized big game animals such as elk and bighorn sheep. By providing some of the highest quality backcountry experiences and opportunities for solitude, the Rocky Mountain Front supports a way of life for many Montanans. Whether it be hunting, fishing, camping, hiking, or just watching wild-

life, the Rocky Mountain Front holds the essence of that what defines Montana. To put it simply, Montana would not be Montana without the Rocky Mountain Front.

The backcountry recreation opportunities provided by the Rocky Mountain Front also have a significant economic impact on local communities. According to data collected by Montana Fish Wildlife and Parks over the past five years, sportsmen have been spending $10 million each year as they hunt along the Rocky Mountain Front. It is the local hotels, restaurants, taverns, grocery stores, and gas stations that feel the benefits of this $10 million pulse of economic activity. Protecting the Rocky Mountain Front so backcountry recreation opportunities remain tomorrow as they do today will ensure the economic impact of the Rocky Mountain Front is sustained and local communities benefit well into the future. Protecting the Rocky Mountain Front will maintain a lifestyle and quality of life that attracts people to Montana's communities to establish new businesses and raise families as well as contribute to the current and future economic prosperity and stability of those communities.

The Rocky Mountain Front Heritage Act

Often referred to as a "made in Montana" solution, the Heritage Act is the result of a five-year effort aimed at protecting the wild backcountry of the Rocky Mountain Front while ensuring livestock grazing opportunities and maintaining access for hunting, fishing, horseback riding, hiking, and camping. This effort required eight public meetings, countless kitchen table discussions, and small group meetings with local permittees, elected officials, and landowners. This locally driven collaborative effort resulted in many substantive changes being made to the Heritage Act. These changes to the Heritage Act ensure there is a place for a variety of uses and activities on the Rocky Mountain Front while still protecting the wild backcountry that makes the Front such a special place for both people and wildlife.

The Heritage Act protects a substantial portion for the Rocky Mountain Front by designating approximately 67,160 acres of Lewis and Clark National Forest as additions to the Bob Marshall and Scapegoat Wilderness areas. In addition, the Heritage Act designates 208,112 acres of Lewis and Clark National Forest and Bureau of Land Management lands as a Conservation Management Area. In this Conservation Management Area, The Heritage Act limits the construction of new roads while ensuring the public use of current motorized routes, which provide public access for hunting, fishing, biking, and grazing. These routes are also used to achieve vegetation management objectives such as thinning, post and pole, and firewood gathering.

The Heritage Act also prioritizes the eradication and prevention of noxious weeds on approximately 405,272 acres of U.S. Forest Service and Bureau of Land Management lands along the Rocky Mountain Front. Prioritizing noxious weed eradication and prevention on public lands along the Rocky Mountain Front will help to protect adjacent private ranchlands and ensure important wildlife habitats remain intact.

Through the designation of wilderness additions to the Bob Marshall and Scapegoat Wilderness Areas, the designation of a Conservation Management Area on U.S. Forest Service and Bureau of Land Management lands, and the prioritizing of the eradication and prevention of noxious weeds, the Heritage Act will maintain the wild backcountry and wildlife habitats that make the Rocky Mountain Front such a wild and special place to Montanans.

Conclusion

The Rocky Mountain Front Heritage Act is a shining example of how Montanans can put their differences aside and work together to preserve our state's wild backcountry while meeting the needs of local communities. The Montana Wilderness Association strongly and enthusiastically supports S. 1774, the Rocky Mountain Front Heritage Act, and the permanent protections it provides. We urge the Committee to approve the bill and send it to the floor for consideration by the Senate.

Sincerely,

BRIAN SYBER,
Executive Director.

MONTANA BOWHUNTERS ASSOCIATION,
Billings, MT, April 4, 2012.

Hon. MAX BAUCUS,
113, 3rd St. North, Great Falls, MT.

Dear Max—

As one of Montana's leading sportsman's organizations, the MBA is very interested in the future of the Rocky Mountain Front as critical wildlife habitat. We understand the importance of protecting it from further development, and realize that effort requires assistance from many organizations. We are pleased to add our en-

dorsement to the Rocky Mountain Front Heritage Act, and thank you for your support of this collaborative effort.

Sincerely,

JOELLE SELK,
President.

STATEMENT OF DAWN BAKER, CHOTEAU, MT, ON S. 1774

Chairman Wyden, Ranking Member Barrasso, and members of the subcommittee:

We farm and ranch ten miles north of Choteau, MT and are in the heart of the controversy about the Heritage Act. I appreciate the time and energy that has gone into the development of the Heritage Act. It is thoughtful and includes all local interests. Yes there is some opposition but these local people who don't normally take time to enjoy the wilderness anyway. Many of them are the same folks who oppose anything that does not have to do with development and making money. We live simply and can afford to enjoy those beautiful and breath taking areas that we hope you will protect.

I would appreciate your consideration in getting this important act passed. Our wilderness future on the Rocky Mountain Front depends on it!

Thank you for the opportunity to testify.

STATEMENT OF THE WILDERNESS SOCIETY, ON S. 1774,

The Wilderness Society (TWS), representing over 500,000 supporters and members, supports S. 1774, the "Rocky Mountain Front Heritage Act" introduced by Montana Senator Max Baucus.

Montana's Rocky Mountain Front (the "Front") is truly an outstanding natural and cultural resource of national significance. It is a place where jagged limestone mountains rise up from the Great Plains in an unbroken 110-mile chain along the eastern side of the Continental Divide. This collision of vast landforms has created a foothill transition zone that is among the finest wildlife habitat in the lower 48 states. It is also a world-class destination for outdoor recreation in a natural setting of unparalleled splendor. Flanking the public wildlands are large working ranches and family farms along with guest ranches; many of these properties have been passed down from generation to generation.

The Front lies adjacent to the Bob Marshall Wilderness ("the Bob"), named in honor of Bob Marshall; forester, wilderness preservation pioneer, and cofounder of The Wilderness Society. The Bob was originally set aside as the South Fork, Pentagon, and Sun River Primitive Areas between the years of 1931-1934 then, congressionally designated as Wilderness in 1964. Adjoining the Bob to the north is the Great Bear Wilderness and to the south of the Bob is the Scapegoat Wilderness. Taken together, these three Wilderness areas total approximately 1.5 million acres of carefully preserved public lands, that along with Glacier National Park comprise a critical piece of the larger landscape called the Crown of the Continent.

To the Blackfeet Nation, the Front is known as Miistakis, the Backbone of the World, and is a part of their ancestral homeland. Fragments of the Old North Trail are still visible along this wild and sparsely inhabited landscape, primarily in the form of ruts left by the travois the continent's first natives pulled. Much of the pristine 130,000-acre area for the northern end of the Front, referred to as the Badger-Two Medicine area has been nominated for inclusion in one of the nation's largest Traditional Cultural Districts. A.B. Guthrie Jr., Montana's native son, Pulitzer Prize winning novelist, and resident of the Front, eloquently describes the Rocky Mountain Front in The Big Sky:

> Overhead there was more sky than a man could think, curving deep and far and empty, except maybe for a hawk or an eagle sailing.The eye could follow the river winding and see where canyons notched the blue mountains. One peak looked like an ear turned up on its side. Trees and river and the wide valley and the brown hills on either side floated in the fall haze, lazy and comfortable and sleepy now in autumn. It was as pretty a place as a man could wish, a prime place . . .
>
> No place could be prettier than this valley, with two buttes rising to the south and the tan hills ridged wide on the sides, and cottonwood and black birch and sagebrush growing, and elk and deer about and buffalo coming down from the benches to drink. It was a place a man could spend his whole life in and never wish for better . . .

S.1774 Continues the Tradition of Collaborative Conservation—Recognizing the unique and superlative qualities of the Rocky Mountain Front, Montana citizens from all walks of life joined together to develop the Rocky Mountain Front Heritage Act. The goal of this loose-knit and diverse group, known as the Coalition to Protect the Rocky Mountain Front (the "Coalition"), was to develop legislative language that provides meaningful protection for the federally-owned public lands of the Front while preserving traditional uses consistent with protecting this special place. For more than five years, the members of the Coalition (which includes TWS) have worked diligently to include diverse perspectives, provide ample opportunities for public scrutiny, respond to everyone that provided input and whenever possible accommodate the needs of diverse stakeholders (Appendix A*). The Rocky Mountain Front Heritage Act follows in the footsteps of other Front collaborative partnerships that have successfully conserved the wildlife, water, and ranching heritage of the area (Appendix B). Almost a century ago, sportsmen purchased lands around the Sun River's headwaters to create the state's first wildlife refuge, the 200-000-acre Sun River Game Preserve. The nation's premier Wilderness area, the Bob Marshall, includes some areas of the Front and Congress recently put an end to oil and gas leasing on all the Front's federal lands. State wildlife officials have set aside key areas for wildlife, such as the Blackleaf and Sun River wildlife management areas, to protect important winter range for elk and other big game. In addition, many private landowners have been full partners in Front conservation.

S.1774 Will Protect the Front's Rich Array of Wildlife and Game Species—TWS supports S. 1774 because it will protect the vital National Forest and BLM lands that connect the alpine Wilderness to the west and the vital wildlife winter range on the prairie to the east. The land encompassed in S.1774 represents an irreplaceable biological link, providing habitat for more than 290 wildlife species and at least 700 plant species, a full third of Montana's total. Except for wild bison, the Front continues to harbor all the species present when Lewis and Clark first laid eyes on these limestone reefs as they paddled up the Missouri River 200 years ago.

The Front is the last place where grizzly bears still roam onto the Great Plains. Other threatened species, such as Canadian lynx and gray wolf, persist in numbers rivaled in few other places. Also present are healthy populations of bobcats, wolverines, swift and red foxes, moose, golden and bald eagles, harlequin ducks, badgers, peregrine falcons, native cutthroat trout, at least seven species of owl, and at least 11 species of hawk. The main wildlife attraction, however, is big game. Elk, bighorn sheep, mule and whitetail deer, and mountain goats all depend on the lower-elevation landscapes of the Rockies' eastern front, where mild Chinook winds clear enough snow for winter forage and easier travel.

Economic Contribution of Hunting on the Front—Along the Rocky Mountain Front, expenditures by hunters and anglers have held steady through the most recent recession, making these popular outdoor pursuits a rare bright spot when compared to the struggles of the broader economy.

According to Montana Fish, Wildlife, and Parks (MTFWP) data, hunter expenditures along the Front, over a five year period from 2006 to 2010, have held steady despite the broader economic challenges facing other industries during the recent recession.

In real terms, during 2006, at the peak of the last business cycle, sportsmen hunting along the Front spent $9.8 million; growing to $10.4 million in 2008 in the middle of the recession; and falling only slightly in 2010 to $10.1 million.

These impressive numbers show that the high quality of the hunting resources on the Rocky Mountain Front is known not only to local residents but also to hunters from across the region and the country. In 2010 alone, MTFWP measured more than 90,000 hunter days on its districts along the Front.

According to MTFWP most hunters visit the Front for upland game birds, deer, and elk while a smaller number of sportsmen hunted antelope, big horn sheep, moose, and mountain goats. In 2010, sportsmen hunting upland game birds spent more than $4 million and those hunting deer and elk spent more than $5 million.

The Wilderness Society Strongly Supports all Three Components of S. 1774

Currently there is no permanent plan in place to protect existing uses on the Front's over 400,000 acres of Forest Service and BLM lands. This means that future land management could look very different from today. Montanans from all walks of life want the Front to maintain its current character and S. 1774 accomplishes this goal through its three-pronged approach described below.

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*All appendixes have been retained in subcommittee files.

Conservation Management Area (CMA)

208,160 acres of Forest Service and Bureau of Land Management land would be managed under the CMA which is intended to keep things the way they are and protect against an uncertain future.

Wilderness

The Heritage Act would add 50,401 acres to the Bob Marshall Wilderness and 16,711 acres to the Scapegoat Wilderness for a total of 67,112 acres. The Forest Service currently manages all of the proposed acres for their wilderness character.

The legislation makes clear that grazing shall continue within wilderness areas, and TWS supports the continued grazing of livestock consistent with the Wilderness Act in the proposed wilderness additions.

Noxious Weeds Management

Exotic and invasive species are a common enemy for ranchers, sportsmen, private landowners and public land managers and S. 1774 would require the Forest Service and the BLM to prioritize noxious weed management on the public lands. The U.S. Fish and Wildlife Service (USFWS) has identified noxious weeds as one of the top three threats to the outstanding biological diversity on the Front. The threat of noxious weeds is real on the public lands of the Front and is an issue that federal land managers can and must address to protect the ecological and economic integrity of the public and adjacent private lands (see Appendix C).

Other Management Considerations

Fire Management and Vegetation Management

The Heritage Act ensures that land managers maintain the ability to control wildfires. Section 4(d)(1) of the Wilderness Act states that "such measures may be taken as necessary in the control of fires, insects and diseases" within wilderness. The Heritage Act reaffirms this authority.

The Heritage Act also provides the Forest Service the authority to carry out vegetation management projects within the CMA, consistent with the purposes of the Act.

Motorized Use and Public Access There are currently 155 miles of legal motorized roads and trails on the Front. S. 1774 authorizes motorized vehicle use to continue within the CMA on designated routes. The Act would not close any route that is currently open to motorized vehicles.

Mountain Bicyclists

The Heritage Act retains over 300 miles of trails and roads for cyclists on the Front and gives flexibility to create new bike trails in the future.

Conclusion

S. 1774 is truly "bottom-up" and represents the product of neighbors and even adversaries sitting down long enough to get to know one another, learning to respect one another, and forging a common vision for the management of our public lands. Through a laborious process requiring ranchers, landowners, outfitters and others to volunteer hundreds of hours of their time, the Coalition was able to come to agreement on how the Front should be managed in the future. S. 1774 reflects this vision.

TWS supports S. 1774 and is committed to working with Senator Baucus, the committee and the administration to address concerns, and ensure that the Heritage Act is the best possible legislation for Montana and the nation. We look forward to seeing this legislation signed into law and urge the committee to advance it as expeditiously as possible.

STATEMENT OF ANN M. DRAKE, PRESIDENT, WINNEMUCCA NV, ON S. 1788

I am writing in support of S. 1788-Pine Forest Range Recreation Enhancement Act, a bill to designate the Pine Forest Range Wilderness area in Humboldt County, NV, included in the miscellaneous public lands bills presented during the Public Lands and Forests Subcommittee hearing Thursday, March 22, 2012.

As part of the original working group, I am pleased and satisfied that this final product, if enacted into legislation, will protect the unique and spectacular nature of this area while providing clear and reasonable guidelines for use.

Clarity was the motivation for many of the stakeholders who participated in the process, which was presented as an effort to move forward on two long-standing Wilderness Study Areas. A variety of backgrounds were represented, each with very different interests and agendas. The one common thread was the value we all placed

on the lands in consideration. Exactly what was of value to each of us was as diverse as the group itself, and included much more than monetary considerations.

Meeting for the first time was uncomfortable for many of us, unsure of how our interests could be protected amidst the varying (and seemingly opposite) agendas. Respect, experience, common sense, and some level of intelligence proved potent, and resulted in the development of the final recommendations. We started in meeting room chairs, gathered around tables with maps, toured the actual land under consideration, and returned to the meeting room. Ideas and perspectives may have changed through the process, but I believe the end product accomplished exactly what we intended from the beginning, which was to protect our vested interests in an area of priceless value.

FRIENDS OF NEVADA,
Reno, NV, March 19, 2012.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources Committee, U.S. Senate, 703 Hart Senate Office Washington, DC.

DEAR CHAIRMAN BINGAMAN:

I want to thank you so much for holding a hearing on S. 1788, a bill to designate the Pine Forest Range Wilderness in Humboldt County, Nevada.

As one of the Pine Working Group members, representing wilderness, I wanted to let you personally know how productive our meetings and field tours were as we worked together to find common sense solutions for boundaries for the Pine Forest Range proposed wilderness. Jim Jeffress from Trout Unlimited did an exceptional job heading up the process.

Everyone brought their ideas, values and concerns to the table and we learned from each other and shared stories on why this area is so important to us and worth protecting.

Friends of Nevada Wilderness and our volunteers are looking forward to getting together with the Bureau of Land Management and our fellow Pine Forest Working Group members to do on-the-ground projects that will improve wildlife habitat, recreation access, and help keep this gem of an area wild for future generations.

Please know our 1,400 members are extremely supportive of this process and its outcome.

Let us know if there is anything that we can do to help you move this process along. Again, our deepest thanks go out to you.

Sincerely,

SHAARON NETHERTON,
Executive Director.

HUMBOLDT COUNTY BOARD OF COMMISSIONERS,
Winnemucca, NV, March 12, 2012.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources, U.S. Senate, 703 Hart Senate Office, Washington, DC.

DEAR CHAIRMAN BINGAMAN:

In August 2009, the Humboldt County Commission sanctioned a new approach in reviewing the remaining Wilderness Study Area Inventory within Humboldt County. The recommended process focused on the two WSA's in the Pine Forest Range. A collaborative group "Pine Forest WSA Working Group" with over twenty members from diverse interest groups across northern Nevada was formed. The group formulated and moved forward twelve issues which were resolved and found full consensus by the Humboldt County Commission through a series of public meetings.

We need to continue to move this legislation forward. In so much as this effort had complete consensus among the Pine Forest Working Group and their affiliates, full support of the Humboldt County Commissioners, a concurrent resolution of support from the Nevada Legislature 2011, and numerous other supporters, we look forward to your support in moving this legislation through Congress.

We are especially proud that this grass-roots effort and the recommendations brought forward to not only benefit Humboldt county, but the state of Nevada to insure that special designation of this unique part of Nevada is attained for further generations.

If you have questions, please contact the Humboldt County Administrator, Mr. Bill Deist. Mr. Deist will serve as the primary point of contact for the commission.

Regards,

MIKE BELL,
Chairman.

TROUT UNLIMITED,
Arlington, VA, March 22, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC.

Hon. LISA A. MURKOWSKI
Ranking Member, Senate Energy and Natural Resources Committee, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC.

RE: S. 1788, the Pine Forest Range Recreation Enhancement Act of 2011

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI,

I write on behalf of Trout Unlimited (TU) and its 140,000 members to express our strong support for S. 1788, the Pine Forest Range Recreation Enhancement Act of 2011. The legislation is the result of the collaborative efforts of the Pine Forest Working Group, a group of local citizens from northern Nevada, and will create a new 26,000-acre official wilderness area in the northwestern part of the state from two existing wilderness area study areas (WSA) through a unique series of land exchanges and creative compromises.

The proposed wilderness, which augments the Blue Lakes WSA but releases 1,000 acres of the Alder Creek WSA for multiple use management, would conserve an area of Nevada that provides some of the best hunting and fishing opportunities in the state. Mule deer, pronghorn antelope and California bighorn sheep thrive in a landscape that ranges from 5,400 to over 9,000 feet of elevation, and also provides habitat for sage grouse, chukar partridge and valley quail. Three fishable lakes, the Blue Lakes complex and both Onion Valley and Knott Creek reservoirs, are a point of destination for thousands of anglers that visit each summer and fall.

The bill is the result of a truly collaborative effort that won the unanimous support of the Humboldt County Commission, as well as working group members representing sportsmen, off-highway vehicle users, ranchers, the Humboldt County Administrator, Nevada Department of Wildlife, guides and outfitters, wilderness advocates, miners and the Humboldt County - University of Nevada Extension Agent. The process by which the recommendations were developed has received the endorsement of the 2011 Nevada State Legislature and the Nevada Association of Counties.

TU strongly supports S. 1788. We thank you for holding a hearing on this important legislation, and for including this letter in the hearing record.

Sincerely,

STEVE MOYER.

STATEMENT OF PETER D. BAILEY, TACOMA, WA, ON S. 1906

I was asked to testify at this hearing, but personal circumstances preclude my attendance, however I wish to share my thoughts with the sub-committee. I ask that you support and help facilitate the prompt passage of this legislation. The reasons are many. 1. It is a revenue neutral bill that has been reviewed by the Congressional Budget Office (CBO). 2. The bill has genuine bi-partisan support, with the following co-sponsors: Jon Tester [D- MT] (Sponsor), John Barrasso [R-WY], Max Baucus [D-MT], Michael Enzi [R-WY], Dianne Feinstein [D-CA], Charles Grassley [R-IA], and James Risch [R-ID]. 3. Forest Service leadership also supports the passage of the Cabin Fee Act with some modifications that we agree with. We believe the Forest Service will express such support at the hearing. 4. This bill will solve a long standing problem within the Recreation Residence Program that has been a huge burden to cabin owners and the Forest Service alike. Everyone looks forward to the resolution the bill provides. Please support the passage of the bill out of committee and early vote in the Senate.

STATEMENT OF ROBERTA ULRICH, PRESIDENT, PRIEST LAKE PERMITTEES ASSOCIATION, BEAVERTON, OR, ON S. 1906

On behalf of the 121-member Priest Lake Permittees Association I thank the subcommittee for conducting this hearing on S1906. I hope this testimony will explain to you why the Cabin Fee Act is so vital to us. To put it in stark terms, a number of our members would not be able to pay the fees imposed by CUFFA, the current controlling act. They would be forced to sell, if a market remains in the face of such high fees; if they could not sell they would be forced to demolish their cabins and surrender their permits. Many of these families have had their cabins for four and five generations. Descendants of the man who built the original permitted cabin on Priest Lake in 1911 still gather there. I tuck my great grandson into a bunk on the sleeping porch where I tucked in his grandfather and my other son half a century ago.

Perhaps a bit of history and description is in order. Although there were a few permitted recreation cabins n national forests early in the 20th Century, the formal recreation residence program was established by Congress in 1915, largely to draw middle income families into the national forests for recreation. At that time, Priest Lake in Idaho 90 miles northeast of Spokane, WA, and stretching almost to Canada was considered pretty remote. As late as the late 1940s the final 20 plus miles was dirt or gravel and the preceding pavement wasn't all that good. But the reward for that trip was a narrow 20-mile-long lake that partially filled a glacier dug canyon with water so clear you could count fish 20 feet below the surface. Mountains more than 7,000 feet high guard both shores. On their flanks and in the nearby valleys are mixed conifer forests ranging from 2,000-year-old cedars to upstart lodgepole pine. I've been told this area with its rare inland maritime climate is the only place that still has all the wildlife that was present when Lewis and Clark went through Idaho farther south.

The beauty was enough to draw people over the bone rattling dusty roads to claim a small lot for a cabin. Because the program was designed to pull less-than-rich people into the forests, the fees were low and less-than-rich people responded -teachers, office workers, craftsmen. We maintain that diversity today. With perhaps one or two exceptions, we are still the middle income people the cabin program was designed for.

Our permits carry restrictions that make a national forest cabin far different from private property. The land remains public land except for the footprint of the cabin and any out buildings. Anyone may legally pitch a tent and settle down for the night next to my deck. We are limited in the size, color, building materials, and type of construction; most landscaping and the planting of non-native plants is forbidden. In my personal view, these restrictions have been good because they preserved the character of the forest and lake shoreline. But still they restrict what people can do with the cabins. In addition we pay county taxes (on the buildings), provide our own water, sewer, electrical and telephone service. The Forest Service provides none of these.

I will leave it to the experts of the National Forest Homeowners Association to discuss how the CFA would leave the government income intact while providing relief to us. I will say only that we have no desire to deprive the government of legitimate revenue or to seek a subsidy for the cabin program. We want to pay a price that is fair to the government and fair to us, a price that will enable us to afford the annual fees.

I leave you with this: my fee this year with the moratorium on implementing CUFFA was $6,355. Had CUFFA gone into effect the bill would have been $12,950.

STATEMENT OF DAVID MORYC, SENIOR DIRECTOR, RIVER PROTECTION PROGRAM, AMERICAN RIVERS, ON S. 2001

On behalf of American Rivers' thousands of members and supporters thank you for holding a hearing on S. 2001, a bill to protect Oregon's Wild Rogue River and tributaries. We applaud Senator Ron Wyden for leading the effort to protect the Wild Rogue River. American Rivers is the nation's leading conservation organization fighting for healthy rivers and communities. Protecting Wild and Scenic Rivers was at the heart of our mission when we were founded in 1973 and we continue to support the protection of our nation's most outstanding rivers through the benefits of Wild and Scenic River designation.

American Rivers strongly supports S. 2001, a bill to expand the Wild Rogue Wilderness and designate 93 miles of tributaries of the Rogue River as National Wild and Scenic Rivers. The Rogue River is one of the most iconic rivers in the United States, providing freshwater habitat to important ocean-going salmon runs and pos-

sessing flora and fauna diversity unmatched anywhere in the Pacific Northwest. The Rogue is the largest producer of Pacific salmon and steelhead in Oregon outside of the Columbia River basin, with over 85,000 anadromous fish returning from the ocean each year.

The Rogue River and its fish-bearing streams are of critical economic importance to local communities and to the state of Oregon. A recent economic study determined that rafting, fishing and other recreation along the Rogue annually generate $30 million in economic output statewide, including 445 jobs. This includes local economic impacts of approximately $16 million Josephine County, OR, alone. Furthermore, another study concludes that West Coast residents enjoy more than $1.5 billion in economic benefits each year from the entirety of the Rogue River salmon and steelhead runs. These benefits include quality of life, and the importance placed on salmon by Oregonians and other West Coast residents. Consequently, it is clear that the Rogue River's fish populations are valued beyond just local communities, and even beyond the state of Oregon.

Southwest Oregon voters favor additional protections for the Rogue River according to a recent poll conducted by Moore Information. Over 75 percent of respondents support protection of the Rogue for its importance to the economy, scenic beauty and the health of fish and wildlife populations. The 300 participants from Josephine, Douglas, Jackson and Curry counties favor the pending legislative proposal by a clear majority. Rogue's cold-water tributaries are critical to the health and survival of these massive fish runs, yet most are currently unprotected. By expanding the Wild Rogue Wilderness and designating 93 miles of Rogue tributaries as National Wild and Scenic Rivers, we can ensure that this economic engine is protected.

Finally, we urge the Senate Energy and Natural Resources Committee to favorably report two additional bills concerning Wild and Scenic Rivers in Oregon as soon as possible-S. 403, the Molalla River Wild and Scenic Rivers Act, and S. 764, the Chetco River Protection Act. Both S. 403 and S. 764 have overwhelming support from local communities who cherish the Molalla River and Chetco Rivers for the many benefits they provide.

Thank you again for holding a hearing on the Rogue River. We urge the Senate Energy and Natural Resources Committee to support S. 2001.

Sincerely,

STATEMENT OF JACK H. SWIFT, VICE-CHAIRMAN, SOUTHERN OREGON RESOURCE ALLIANCE, GRANTS PASS, OR, ON S. 2001

Southern Oregon Resource Alliance is a local association of businesses, farmers, loggers, miners and concerned citizens dedicated to the responsible utilization of our natural resources. For nearly three decades SORA and our members have attempted to take an active role in the development and implementation of federal plans for the use of our resources. Generally, the results of management by bureaucracy from afar have not been good for our community or our resources. We ask to be heard regarding the present proposal to expand the Wild Rogue Wilderness Area and establish Wild and Scenic River protections within the watershed of the lower Rogue River.

SORA opposes these expansions unequivocally, whether as a stand alone bill or whether as an inclusion in a larger scheme of management.

This opposition is based on the fact that the lands in question are not wilderness and that the protections for these lands, and the attendant restrictions on use, serve no useful purpose. Moreover, the cost to the local community and the nation, both in terms of local government solvency and the mineral withdrawals proposed, is more than we and the nation can reasonably afford.

The lands in question have been the subject of repeated evaluation and consideration by the Medford District BLM as wilderness. There was an initial evaluation and rejection in 1980. In that evaluation, the land was rejected because of its obvious economic value as revested Oregon and California Railroad lands dedicated to timber production as a means of support for local government and contribution to the local economy. SORA would point out that scheme worked exceedingly well and much of the proposed "wilderness" really is regeneration forest brought about under that scheme of management.

The Medford District BLM has done repeated wilderness and wild/scenic river evaluations on the area. One in 1995. Another in 2007. At best, 5667 acres in the Whiskey Creek area have been deemed to have wilderness characteristics. That is less than 10% of the withdrawal being proposed. Four of the tributaries to the Rogue proposed for wild and scenic designation and other protections were deemed to have the requisite wild and scenic characteristics.

Most insightful are two watershed analyses undertaken by the Medford District BLM. These are "Wild Rogue North Watershed Analysis" dated December, 1999 and "Wild Rogue-South Watershed Analysis" dated March, 2000.

In terms of the area being roadless, the studies make clear that there are extensive roads in the area created by timber operations, mining operations, fire fighting and as access to private property. Several access agreements remain in place in the area regarding historic interests. One should be aware that in these analyses the BLM recognizes several categories of roads: maintained roads, un-maintained roads and "ways." Ways are defined as old un-maintained roads that have been reclaimed to varying degrees by vegetation. Of no consequence to the BLM and not recorded in their road inventories, these old fire roads or logging skid roads are of immense value to hunters and so-called "off-roaders" and there are lots of them. In sum, the area does not present the traditional roadless characteristic one associates with wilderness.

The proposed bill attempts to deal with this road problem by excluding the areas of heaviest concentration of roads. These exclusions give the resulting map of the area the look of Swiss cheese. In combination with the history of intensive timber management and plantation regeneration, the entire effort is analogous to declaring the drainage ditches around an Iowa cornfield to be wilderness. This area is not wilderness, not factually, not legally, not realistically. A simple drive through the area by those interested would make the facts abundantly clear.

It is alleged that the additional protections are necessary to preserve the "iconic" Rogue River, its value to tourism and its "world class" fishery.

The Rogue River and the adjacent viewscape are already protected by its Wild and Scenic River designation. The river in this area has carved its way through the mountains in a deep and spectacular canyon. The terrain abutting the river is steep. The watershed analyses point to the fact that this terrain has gradients ranging from 40 degrees to perpendicular. Because of the depth of the canyon, it is impossible to see the lands proposed from the river. The only access by tourists to the river is by permitted rafting and by hiking the one trail that follows the river's edge the entire length of the wild and scenic portion. What lies above and beyond the tops of the canyon is irrelevant to the viewscape of these tourists.

An arguable threat to the fishery could arise from commercial activities along the tributaries owing primarily to the presumed threat of sedimentation. However, as the watershed analyses point out, the primary sources of such questionable sedimentation are roads. Their conclusion has been that this threat is negligible in this area because fewer than 5% of the roads in the area are within 200 yards of a stream.

The studies also point out that owing to the steep gradients in the area, the streams present very little gravel which is crucial to spawning of the anadromous species. Moreover, repeated studies have shown that the water temperatures are not conducive to salmon and steelhead who prefer cold temperatures. These waters are too warm. The Rogue itself is colder than its tributaries in this area because the Rogue is artificially cooled by regulated discharges from Lost Creek and Applegate dams. The area presents the unusual circumstance that the river is cooler than its tributaries. The result is that the river is highly important to the fish as a route to their spawning grounds in the cooler waters of the higher elevations. But these tributaries proposed for protection to protect the fish are not utilized by the fish.

According to the BLM watershed analyses, the waters of the tributaries are irrelevant to the spawning of anadromous fish such as the salmon and steelhead. The waters are not used by these fish. That has been the historic pattern and there is nothing that is likely to change that situation.

On the cost side of the equation, the price is dear, both for our county and the nation as a whole. All of the studies of the area, up to and including the recent FEIS for the Western Oregon Plan Revision speak to the hazard of catastrophic fire in the area owing to ladder fuel build up under a regime of fire suppression and lack of fuel management. These studies consistently rate these forests as 86% extreme or high fire hazard, with the overwhelming majority being extreme. Not so long ago we had the experience of the Bisquit fire in the Kalmiopsis Wilderness area. We are left with hundreds of thousands of acres of scorched lands with no esthetic or economic value and no regeneration management. While regulations would allow, at the discretion of the BLM, mechanical intervention for purposes of fire suppression, there are no regulations nor is it the scheme of management to mechanically remove ladder fuel accumulations in a wilderness area. This fire hazard can only be increased by wilderness designation. One wonders what the effect would be on tourism and the "iconic" Rogue River canyon if it were visited by a stand replacement fire event.

The lands proposed for wilderness designation consist entirely of revested Oregon and California Railroad lands. These are lands that were originally granted to the Oregon and California Railroad in compensation for building a railroad linking Sacramento and Portland in the late 1800s. As intended, they were enrolled on the tax rolls of the respective counties as a revenue foundation for the local governments brought about by the creation of the rail infrastructure. The removal of those lands from the local tax base created a financial crisis for the counties which led in turn to their dependence upon federal support -a situation that is unique in the country. In 1937 Congress solved the problem effectively by dedicating those lands to permanent sustained yield timber production and sharing the revenues generated with the counties. Until the current Northwest Forest Management Plan arrived in the course of the Clinton/Gore administration, that system worked quite well. Since then, the counties have once again been dependent upon federal subsidy. We submit that the solution to the funding problem for these counties is a simple Congressional declaration to the effect that the general northwest forest management plan does apply to the specific and unique O&C lands. But that is the opposite of what this bill attempts.

This bill proposes the permanent withdrawal of the largest block of contiguous O&C lands in the system. This bill would remove these easily managed lands from production forever, whatever the fate of the northern spotted owl. As such, they could never contribute to the economy or the finances of the county, whatever management plan might arrive in the future. We submit that the counties cannot afford this and that it is a needless expense to the federal government.

Most significant to the entire proposal is the provision for the mineral withdrawals set for the watershed and its tributaries. The area in question covers a large portion of the Josephine ultramafic sheet, well known for producing chrome, nickel and other valuable strategic materials. During WWII Josephine County was a source for chrome and supported a chrome smelter in Grants Pass. Should there arise a need for such resources in the future, the area should not be closed to exploitation.

The area is highly mineralized and encompasses two historic mining districts: the Mt. Reuben Mining District and the Galice Mining District. Both districts have produced vast quantities of gold over the years and there are several active mines in the area. In addition, the area has been identified as a source for tellurium, critical to the production of solar panels While the area has not been surveyed for commercial concentrations of rare earth elements, the history and disposition of the land, especially its placer mining success, rank it according to the USGS as an excellent candidate for prospective REE development. We respectfully suggest that the watershed should not be the subject of a mineral withdrawal without a full evaluation of the cost to the nation and the community.

As this is a bad investment for the nation, it is an incredible extravagance for the community. 70% of Josephine County is owned by the federal government. Of that, 10%, more than 70,000 acres, is already invested in wilderness or wild and scenic withdrawals. There is a large part of the Kalmiopsis Wilderness Area, part of the Red Butte Wilderness Area, the Oregon Caves National Monument, the Wild and Scenic River and the Wild and Scenic River corridor. Josephine County cannot afford greater investment in wilderness. Please reject this bill.

STATEMENT OF THE WILD ROGUE ALLIANCE, ON S. 2001

The Wild Rogue Alliance is a coalition of 114 businesses, organizations and associations that organized over the last five years to advocate protecting the economically, socially and ecologically important roadless area in the lower Rogue River Canyon, known locally as the Zane Grey roadless area, and the tributary streams in the same area.

Protecting this area for future generations is important to many local values:

- Fishing, hunting, rafting, camping, hiking, and other family recreation activities;
- Economic output of $30 million annually from the proposal area, which acts as a foundation for the areas growing tourism economy;
- Critical habitat for the endangered northern spotted owl, and coho salmon; and
- Vast swaths of rare ancient forests.

With this letter we send our support for S. 2001. This should not be interpreted as support for any other legislation.

We urge you to advance the bill.
Sincerely,

American River Touring Association
American Rivers
American Whitewater
Andy & Bax Sporting Goods
Andy Buckingham Guide Service
Andy's Wild Water Adventures Arrowhead River Adventures
Ashland Mountain Supply
Ashland Outdoor Store
Bear Creek Watershed Council
Big Rock Guide Service
Birdseye Creek Anglers
Black Bird Shopping Center
Blue Stone Bakery Café
Bullet Watercraft
Caddis Fly Angling Shop
Cascade Designs, Inc.
Cascadia Wildlands Project
Catherine Freer Wilderness Therapy Programs
Circle J's Café
Clear Creek Family Practice
Cricket Hill Winery
Destination Wilderness Adventure River
Center Resort
Dragons Lair
ECHO River Trips
Eco Tots
Ferron's Fun Trips
Fly Water Travel
Garden Gypsies
Guerrero Dental Lab
Heartsong
Helfrich's Tightlines Fishing and Rafting
Herb Pharm
Herb Shop
Home Waters Fly Fishing
Indigo Creek Outfitters
International Mountain Biking Association
Jefferson State Financial Group
Katalyst, Inc.
Keen Footwear
Klamath-Siskiyou Wildlands Center
Kokapelli River Guides
Listen Here CD's
Madrone Hill Mobile Home Park
Matt Ramsey Fishing Guides
McKenzie Flyfishers
McKenzie Outfitters
McKenzie River/Upper Willamette Trout Unlimited
Middle Rogue Steelheaders
Momentum River Expeditions
Morrison's Rogue River Lodge
Motel del Rogue
Mountain Gear
Native Fish Society
Never a Bum Steer
Noah's River Adventures
Noah's Wilderness Adventures
Northwest Nature Shop
Northwest Outdoor Store
Northwest Rafters Association
Northwest Rafting Company
Northwest Sportfishing Industry Association
OARS (Outdoor Adventure River Specialists)
Orange Torpedo Trips
Oregon Council of the Federation of Fly Fishers

Oregon Council of Trout Unlimited
Oregon Outpost
Oregon River Experiences
Oregon River Sports
Oregon Wild
Outdoor Industry Conservation Alliance
Outlaw Guide Service
Outward Bound
Pacific Coast Federation of Fishermen's Associations
Pacific Rivers Council
Paul's Bicycle Way of Life
River Trail Outfitters
Rogue Art
Rogue Coffee Roasters
Rogue Flyfishers
Rogue Klamath River Adventures
Rogue River Journeys
Rogue River Outfitters
Rogue River Raft Trips
Rogue Riverkeeper
Rogue Valley Runners
Rogue Wilderness Inc.
Rosso's
ROW Adventures
Saturday Artisan & Crafters Market
Sawyer Paddles and Oars
Siuslaw Guide Service
Soda Mountain Wilderness Council
Spin Cycles Inc.
Stream Restoration Alliance of the Middle Rogue
Summer Jo's Farm, Garden and Restaurant
Sundance Kayak School
Sunday Afternoons
Sunshine Natural Food & Vitamins
Swiftwater Guide Service
The Alpine Experience
The Bead Merchant
The Kitchen Company
The McKenzie Angler
The Riverhouse
Tierra Del Sol
Trium Winery, Talent, OR
Troy's Guide Service
Turtle River Rafting Co.
U-Save Gas and Tackle
Waterwatch
Weisenger's
Whitewater Warehouse
Wooldridge Creek Winery
Yale Creek Ranch

STATEMENT OF MAYNARD FLOHAUG, PRESIDENT, MIDDLE ROUGE STEELHEADERS, GRANTS PASS, OR, ON S. 2001

This letter is in support of adding 93 miles of Rogue River tributaries to the national Wild & Scenic Rivers System.

I am writing on behalf of the Middle Rogue Steel headers LLC., headquartered in Grants Pass, Oregon. Our primary purposes are to conserve, protect and restore coldwater fisheries and their watersheds. We operate as a non-profit, non-political, and nonsectarian organization. We function for charitable, educational, and scientific purposes, while supporting sports fishing for members and the general public. Our web site is http://www.rogue-steelheaders.org/.

As you know, recreation and tourism on the Lower Wild and Scenic Rogue River are a very important part of southern Oregon's economic and social fabric. This outstanding landscape should be managed and protected to preserve these values for current and future generations. We urge you to take specific action to protect the wildlands and tributaries of the Lower Wild and Scenic Rogue River because of their

importance to the Steel head and Salmon of the Pacific Northwest. Therefore we ask you to consider Wilderness and Wild and Scenic designations for some of the most remote, unspoiled, and pristine areas of this landscape, as a way to preserve this important area for future generations.

STATEMENT OF MARGARET GOODWIN, JOSEPHINE COUNTY, OR, ON S. 2001

Honorable Chair and members of the Senate subcommittee on Public Lands and Forests, I would like to offer the following testimony on S 2001, the Rogue Wilderness Area Expansion Act of 2011.

I live in Josephine County, Oregon. Over 80% of the lands that this bill proposes to withdraw for Wilderness and/or Wild & Scenic designations and "additional protections for Rogue Tributaries" are in Josephine County. The community and the local government here in Josephine County are predominantly opposed to this bill. It will hurt our local economy, and will lock people out of access to this land for the common recreational purposes for which it is used today.

On March 7, 2012, the Josephine County Board of County Commissioners officially passed a resolution opposing any further Wilderness expansion or Wild & Scenic River designations in our county, and specifically opposing this Rogue Wilderness Area Expansion Act (S 2001). Prior to the Board voting on the resolution, Mr. David Strahan, who testified before this subcommittee, and Mr. Shane Jimerfield, of the Klamath-Siskiyou Wildlands Center, made a joint presentation to the Board of Commissioners in support of the Rogue Wilderness expansion. The Board also took testimony from citizens for over an hour and a half at the same meeting. The testimony ran 3:1 opposed to the wilderness expansion.

Even without the local opposition, this bill should be rejected on legal grounds because over 90% of the 58,100 acres this bill would designate as Wilderness do not meet the federal criteria for Wilderness designation. The BLM has done several studies on this area, the latest in 2008, and has repeatedly found that only 5,667 acres qualify for Wilderness designation under Federal criteria.[1]

The BLM also found that only 5,083 acres (just under 16 miles of creeks) in the designated area meet the Federal criteria for Wild & Scenic Rivers, where this bill would designate 93.2 miles of creeks as Wild & Scenic Rivers.[2]

It would be very wrong for our federal government to willfully designate lands as Wilderness and Wild & Scenic for purely political purposes, knowing that they do not meet the legitimate criteria for those designations. This would render the criteria for these designations meaningless, and make a mockery of the very laws that define Wilderness and Wild & Scenic Rivers.

I would also like to respond to the testimony presented at the subcommittee hearing by Mr. David Strahan, who was the only witness who specifically addressed this bill. Mr. Strahan represents a special interest and his opinion on wilderness expansion is not representative of the community sentiment in Josephine County.

In his testimony to this subcommittee, Mr. Strahan mentioned 110-plus Oregon businesses that support the Wilderness expansion. Only one third of the businesses on that list are actually located in Josephine County, and a number of them are not even located in the state of Oregon. About 10% of them are not businesses, but environmentalist organizations, like the Klamath-Siskiyou Wildlands Center, Rogue Riverkeeper, WaterWatch, Oregon Wild, American Rivers, Cascadia Wildlands Project, Conservation Alliance, Pacific Rivers Council, Stream Restoration Alliance of the Middle Rogue, etc.

Mr. Strahan also referred to a recent poll stating that 77% of those polled support the Wilderness expansion. This poll was conducted by Bob Moore, a pollster who was famously investigated by the New Hampshire attorney general in 2008 for conducting "push polls." (Push polling means using the pretext of a poll to spread propaganda in support of a position advocated by the organization that commissions the poll.) That was not the first time this pollster has come under fire for push polling.

This particular poll was commissioned by the environmental organization, American Rivers. Only 300 people were polled, and they were asked if they support additional protection of the Rogue River for its importance to the economy, scenic beauty and the health of fish and wildlife populations. They were not advised of any potential drawbacks of the Wilderness designation, such as the impact on the economy of permanently withdrawing these lands from all future timber and mineral produc-

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[1] BLM, 2008, Final Environmental Impact Statement for the Western Oregon Plan Revision (Vol 1, Table 3-73)

[2] BLM, 2008, Final Environmental Impact Statement for the Western Oregon Plan Revision (Vol 1, Tables 2-34, 2-35, 3-76)

tion. Nor were they advised that the logging and mining roads that provide recreational access to these lands for local citizens would be permanently closed off by this wilderness designation. The poll was designed to present only one side of a complex issue to elicit a desired response.

When local citizens were exposed to both sides of the issue, as they were at the Board of County Commissioners meeting on March 7, they overwhelmingly opposed this wilderness expansion. Mr. Strahan is presenting to this subcommittee the same one-sided presentation of the same complex issue. Please be aware that his views do not represent the views of the majority of the citizens of Josephine County. The resolution passed by our Board of County Commissioners officially opposing the Rogue Wilderness Area Expansion Act should be given more weight than Mr. Strahan's personal opinion.

Mr. Strahan also testified that the American Forest Resource Council (AFRC) did not oppose this legislation as of May, 2010. At the time of his testimony, Mr. Strahan could not have been aware that, on March 22, 2012, the same day he was testifying, the AFRC officially reversed its position on this bill and announced its opposition to S 2001 as a standalone wilderness expansion bill.

When asked by Senator Wyden to elaborate on the economic benefits of S 2001, Mr. Strahan referred to the EcoNorthwest study, which was commissioned by the Save the Wild Rogue Campaign. Mr. Strahan stated that this study determined the existing Wild & Scenic section of the Rogue River produced "over $18 million in economic benefits in Southern Oregon, as well as 300-plus full- and part-time jobs." Apparently, Mr. Strahan was confusing statewide impacts with local economic impacts in Southern Oregon. The study actually determined that the total economic impact in Josephine County associated with the Wild & Scenic section of the Rogue River was less than $7.7 million, and the total number of "direct, indirect, and induced" jobs in Josephine County was only 140.[3]

In 2006, there was a timber sale for 10.64 million board feet of timber in the proposed Wilderness expansion area (the Kelsey-Whisky timber sale). Every million board feet of timber harvested supports 24 jobs.[4] That timber sale alone would have supported 255 local jobs. But the same environmentalist groups who are now promoting this wilderness expansion succeeded in halting that timber sale, killing all of those jobs. The timber sale was quite far from the river, and would have had no impact at all on river recreation. This area could have easily sustained both the 140 river recreation jobs and the 255 timber jobs. Blocking that one timber sale had a far greater impact on the local economy than the entire tourism and recreation industry on the Wild & Scenic section of the Rogue River that year. And designating this land as Wilderness will make that negative economic impact permanent.

Mr. Strahan went on at some length about his boyhood and adult adventures on the Rogue. I would like to point out that all of those wonderful experiences occurred without the Wilderness protections that are being sought in this bill. Furthermore, all of the economic benefits of recreational use of the Rogue River have accrued without these additional Wilderness protections. The fact is that all of the lands that can be seen or accessed from the Wild & Scenic section of the Rogue are already protected under the existing Wild & Scenic River designation.

Designating an additional 58,100 acres, which cannot be seen or accessed from the river, as Wilderness will have no impact whatever on river recreation. But it will have an enormous and permanent negative impact on our local economy by eliminating any future timber production on these lands, and any future mineral exploration and extraction on 150 miles of creeks in one of the most highly mineralized areas in the state of Oregon. Additionally, this Wilderness designation will cut off recreational access to these lands for most of the local residents who use the logging and mining roads to access them today.

We are a poor county, with already high unemployment, and we cannot afford more Wilderness.

Thank you for this opportunity to present the other side of the story.

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[3] EcoNorthwest, 2009, Regional Economic Impacts of Recreation on the Wild and Scenic Rogue River (p. 27, Table 3)

[4] Oregon Department of Forestry, 2010, Northwest Oregon State Forests Management Plan (p. 2-75).

CARBON COUNTY,
Price, Utah, March 14, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, 703 Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN, BINGAMAN:

Thank you for the opportunity to submit our testimony in support of the Bill to authorize the Department of Interior to convey certain interests in Federal Land that was acquired for the Scofield Project in Carbon County, Utah.

The Scofield Dam was built to provide water to sustain the citizens of Carbon County and to protect the railroad which was the primary route to deliver coal to steel mills during World War II. Over the years, generations of Carbon County families have lived, worked and recreated in and around the Scofield Reservoir.

As the Carbon County Board of Commissioners, we recognize that there are a number of concerns including the advancement of technology which has evolved over the years to help USGS determine accurate elevation levels of the reservoir. As a result, conflicting information arose based on outdated technology.

We believe the County and local stakeholders have worked hard to identify a course of action that is favorable to local stakeholders, the Federal Government and Carbon County. We feel that our efforts have been collaborative, open and committed to finding a fair and balanced resolution to this problem. And, even though this resolution is not perfect, we feel it is a fair and reasonable compromise for everyone.

With the passage of this language, stakeholders will continue to have access to property that has been in their families for generations. It will also enable the Bureau of Reclamation to meet compliance standards for Scofield Dam.

If this Bill fails to pass, sixty-five families will be left with nothing more than a memory of years where families were raised and weekends spent in homes near the lake and of building a sense of community pride that helped fortify them during times of adversity as well as prosperity.

Many of these families have worked hard to improve and develop the area and have paid taxes the entire time so that they and their families can continue to enjoy the benefits of homeownership in the Scofield community. The county, state and federal governments also committed financial resources to develop infrastructure in the area including sewer, roads and utilities.

Most homes are simple and the people who own them are from modest backgrounds. The only reason many of them are able to have a house in the area is because it was passed down from one generation to the next. In today's world, these people would not be able to afford to replace these houses if they were forced to build elsewhere. Most of these people are now retired and have planned to spend their retirement years at their property. They will not be able to do that if the Bill does not pass.

The Carbon County Commission will continue to work in a collaborative spirit with local stakeholders and federal agencies to resolve this issue.

Thank you again for the opportunity to present these comments. We respectfully request and sincerely hope that Congress passes S. 2056. Please feel free to contact us if you or any committee member has questions or would like to discuss this further.

Sincerely,

MICHAEL S. MILOVICH,
Chairman.

STATEMENT OF BRUCE DUNN, RICHARD DUNN, CLYDE ("BUD") PANNIER, JOSEPH LAMB, E. JAY SHEEN, SALT LAKE CITY, UTAH, ON S. 2056

Some of the history from the documents the Bureau of Reclamation produced in the quiet title action referred to in the agency's statement on this bill.

1. In the letter from Parley R. Heeley inquiring of the BOR, dated January 16, 1944, the 1927 Jorgensen deed to Price River Water Conservancy District is described as follows: "This Warranty Deed is subject to the right to graze or otherwise use any portion of said lands where not actually covered by water of grantee's reservoir, heretofore granted to Neil M. Madsen and Andrew C. Madsen." Mr. Heeley goes on to inquire as follows: "You are requested to advise as to whether the United States has sufficient title in these lands . . . to convey to the State of Utah rights of way for relocation of the highway . . . "

2. The BOR map of the Scofield Reservoir dated 11-17-59 has legends that show a large portion of the disputed land as "Fee title in U.S. subject to grazing and any other use except when inundated." The map, with its legends, has separate signatures for submitted, recommended and approved, each of which were initialed by relevant BOR employees.

3. The BOR map dated 03-29-67 shows the same property as either "Flowage Easement (only) in U.S.", or "Fee Title in U.S. subject to grazing and other use except when inundated." This map too, with its legends, has separate signatures for submitted, recommended and approved.

4. In a 1968 appraisal prepared by the BOR, it is noted that: "Land in Catergory II is designated on project maps as owned by the United States, in fee title, subject to grazing and any other use when not inundated . . . Three daughters of Anna W. Madsen are being assessed by Carbon County and are paying taxes on the subject tract."

5. By letter dated May 31, 1988, A. J. Butler indicated that a meeting was held on May 17, 1977 in Conference Room 7102 at the Federal Building, between Ron Staten, an attorney for the BOR (Solicitor's Office), deceased before the date of the letter, and Joseph J. Palmer, attorney for Lazy CP, predecessor to the Dunn's, and other landowners. The representation was made by Mr. Staten to Mr. Palmer, that "he was recommending to Washington that the United States did not own the land in question but only possessed a surface flood easement. Apparently, Mr. Staten was terminally ill at the time but stated that if he did not finish his report to Washington, that a Mr. Roland Robinson, another attorney in the office, was fully advised on the matter and would follow through." Mr. Palmer made a note to his file, dated October 10, 1977, stating essentially the same thing: "Ron Staten told me, on my inquiry, that his file has a draft report and recommendation to Washington to the effect that government has only a surface flood easement." The handwritten note from someone at BOR dds further credence to the notion that everyone left the meeting waiting to hear of the implementation of Justice's recommendation.

6. Plat map in the BOR file, dated May 9, 1981, shows the predecessors of the persons noted above as "owners" of the lots indicated.

7. Letter stamped March 19, 1987, with appraisal attached states the following: "Because of the expediency of the work at this time [referring to the reconstruction in 1943 and thereafter], rights-of-way were not carefully prepared and documented. Fee title lands in the United States were acquired; flowage easements only were acquired; fee title lands in the United States, subject to grazing and any other use except when inundated ("funny title"), were acquired . . . The Bureau of Reclamation has been trying for several years to clear up trespass problems and deal with the "funny title" problem. Funding to do such is nonexistent." The appraisal, done by Foster R. Lamb for the BOR in late 1986, regards the subject land, ownership of which is described in the appraisal as: According to what the Appraiser can best determine fee title to the subject tract is held in the United States, subject to grazing and any other use except when inundated by Schofield [sp] Reservoir. The right to use the subject parcel for other purposes is owned by the Madsen Family. The Madsen family members have in turn leased the property along with other land to Mr. Mike Singleton for a recreational trailer and boat camp."

Mr. Lamb indicated he contacted Clyde "Bud" Pannier in connection with the appraisal. The only thing Mr. Pannier could have taken from that contact was that the U.S. continued to recognized his family's title in the property and were considering making an offer to purchase it, based on the outcome of the appraisal.

8. The commitment for title insurance dated May 3, 1988, prepared by USA Insurance Corporation, for BOR, showed the confused state of title when it noted the exceptions to the commitement, Schecule B-II: "19. Subject to the claims of interest of Boyd W. Hafer, Johanna M. Hafer, Bladys P. Butler, Louise M. Watts, Evelyn M. Jacobsen, Leoann M. Gunderson and Della L. Madsen as Grantees under various Deeds of record. NOTE: These interests appear to derive from the interest of Neil M. Madsen which was extinguished by that certain Order and Decree described above." The insurance company was only willing to insure with the exception noted.

9. The letter to Mike Jackson, Superintendent of Scofield State Park, from P. Kirt Carpenter, Project Manager, referenced the "Funny Title" lands: "These lands were acquired in fee title by the United States as part of the Scofield Project. The deeds reserved the rights of the former owners to retain grazing and other uses except when inundated."

10. The transaction by which the U.S. claims to have purchased interests in the property from the Madsens and the Watts was not concluded for many years. Payment was still being discussed in November of 1950, more than seven years after the contract of sale was dated. The communication from Mr. Neeley, in November

of 1950, indicated that payment had yet to be made. We still have no evidence payment was made or received by the sellers.

11. Possession of the property by third parties has been open and obvious for decades. Other governmental entities have recognized the property rights of the persons occupying the property, not the U.S. For example, water and sewer were built to the houses under the auspices of a Special Improvement District. The Dunns or their predecessors obtained a permit to construct and operate a well on his property, and the permit was renewed and modified at different times. Carbon County continues to this day to assess property taxes on the land.

The government, for its own account, recognized its limited title to the property over and over again in its internal documents, in communications to and from third parties, and over a span of decades.

From 1927 until 1945, the Madsens continued to use the Scofield Reservoir property (as it was then being called) as they had since acquiring that property. They grazed cattle and sheep on the property. They farmed parts of the property. They treated the property as their own.

That had been part of the original agreement that had originated with Mr. Jorgensen. The Madsens would be able to use the Scofield Reservoir Property when not inundated by water, so long as that use did not to interfere with use of the reservoir or the flow of water into the reservoir. After the new dam was finished in about 1946, life went back to normal in Scofield. People moved in and out. Families grew up, children moved away. The Scofield Reservoir became a gathering place for families. Reunions, hunting trips, recreation, fishing. And still the Madsens and their family used the property for grazing, farming and leased parts of the Scofield Reservoir Property to others for boat camps, sheep farming and other uses.

In the summers, the lake was a bustle of activity. Tents, trailers and campers lined the lake. Houses began to spring up and permanent structures erected for stores, restaurants, cafes and both seasonal and permanent accommodations that were a vast improvement over a tent or camper floor. Life at Scofield continued in this fashion from 1948 to 1972, without any concern being raised by any government authority regarding any trespass by Defendants or their predecessors.

In June of 1976, the Government sent a notice to property owners occupying the Scofield Reservoir Property that they were trespassing on government land.

This news created a stir among the property owners as most had been raised on the notion that their family owned the Scofield Reservoir Property since nearly the turn of the century.

A meeting was held in Salt Lake City, at the federal building, on May 17, 1977. Presiding over that meeting was Ron Staten, a representative from the United States Department of the Interior.

Each participant at the May 17, 1977 meeting believed that, after the meeting, the matter of ownership of the Scofield Reservoir Property had been resolved in favor of the acknowledgment of the use right. After that meeting, the Government took no further action in relation to its claim of ownership for another 22 years. From 1927 until just recently the Madsens and their successors - as well as the Government and its agencies-acted consistent with the reservation of the right to use the Scofield Reservoir Property for any and all purposes not inconsistent with the flowage or storage of water thereon.

The parties desire to be treated equal to those landowners on the other side of the resevoir.

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