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H.R. 427, H.R. 434, and H.R. 451

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND
FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

April 25, 2001

Serial No. 107-19

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

71-931 PS WASHINGTON : 2001

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HEARING ON H.R. 427, TO PROVIDE FURTHER PROTECTIONS FOR THE WATERSHED OF THE LITTLE SANDY RIVER AS PART OF THE BULL RUN WATERSHED MANAGEMENT UNIT, OREGON, AND FOR OTHER PURPOSES; H.R. 434, TO DIRECT THE SECRETARY OF AGRICULTURE TO ENTER INTO A COOPERATIVE AGREEMENT TO PROVIDE FOR RETENTION, MAINTENANCE AND OPERATION, AT PRIVATE EXPENSE, OF THE 18 CONCRETE DAMS AND WEIRS LOCATED WITHIN THE BOUNDARIES OF THE EMIGRANT WILDERNESS IN THE STANISLAUS NATIONAL FOREST, CALIFORNIA, AND FOR OTHER PURPOSES; AND H.R. 451, TO MAKE CERTAIN ADJUSTMENTS TO THE BOUNDARIES OF THE MOUNT NEBO WILDERNESS AREA, AND FOR OTHER PURPOSES.

Wednesday, April 25, 2001
U.S. House of Representatives
Subcommittee on Forests and Forest Health
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 3:05 p.m., in Room 1334, Longworth House Office Building, Hon. Scott McInnis, [Chairman of the Subcommittee] presiding.

Mr. MCINNIS. The Subcommittee on Forests and Forest Health will come to order. The Subcommittee is meeting today to hear testimony on H.R. 451, H.R. 434 and H.R. 427. I appreciate the witnesses taking time to offer remarks on these bills today, and I look forward to hearing each of your comments.

Under Committee Rule 4(g), the Chairman and Ranking Minority Member can make opening statements. If other members have statements, they will be included in the hearing record.

Now, is there any objection to Representative Doolittle having permission to sit on the dais and participate in the hearing? Seeing none, so ordered.

Today the Resources' Subcommittee on Forests and Forest Health is conducting a hearing for those three bills as I just mentioned. I appreciate our witnesses taking time to offer remarks on these bills, and I look forward to your comments, but I would ask that all the witnesses honor the five-minute limit on testimony.

[The prepared statement of Mr. McInnis follows:]

Statement of The Honorable Scott McInnis, Chairman, Subcommittee on Forests and Forest Health, on H.R. 451

I would like to thank Chairman Hansen for taking the time to testify before the Forests and Forest Health Subcommittee and to commend him for his leadership on the Mount Nebo Wilderness Boundary Adjustment Act. This legislation is a balanced attempt to correct an oversight within the Utah Wilderness Act of 1984 that presently threatens the drinking water supplies of several communities in Mr. Hansen's District. The Chairman has gone to great pains to accommodate all of the parties with a stake in the legislation, and for that the bill deserves the support of the Members of this Subcommittee.

The Mount Nebo Wilderness Area is located in the Uinta National Forest in Juab County, Utah, not far from my District in western Colorado. Mount Nebo was designated as wilderness with the enactment of the Utah Wilderness Act in 1984, a bill Chairman Hansen sponsored. Unfortunately, the legislation and accompanying maps wrongly designated as wilderness various parcels of public land that included water system developments.

Because, as we all know, the Wilderness Act does not allow any motorized vehicles to enter into wilderness areas, these water systems have begun to deteriorate without the aid of maintenance. While some of the necessary maintenance has been done by hand, much of the work requires the use of either motorized or mechanized equipment. In one area, Willow Creek, a concrete ditch once became so dilapidated by normal wear and tear that it was unable to sustain the flow of water. Due to the county's inability to sufficiently maintain the ditch, the water caused substantial erosion before it was finally repaired. At present, without the possibility to adequately maintain these water developments with machinery, more large-scale damage along these lines will occur to the other facilities.

To remedy this situation, Chairman Hansen has introduced legislation to remove these eight tracts, each of which is home to a water facility, from the wilderness area. Again, it is critical to remember that these areas were erroneously included within the borders of the wilderness area in the first place. Moreover, as Commissioner Howarth has pointed out in his written testimony, these parcels will still remain in the public domain, and will therefore still be subject to the Forest Service's management protections.

Much to their credit, Chairman Hansen and officials from Juab County entered into negotiations with local Forest Service officials in an effort to identify additional would-be wilderness areas to compensate for the 428.774 acres that would be excluded in the boundary adjustment. The parties agreed to include 439.209 acres of land classified as "roadless" to offset the discharge of the eight parcels with water facilities. When viewed together, then, this boundary adjustment would actually result in a 10-acre net gain in the overall size of the wilderness area.

As a general matter, I know that there are some who are opposed, per se, to removing land from wilderness protection. While I might be sympathetic to this argument in some instances, this is not one of those times. The Chairman's bill is an eminently fair attempt to remedy an unfortunate oversight within the 1984 legislation, in a manner that honors the Mount Nebo Wilderness Area's broader preservation values. At the end of the day, the wilderness area actually increases in size, even as Juab County's water facilities are excluded. For these reasons, this bill clearly deserves the support of this Subcommittee.

[The prepared statement of The Honorable Gary Condit follows:]

Statement of Gary A. Condit, a Representative in Congress from the State of California, on H.R. 434

Mr. Chairman, thank you for the opportunity to speak in favor of H.R. 434, a bill that protects a piece of California's back country heritage that has become an important wildlife habitat.

H.R. 434 directs the Secretary of Agriculture to enter cooperative agreements to retain, maintain, and operate at private expense 18 concrete dams and weirs located within the Emigrant Wilderness in the Stanislaus National Forest. I fully support this legislation, and the preservation of these historic structures.

The first of the 18 dams and weirs was constructed in 1920- 55 years before Congress designated it as a Wilderness Area. Sportsman and high-country adventurer Fred Leighton traveled throughout the area, constructing dams to maintain water flow on the Cherry River to nurture minnows living in the streams and keep lakes deep enough to prevent fish from freezing in the winters. His efforts were supported through funding and labor provided by the United States Forest Service, California Department of Fish and Game, California Conservation Corps, Tuolumne County, Tuolumne County Sportsmen's Association, City and County of San Francisco and local citizens.

For more than 80 years, lakes, meadows and wetland habitats providing healthy ecosystems for fish, otters, geese, birds, deer, rabbits, reptiles, waterfowl, and insects have thrived thanks to the presence of these check dams. Loss of these reservoirs through lack of maintenance would jeopardize all of these wildlife populations. Additionally, the absence of these check dams will increase recreational pressure on remaining lakes in the Emigrant Wilderness Area. Sport fishing visitors will be forced to congregate around the few existing lakes, which will also reduce opportunities for solitude, a key part of true wilderness experience.

Although subtle features of the Emigrant Wilderness themselves, these 18 check dams have become important aspects of the natural environment and reflect the unique history of the land and its visitors. Having personally visited Emigrant Wilderness Area, specifically Yellowhammer dam, I can attest the wilderness qualities of the region are in no way compromised by the presence of these small dams. In fact, the maintenance of these dams insures the continued existence of many wildlife species, which are a significant draw to visitors in the area. I wholeheartedly endorse the passage and enactment of this legislation. Thank you again, Mr. Chairman, for providing me the opportunity to share my comments.

Mr. MCINNIS. With that, the Subcommittee will take up H.R. 451, the Mount Nebo Wilderness Area Boundary Adjustment Act.

Mr. Chairman, thank you for coming. I will have you note I started the Committee pretty close to on time, since you insist on promptness. You are recognized, Mr. Chairman. You may proceed.

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

Mr. HANSEN. Well, thank you, Mr. Chairman. It is a pleasure to be here in the Subcommittee, and I appreciate you taking this piece of legislation.

I want to welcome W. Boyd Howarth, our County Commissioner and those who are with him from Juab County. These folks are great public servants, and I appreciate the great work they do in this beautiful county.

Let me give you a little background on H.R. 451. You know, we have been playing around with this for a long time. Almost 18 years ago, myself and Jake Garn did a bill on Utah wilderness and the Forest Service. The area of Mount Nebo is immediately east of Nephi, Utah, and in that area we thought we had it worked out. I guess we weren't smart enough to see that we didn't, but there are some water systems up there and a few other things we are very concerned about. We felt that they were cherry-stemmed so

that the people in Juab County could go up in that area and take care of this water. Now, they use this water. The water they use for culinary purposes and other purposes, and all of a sudden they were told by the Forest Service they couldn't do it. We have been hammering the Forest Service now for 15 years, asking, well, give us a definitive action on this.

So now we expect our guys out there to put a backpack on, walk up in there, fix the tile, clean it up, clean the thing up and walk out. Well, it is almost impossible, and it is a tough situation for our folks to have there.

So, we thought, well, maybe the best thing for us to do—and I have been to that area. I have looked at it. I have been up on top, on the bottom. I think I know it backwards and forwards. And we have been dealing now, this is the third or fourth administration we have been trying to square away this relatively minor problem, which has created quite an encumbrance on the folks down there in Juab County.

So we are introducing this bill, which in effect says that we will cherry-stem those areas so that they can take in the proper equipment to take care of these areas as they need to maintain, which we thought we did the first time around.

I went up with Jake Garn in his airplane the other day and we flew around, and this issue came up, and we said—Jake said, "Well, I thought we had that resolved." I said, "I thought we did too, but apparently, we don't."

So I think the only way we can handle this is to put this bill in and see if we can take care of something that Congress originally intended. And so this remedy is a legislative remedy to adjust the current boundaries to exclude the water development, and also—the commissioner can correct me, but I think there are some private inholdings in there we also want to take care of. However, what it does, is we are adding some acreage, which would in effect more than take up the difference which is necessary to take care of this area.

Now, Nephi and the town of Mona will now have access to their water development, inholdings will be removed, and the Forest Service will have a wilderness area with less human intrusions and fewer access issues.

Now, I personally feel it is a good piece of legislation, probably a housekeeping piece of legislation, but I appreciate the commissioner and his folks from the county being with us, to spend the time with us. It means an awful lot to those cities in Juab County.

And with that, Mr. Chairman, I would be happy to respond to any questions anyone may have regarding this legislation.

[The prepared statement of Mr. Hansen follows:]

Statement of The Honorable James V. Hansen, Chairman, Committee on Resources, on H.R. 451

I want to welcome Commissioner Howarth to this hearing on H.R. 451. I appreciate you being with us today. As the good Commissioner knows, I have taken a particular interest in this ongoing management issue of the Mt. Nebo Wilderness Area because of my history with the legislation.

More than 15 years ago, as a junior member of this Committee, I drafted the Utah Wilderness Act of 1984 which created 800,000 acres of wilderness within the Forest Service lands in Utah, including the Mt. Nebo Wilderness area. This is a very beautiful area, rich in biological diversity, offering numerous primitive recreational

opportunities, tremendous solitude and breathtaking views of the Great Basin, all within one hour of nearly 80 percent of the population of Utah. There is no question that the Mount Nebo area deserves wilderness protection.

As the members of this Committee know, creating congressionally designated wilderness is not an easy process. In Utah, we had to work through a dozen different management issues in each area we wanted to protect. We had to determine how to protect valid existing rights such as grazing, mineral development and historic access to certain areas. We had to navigate through the private inholdings issues and work with the agency and local governments to identify and draw boundaries that made the best management sense. The legislation was literally the result of hundreds of hours of negotiations. However, during the legislative process we don't always get everything buttoned up exactly the way we would like.

In this case, 17 years ago, maps were erroneously drawn which included some pre-existing developments to municipal and agricultural water systems that have supplied water to Juab County since the late 1800s inside the wilderness boundaries. These systems are old and in need of constant maintenance and care. But due to the restrictions on motorized vehicle access in wilderness areas, it is difficult, if not impossible, to adequately maintain these existing facilities.

In addition to these maintenance problems, a small piece of private land was also included that should not be inside the boundaries of the wilderness area.

I know the Forest Service is interested in working toward a solution. The Committee needs to be aware that the Forest Service has had more than 15 years to develop a solution. Commissioner Howarth will tell us that they have been trying to reach an administrative solution since the wilderness area was declared. Given that we were forced to introduce legislation to bring about a solution is indicative that it is not likely that the problem can be solved administratively.

The best remedy is to legislatively adjust the current boundaries to exclude the water developments and the private inholdings. This bill accomplishes that. We have also adjusted the southern boundary to include an area of roadless Forest Service land to compensate for the acres removed, resulting in a slight increase in the wilderness acreage. Nephi City and the Town of Mona will have access to their water developments, inholdings will be removed and the Forest Service will have a wilderness area with less human intrusions and fewer access issues.

I know that initially, there were concerns regarding the impact of moving boundaries back up these canyons and how it might put pressure on additional development through increased public access. Administrative roads are used by all agencies. Nothing precludes the Forest Service from keeping these roads closed to the general public except motorized access to the County for the maintenance of their existing water facilities.

Ms. Collins, I look forward to hearing the testimony today and I particularly look forward to your taking my questions.

Mr. MCINNIS. Mr. Kildee, do you have any questions?

Mr. KILDEE. I have none right now.

Mr. MCINNIS. With that, we are going to go ahead and ask the county commissioner. Commissioner? Thank you, commissioner for attending. A long ways from home. We appreciate your time, and again ask that you honor the five-minute rule. You may proceed with your testimony, sir.

STATEMENT OF WILLIAM BOYD HOWARTH, CHAIRMAN, JUAB COUNTY, UTAH, BOARD OF COMMISSIONERS

Mr. HOWARTH. Honorable Chairman and committee members, I am William Boyd Howarth, Chairman of the Juab, Utah Commission. We appreciate the opportunity to represent the residents of Juab County today, and express our strong support of H.R. 451.

In my written statement I have included a more-detailed explanation of the issues and problems that we have been facing, concerning some small areas within the Mount Nebo Wilderness Area. Because of Committee rules, even the written submittal is very abbreviated. We have much additional information to substantiate the real need for H.R. 451. In the few minutes that I have here

today, I will highlight some of the important points. I would ask you to remember that as you consider H.R. 451, there are five points that I will briefly discuss.

Item Number 1. Water systems and patent mining claims should never have been included in the wilderness of 1984. All of the information presented during the discussion of proposed wilderness indicated the wilderness boundary would be at the 8,000-foot level on the west side of Mount Nebo. This was important to protect existing water systems and patent mining claims located below that elevation. After the Utah Wilderness Act of 1984 was passed, it was discovered that the actual wilderness boundary was, in most cases, brought down to the forest boundary, in some areas below the 5,300-foot level of elevation. With this change, the patent claims and the water systems were held hostage within the wilderness. Their presence presents significant problems for the owners of the system and also creates management headaches for the Forest Service.

While the 1964 Wilderness Act provides for recognition of prior valid and existing rights, and some believe that H.R. 451 is not necessary, over 16 years of experience have clearly demonstrated that change is needed. While current law may allow these items to be resolved, this certainly has not been the case.

On several occasions congressional intervention and even court action has been required to protect these rights. Bob Steele, a member of our county commission, was forced to sue the United States to get access to his patent mining claims and the right to mine these claims. This suit was settled with a judgment against the United States.

Number 2 of the stipulation of entry for judgment reads: "Judgment shall be entered in the favor of the plaintiffs and against the United States in the amount of $120,000." A copy of this stipulation is attached to my written testimony.

Significant resource damage has occurred when water delivery systems have worn out or eroded, and if rapid approvals could have been received, this damage could have been very well minimized. However, the extended delays encountered and bureaucratic delays and untruths, resulted in significant erosion and other problems.

Point Number 2. This will not adversely impact the Mount Nebo Wilderness. I believe these areas are in fact in conflict with wilderness management goals and values. There is an absolute need to access these systems, including needed cleanup that cannot practically be accomplished without the use of mechanized equipment. These water rights have priority dates in the 1800's, and constitute a valid longstanding right to the owners of those rights.

Point Number 3. There is a net gain of wilderness. Early discussion indicates that if the total area requested out of wilderness were less than 500 acres and if there were no net loss of wilderness acres, this boundary adjustment would be possible. I feel it is important to recognize there is actually a small gain of wilderness acreage with H.R. 451. Also the area that will be added is much better suited to wilderness designation, and is much more manageable than the areas being removed.

Point Number 4. The resulting wilderness area is more manageable. It has been difficult to manage the existing boundaries. These

well-established roads have been gated. In one area the gates have been removed several times to try and find a location where the access could be managed. We have worked hard to make the new proposed boundaries manageable. It is not enough to easily identify a boundary on a map. The boundaries need to be easily identified on the ground. Proposed boundaries will follow ridge lines and etcetera to help with manageability.

Item 5. The lands removed from wilderness are still within the forest and subject to Forest Service management. It is important to remember that while this land was removed from the wilderness, it is still in the Uinta National Forest. Use of it will still require special use permits and would be subject to Forest Service regulation and oversight. There is not a possibility that these lands can be pillaged.

This change allows the owners of these rights to properly use and maintain their rights, and also allows the Forest Service to be much more responsive to needs. H.R. 451 is a win-win. As one Forest official said, "Let's solve the issues, so when we get together we can work productively on the many issues that face us, and not continue to battle over these systems."

These issues have been a source of frustrations for over 16 years. Let us solve the issues that should have never been created. Protect the Nebo Wilderness. Make it more manageable, and allow for proper maintenance and operation and management in these areas. This bill is a reasonable, environmentally-conscious solution to this problem. Please give this bill your favorable consideration. And thank you.

[The prepared statement of Mr. Howarth follows:]

Statement of William Boyd Howarth, Chairman, Board of Commissioners, Juab County, Utah, on H.R. 451

Honorable Chairman and committee members: I am William Boyd Howarth Chairman of the Juab County, Utah, Commission. We appreciate the opportunity to represent the residents of Juab County here today and express our strong support of H.R. 451.

H.R. 451 would remove approximately 429 acres from the Mt. Nebo Wilderness area, add 439 acres to the wilderness area, and make one technical correction. It is important to note that this a net gain of wilderness acres. This bill is a conservative approach to remove very limited areas from the wilderness in order to allow continued use and maintenance of water systems that date back to the 1800's and to allow access to the existing patented claims in Gardner Canyon. We have checked with local cattlemen, farmers, ranchers, and other public officials. Every one that we have discussed this with agrees that this is a good area to exchange for the water systems and patented mining claims that we have identified.

Let me outline a few of the reasons why this bill is necessary. During the early 1980's, as Forest Service Wilderness was being discussed, the proposals that were presented showed that on Mt. Nebo the western boundary of the wilderness area would be at the 8,000 foot elevation. This was important to protect existing water systems and patented mining claims located below that elevation. Water is the lifeblood of any area. After the Utah Wilderness Act of 1984 was passed, it was discovered that the actual wilderness boundary was, in most cases, brought down to the forest boundary. In some areas it is at the 5,300-foot elevation. With this change, the patented claims and water systems were held hostage within the wilderness. These systems should have never been included in wilderness. Their presence presents significant problems for the owners of the system and it also creates management headaches for the Forest Service. Local Forest Officials have been very positive about trying to resolve these issues.

While the 1964 Wilderness Act provides for recognition of "prior, valid existing rights", and some believe that H.R. 451 is not necessary, over 26 years of experience clearly demonstrates that change is needed. While current law may allow these

items to be resolved this certainly has not been the case. On several occasions, congressional intervention and even court action has been required to protect these rights.

This bill would take seven specific areas out of the wilderness and also clarify the map so there is no misunderstanding that one piece of private property is not within the wilderness area. The areas are identified as follows:

1. Monument Springs: These springs are a part of the Nephi City Culinary Water System. A pipeline carries water from the springs down to a lower collection system. Approximately 1/8 mile of the pipeline and the springs are within the wilderness. Nephi plans to do some repair on this system and pipe it down to water the golf course, freeing up softer water from other springs for the regular culinary system. The original wilderness bill does give municipalities some special access rights, however, this small adjustment would prevent many problems. These springs have a priority date of 1937. This parcel contains 26.045 acres
2. Gardner Canyon: This canyon provides culinary and irrigation water and has patented mining claims. These springs in Gardner Canyon have a priority date of 1878 and 1855. This parcel contains 202.084 acres. Much of this acreage consists of the patented mining claims that are going to be mined.
3. Birch Creek: Water from Birch Creek is used for irrigation on farms located beneath the wilderness. These springs have a priority date of 1850. This parcel contains 4.161 acres. Access is needed to maintain and utilize this water source including the ability to use mechanized equipment when necessary..
4. Ingram Canyon: Water from this canyon provides 100% of the culinary water for four (4) homes in the valley. These springs have a priority date of 1923. This parcel contains 17.296 acres.
5. Willow Creek: The original water rights in Willow Creek were secured under Utah Law evidenced by Diligence Claim 79. Water was first diverted for use into the Willow Creek Canyon System in the 1870's. Mona Irrigation Company was formed in 1896. Willow Creek South contains 68.156 acres, and Willow Creek North contains 50.38 acres.
6. Mendenhall: These springs have a priority date of 1899 and provide irrigation water. This parcel contains 16.350 acres.
7. Wash Canyon: These springs have a priority date of 1880. The water from Wash Canyon is used for irrigation on the farmlands. The Forest Service has requested that debris and fragments from a previous line that was installed prior to current ownership be removed. This also requires the use of heavy equipment for which access rights have been denied. This parcel contains 44.302 acres.
8. Dale: From the information that we have it appears that the Mt. Nebo Wilderness Area Boundary cuts this private property approximately in half. H.R. 451 would clarify that this private property is not within the wilderness boundary.

Time does not permit me to describe all of the problems that have arisen concerning these valid rights so I will only outline a very few of them.

The owner of the patented claims in Gardner Canyon was driving the existing road to his claims when the Forest Service ticketed him. He also faced significant unwarranted delays and was told that he would not be allowed to mine his claims. Even though research showed use of this road as early as the 1880's, the Forest Service denied Juab County's claim that this was an RS2477 right-of-way. As a result of this the owner filed suit against the Forest Service to maintain his right of access and his right to mine his claims. The settlement required the Forest Service to pay $120,000 and required that the Forest Service grant him a special user permit that would allow him necessary access and the right to mine those claims. I have attached to my written statement documents verifying the settlement and lack of recognition by the Forest Service of these rights.

Let me briefly tell you the story of Jack Howard. Jack is an 80-year-old man who lives just below Gardner Canyon. He personally has lived at that location, in two different homes, for 77 of the last 80 years. For the three years that he was absent he was serving in the military. Throughout his entire life (and before that) the culinary water for the family has come from springs in Gardner Canyon as part of the Gardner Canyon Irrigation Company. Maintaining the water system requires cleaning screens located in the canyon. Since wilderness designation, Jack has had to walk the steep up-hill road to clean the screens. This is the same road that can be used to mine the claims, however, at the age of 80 and severely bent over, Jack is still required to walk the 3/4-mile into the canyon.

During the Utah floods of 1983–84, a large mudslide coved and destroyed the upper portion of the pipeline. The water that flowed through that pipeline now flows through an open ditch. During certain times of the year the water flows through

the decaying leaves from the trees and picks up much of this debris that clogs the screens. Jack is required to walk up the road to clean these screens. On washday, Jack and his wife often have to change the filter in their home every two hours. The irrigation company has been unable to repair the pipeline because of wilderness designation.

Willow Creek is another prime example that a change is needed. Let me paraphrase from a letter by the President of the Mona Irrigation Company. Mona Irrigation Company owns the rights in Willow Creek. While Mona Irrigation Company's water rights and legal rights to divert and convey water which originated in the Mt. Nebo wilderness are recognized by state law and the 1964 Wilderness Act provides for recognition of "prior, valid existing rights"— as a practical matter, bureaucratic delays, lack of response, and down-right untruth proves that this has not been the case.

When the company proposed renovation of structures that protruded into "wilderness", they were met by obstacle after obstacle by the Forest Service bureaucracy. Initially, they were told that work was being done on the required Environmental Assessment. They were told this many times over an 18-month period. They persevered until the fact surfaced that not only was the EA never started, many other crucial facts, such as procedural steps, required comment periods, design requirements, and other pertinent facts had been so misrepresented to them that after two years of requesting action, no progress had been made past the initial phase. After the Forest Service was forced to take action due to intervention by Senator Bennett, the Forest Service they continued not only the delay tactics but also sought to interpret the rules in the most stringent way possible. Our engineer finally devised an elaborate design, meant to attempt to meet the requirements. This design used expensive materials, expensive construction methods, and such stringent requirements that when we put the project to bid, the low-cost bid was four times the cost the project should have been required, were in not for the wilderness designation of the upper 900 feet.

The final result was that the project took four years to get approval, water rights had to be defended against wilderness "advocates" who sought to infringed upon them, the costs were dramatically increased, and the resource was wasted during this inexcusable delay with significant accompanying erosion damage caused by an agency supposedly concerned with protecting the resources and serving the public.

Similar stories could be told of each of the areas that H.R. 451 would remove from wilderness. It is important to remember that while H.R. 451 would remove these areas from wilderness, the areas will still be within the Forest, and the Forest Service has adequate regulations and authority to insure that work that is done in these systems is done in an appropriate and environmentally conscious manner. I strongly encourage your favorable consideration of H.R. 451.

[Attachments to Mr. Howarth's statement follow:]

Excerpts From A Statement By Gordon Young President Mona Irrigation Company

While Mona Irrigation Company's water rights and legal rights to divert and convey water which originated in the Mt. Nebo wilderness is recognized by state law and the 1964 Wilderness Act provides for recognition of "prior, valid existing rights"' as a practical matter, individual rights of every kind are in jeopardy under "wilderness" or WSA designation when administered by a bureaucracy with an agenda of extremisms, as we see all to often among personnel of all federal agencies.

When the company proposed renovation of structures which protruded into "wilderness" we were met by every obstacle which the forest service bureaucracy could employ. Initially, we were told that work was being done on the required Environmental Assessment. We were told this many times over an 18-month period. We persevered until the fact surfaced that not only was the EA never started, many other crucial facts such as procedural steps, required comment periods, design requirements and other pertinent facts had been so misrepresented to us that after 2 years of requesting bureaucratic action, we had not even progressed past the initial phase. After the forest service was forced to take action due to intervention by Senator Bennett, they continued not only the delay tactics but also sought to interpret the rules in the most stringent way possible. An elaborate design, meant to placate forest service bureaucrats, was devised by our engineer to meet the criteria placed upon us by the forest service. This design used expensive materials, expensive construction methods, and such stringent requirements tat when we put the project to bid, the low cost bid was 4 times the cost the project should have been were in not for the wilderness designation of the upper 900 feet.

The final result was that the project took 4 years to get approval through the bureaucratic process, we had to defend our water rights against wilderness "advocates" who sought to have infringed upon them, the costs were dramatically increased and the resource was wasted during this inexcusable delay with accompanying erosion damage caused by an agency supposedly concerned with protecting the resources and serving the public.

Our facilities were included in a designated wilderness area because of several unfortunate circumstances.

First, the need to meet an acreage target regardless of "wilderness" characteristics of the area drove the designation to include areas which are not true wilderness and include many manmade improvements which should have disqualified them for designation.

Second, designation was done with minimal input from users and done under false pretenses as to the true area under consideration and qualifying characteristics of these areas.

Third, blatant disregard as to the rights of users under a bureaucracy which sees any "prior, existing, valid" right as conflicting with "wilderness" values and therefore determined to eliminate such uses.

Gordon Young, President
Mona Irrigation Company

MONA IRRIGATION COMPANY WILLOW CREEK CANYON WATER SYSTEM REBUILD IN THE MT. NEBO WILDERNESS AREA

Sequence of Events:

- Original water rights were secured under Utah Law evidenced by Diligence Claim #79
- Water was first diverted for use into the Willow Creek Canyon System in 1870's
- Mona Irrigation Company was formed in 1896.
- Current concrete ditch was constructed 1947-49.
- In 1984 the Mt. Nebo Wilderness Act was passed. Valid pre-existing rights were to be protected and reasonable access for maintenance was to be allowed.
- Approximately 900 feet of the water system was included inside the wilderness area.
- The concrete ditch was worn out in the early 1990's to the extent that the ditch walls were cracking and breaking resulting in uncontrolled water running outside the ditch way.
- Some of the worst uncontrolled runoff and water loss was occurring inside the Wilderness Boundaries.
- In 1993, Mona Irrigation Company asked the local Forest Service office to start the permitting process that would allow the Company to reconstruct the water system and replace the ditch. The loss of water at the time was at an urgent stage.
- The Forest Service promised action. However, nothing was done to move the permitting process forward all through 1993 and 1994.
- In late 1994, due to a lack of action and critical need, Mona Irrigation Company went to Senator Bennett=s office seeking assistance.
- In July, 1995, as a result of Senator Bennett's involvement, an on-site inspection was organized and carried out. Those attending included Forest Service officials, Natural Resource Conservation Service personnel, Utah Congressional Delegation staff, Mona Irrigation Company members, Local Elected officials and Environmental Conservation group representatives.
- During the on-site inspection, Forest officials informed that although the Environmental Assessment (EA) was scheduled to be released within 2 weeks, the background work had not even been started nor had any preliminary engineering been started.
- As a result of the attention brought on the Forest Service at this time, the EA was finally undertaken and a record of decision to proceed was issued in August 1996.
- Mona Irrigation Company immediately put a contract out for bid but received limited interest due to the complicated design and unreasonable restrictions placed by the Forest Service.
- Three bids in total were received, all in the $300,000 to $400,000 dollar range for a project we knew could be done for under $100,000.
- In the spring of 1997, Mona Irrigation Company undertook the portion of the project outside of wilderness and completed this portion for approximately $30,000.
- In June of 1997, Forest Service officials were asked if Mona Irrigation Company could proceed with the upper 900 feet located within Mt. Nebo Wilderness Boundaries under the existing decision and special use permit with minor changes in design. The changes were in (1) type of pipe - replacement of HDPE with ductile iron (2) placement outside of old ditch

instead of being grouted into old ditch (3) minor excavation for access outside of wilderness.

- On or about August 22, 1997, local Forest officials contacted Mona Irrigation Company and verbally authorized proceeding under the existing permit as long as all restrictions on wilderness activity were observed.(even disallowing the use of cordless electric drills for example as it was deemed mechanical equipment). No mechanized equipment of any kind was allowed into the Wilderness area. Forest officials imposed that all work be accomplished manually.
- On the strength of this verbal authorization, Mona Irrigation Company ordered materials, rented machinery and mobilized to proceed with construction by late September 1997.
- On September 3rd, 1997, the local Forest office contacted Mona Irrigation Company and informed that some people thought that it would be better to delay the project, amend the Environmental Assessment and have a new public comment period. The local Forest office further declared that irregardless of their earlier determination to proceed and irregardless of the previous planning, hardship, waste of time, financial burden and other efforts, was going to comply with some peoples wishes and delay the project and amend the EA. It was clear the some people environmental and wilderness groups interests.
- The fact that the local Forest office now denies the earlier verbal authorization that construction would be allowed under the existing permit is amazing, but convenient.
- Mona Irrigation Company asked Senator Bennett to intervene and insist that Forest officials allow construction as they had, in fact, verbally authorized under the existing permit, with no further delays and that this lack of concern for and recognition of the pre-existing rights of the citizens of this area and other acts of obstruction cease.
- Senator Bennett made inquiries and the project was approved to proceed.

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT STEELE, CHRISTY K. STEELE and J.W. DANSIE,	)	
Plaintiffs,	)	No. 94-302 L
v.	)	Hon. Christine O. C. Miller
UNITED STATES OF AMERICA,	)	
Defendant.	)	

STIPULATION FOR ENTRY OF JUDGMENT

COMES NOW Plaintiffs and Defendant, by and through their attorneys of record, and hereby stipulate as follows:

1. Plaintiff and Defendant have engaged in good faith settlement negotiations to avoid further litigation in the Court of Federal Claims and in the Court of Appeals for the Federal Circuit.

2. Judgment shall be entered in favor of Plaintiffs and against the United States in the amount of $120,000 as just compensation, including interest, attorneys fees and costs. In addition, Defendant has authorized Special Use Permits to allow Plaintiffs to access and mine the mineral interests referenced herein.

3. The payment of the above amount, and the issuance of the referenced permits, shall constitute a full, complete and final resolution of all of Plaintiffs' claims against the United States, legal or equitable, arising out of Plaintiffs' 1990 application for a Special Use Permit for mining and access on the

property known as MacFarlane 1, MacFarlane 4, and Little Doctor located within the Mt. Nebo Wilderness Area, Uinta National Forest, Utah. Plaintiffs agree to accept this payment and the permits as full, complete and final resolution of all claims, including, but not limited to, all claims that Plaintiffs asserted in their complaint, or could have asserted, in this or any other action for just compensation, interest, attorneys fees and other litigation expenses, or for any other form of relief.

4. Defendant agrees to timely process the paperwork associated with the payment of the resulting judgment.

5. This agreement is the result of compromise and settlement, and shall not be construed as an admission by Defendant of any legal or specific monetary liability as to any or all of Plaintiffs' claims for just compensation, interest, attorneys fees and other litigation expenses, or any other kind of monetary relief or compensation, nor shall the settlement be interpreted to constitute a precedent or argument in this or any other case.

Dated: August 16, 1996.

ALLEN K. YOUNG
Young & Kester
103 E. 200 South
Springville, UT 84663
(801) 489-3294

Attorney for Plaintiffs

Dated: August 15, 1996.

SUSAN V. COOK
General Litigation Section
Department of Justice
P. O. Box 663
Washington, D.C. 20044
(202) 305-0470 FAX 305-0506

Attorney for Defendant
and Authorized Representative
of the Attorney General

Mr. MCINNIS. Thank you, Commissioner.

Mr. Chairman, do you have a question?

Mr. HANSEN. I would just like to, if I could, Mr. Chairman, ask the commissioner, isn't it true that the Juab County Commission, when this bill was originally passed, was of the opinion that this water system was going to be accessible for the people in Juab County and the people of Nephi and Mona?

Mr. HOWARTH. As I understand, that is correct, that it would be, such as the morning it came back to committee here, it was changed down to the 5,300-foot level, when we thought it would be at the 8,000-foot level, and everything would be safe within those distances.

Mr. HANSEN. I know that you have Mr. Greenhalgh with you also, your economic development director, and having met with him many times, I am sure I have had that opinion expressed to me, I can't understand the attitude of the Forest Service trying to cut off just water supply to these little communities, but I would like to just tell the Committee this is basically kind of a housekeeping measure just to clear up on issue, and maybe the Forest Service will clear up part of it when they take the stand. But I appreciate the commissioner coming, and Mr. Greenhalgh and the other folks with him, for the good work that they have done there, and I would hope the Committee would vote favorably on this piece of legislation.

Mr. MCINNIS. Thank you, Mr. Chairman.

Mr. Inslee?

Mr. INSLEE. Thank you, Mr. Chair. Thank you, Mr. Howarth, for making the journey here. I have a couple questions. I am sorry, I am not really familiar with this issue and I missed part of your testimony. My apologies.

Could you tell us about in the change of the boundary of the wilderness area, would you characterize this, is this the minimal changes that would be required for these water systems? Could your proposal be subject to a criticism that it takes in more in the exclusion than would be really necessary? Tell us about that, if you will.

Mr. HOWARTH. As we have worked it, is the minimal. It was a cherry stem in order that they could come to the forest boundary and in, and bring mechanized equipment. They can bring in the steel pipe now because heavy-duty pipe, extruded PVC, it will crack and move and bend and break in rocky area and when the earth moves. And then if it is a community, they can go into the head houses. They can develop it, because water has to come from source to delivery to point of use, and that is what we are trying to do. We have no natural lakes. We have no reservoirs. In fact, this year we are at 40 percent snow pack. Since 1851, when the pioneers came, they have used these sources as water.

Mr. INSLEE. Given the nature of water in our west, it is a little surprising to me that this issue was not resolved when the bill was first passed. Mr. Hansen indicated there was apparently some misunderstanding about the elevation or the level the wilderness was drawn at. It surprises me that something like that would not be resolved at the time of the bill, given the nature of the importance of water. Could you tell us how that occurred?

Mr. HOWARTH. Maybe I don't understand what you are asking.

Mr. INSLEE. Well, as I understand, Mr. Hansen suggested that there was a misunderstanding about how the parameters, the boundaries of the wilderness were drawn, and there was some reference to elevation. I heard somebody say that there was an elevation difference than they originally contemplated was going to be in the bill. I am just asking you to explain to us how this could have happened, to have such a big difference?

Mr. HOWARTH. I would love to know how that did happen, because it happened back here. As we know, in that area of the residents, that bill should have been placed at 8,000 feet. But when it was passed, the 1984 Wilderness Act for Mount Nebo came down in fact to the 5,300-foot level. As you leave Nephi, you can go past Exit 228 of I-15, and it is within a quarter of a mile of the wilderness boundary.

Mr. HANSEN. Will the gentleman yield?

Mr. INSLEE. Yes.

Mr. HANSEN. The gentleman from Washington is, I am sure aware, when we pass a wilderness piece of legislation, they go draw the maps, and then they let us review those. Well, we didn't ever get to review them. Maybe that is our fault, maybe so. But the intent of the bill, which is very clear, is that these water systems would be cherry-stemmed in, so that these folks—right on the side of the mountain there, east of the town. And that didn't occur. If we had had—maybe we dropped the ball, maybe somebody else. I don't know. If we had done it right though, we would have again reviewed it and made sure that that is the intent where that line was drawn. It is very hard on these wilderness in the west. I am sure you are probably more aware than I am how difficult it is to draw those lines on a wilderness area. I think of all the wilderness areas I have been involved in, we ought to go back and look and see, well, where do you put this line? And many times it just happens, and we don't get a handle on it.

So if it is us or it is the Forest Service, I am not sure, but it was not the intent of the bill, and being the sponsor of the bill with Senator Garn, we both acknowledge the mistake. And the folks in Juab County and the city of Nephi and Mona are the recipients of some rather poor work on maybe our parts or somebody else. But that is what we are trying to rectify.

Mr. INSLEE. Appreciate that, Mr. Chair. Just another question.

Mr. Howarth, I am always a little bit—at least I am a little bit nervous about nibbling on these wilderness areas, that create some red flags because there are a lot of economic activities around the west, that could tend to want to nibble on the boundaries of these areas, and maybe it makes sense to think about a no-net-loss provision when we make these boundary adjustments so that there is—we try to have a policy of no-net-loss on wilderness, and I am just wondering if you or anyone has discussed locally the prospects that if we do change these boundaries, that we add some wilderness of an appropriate acreage another place. And you are already doing that, and my staff is now telling me that is going on. Is that accurate, Mr. Chair?

Mr. HANSEN. The gentleman from Washington, actually not much of an increase, but we do add some to this. Actually 10 acres

we are adding, so what we are taking away, we are more than making up for 10 additional acres into this wilderness. That is not much, but it is better than a loss.

Mr. INSLEE. Well, we appreciate that. And thank you, Mr. Howarth.

Mr. HOWARTH. Thank you.

Mr. MCINNIS. I might add, Mr. Inslee, in the wilderness that I put in last year, we discovered a mistake, and for the Forest Service or for us to now insist that there be no net loss because there is a couple of acres or so that have been mistaken in there, the Government shouldn't have added in wilderness in the first place, and I don't think they should be stuck with a no-net-loss. So I don't think we should have a no-net-loss that locks in every wilderness that we have got up here. But just an aside here.

Let us see. Mr. Peterson.

Mr. PETERSON. I have no questions.

Mr. MCINNIS. Mr. Holt?

Mr. HOLT. It seems to me that this is so dependent on the details of the map, and that I am happy to take the word of the Chairman and our witness on this. So I have no questions at this time.

Mr. MCINNIS. Ms. McCollum?

Ms. MCCOLLUM. Nothing, Mr. Chairman.

Mr. MCINNIS. Thank you, Commissioner. I appreciate very much you taking the time and testifying for us today.

Mr. HOWARTH. Thank you, ladies and gentlemen.

Mr. MCINNIS. At this point in time, we will excuse the commissioner and ask the Forest Service to come up, please, Ms. Collins. Welcome back to the Committee.

Ms. COLLINS. Thank you.

Mr. MCINNIS. You may proceed, and we ask you recognize the five-minute rule.

STATEMENT OF SALLY COLLINS, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE, ON H.R. 451

Ms. COLLINS. My comments on this bill are very short. I am Sally Collins, the Associate Deputy Chief of the National Forest System here in Washington, D.C., have been here a year, and this is the second time I have been before this Committee.

My comments today represent the views of the Administration on this particular bill, H.R. 451—and I won't go into any more of a description of it—but let me start with this statement. We really do recognize that there are legitimate issues associated with these permitted uses in these eight areas. We really are very interested in working with you to resolve these as well as to look at the existing authorities that we have governing all of these facilities.

And I also want to recognize something that you all have already said, that when Mount Nebo Wilderness was created in 1984, we may have overlooked some of these areas as maps were being developed, which may have created this 16 to 18 years of frustration that you all have been talking about this morning or this afternoon.

If enacted, Section 5 of this bill would amend the Utah Wilderness Act to further define water issues, and I do want to make a

point about that. I think that there is some terminology that is technical that we may need to work on, that may impact wilderness areas beyond this in ways that we may not want, that just may be unintended consequences that we are certainly willing to talk about further.

But I guess my main point is that we are really interested in working with Chairman Hansen and the permittees and all the interested parties to resolve all the accessibility and management issues associated with Mount Nebo Wilderness. And that is my comment for today. Any questions?

[The prepared statement of Ms. Collins follows:]

Statement of Sally Collins, Associate Deputy Chief, Forest Service, United States Department of Agriculture, on H.R. 451, H.R. 434, and H.R. 427

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Sally Collins, Associate Deputy Chief for National Forest System, USDA Forest Service. My comments today represent the views of the Administration on three bills: H.R. 451, a bill "To make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes"; H.R. 434, a bill "To direct the Secretary of Agriculture to enter into a cooperative agreement to provide for retention, maintenance, and operation, at private expense, of the 18 concrete dams and weirs located within the boundaries of the Emigrant Wilderness in the Stanislaus National Forest, California, and for other purposes"; and H.R. 427, a bill "To provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes."

For reasons I will detail in my testimony, the Forest Service has some concerns with the management direction provided by these bills. However, the Department and the Forest Service would like to work with the Committee to resolve the issues these bills address and work toward outcomes that will serve our mutual interests. Today's hearing is an important step in beginning this process.

H.R. 451, "Mount Nebo Wilderness Boundary Adjustment Act"

H.R. 451 makes boundary adjustments to the Mount Nebo Wilderness area. Eight small areas within the Mount Nebo Wilderness, currently covered by special use permit authorizations for water and mineral developments, would be removed from the wilderness. We recognize there are legitimate issues associated with these permitted uses. We want to work with you to resolve these, as well as, continue looking at existing statutes governing these facilities. We also recognize that when the Mount Nebo Wilderness was established in 1984 we may have overlooked some of these areas as maps were being developed.

If enacted, Section 5 of the bill would amend the Utah Wilderness Act of 1984 to further define water uses. We believe the term "systems" could be broadly interpreted and would be applied to all wilderness areas established by the Utah Wilderness Act. For these reasons we feel there may be unintended consequences that we would like to discuss with you further.

We are committed to working with Chairman Hansen, the Committee, and the permittees to resolve accessibility and management issues in the Mount Nebo Wilderness.

H.R. 434, "Emigrant Wilderness in the Stanislaus National Forest, California"

H.R. 434 would require the Secretary of Agriculture to enter into a cooperative agreement to provide for retention, maintenance, and operation, at private expense, of the 18 dams and weirs located within the boundaries of the Emigrant Wilderness in California. These small rock and mortar dams have deteriorated over time as maintenance levels have decreased. Some structures are in poor condition and are leaking significantly or have washed out and no longer function. The remaining structures are in fair to good condition. Because of the age and overall character of some dams, several are now eligible for listing on the National Register of Historic Places.

During the 1970's and 1980's, maintenance of the dams was shared between the Forest Service and the California Department of Fish and Game (CDFG). The last permit issued to CDFG for maintenance and operation was in 1975 and included the 11 structures that remain in fair to good condition. CDFG declined to participate

in maintenance of the other seven structures. CDFG ceased maintaining or operating the eleven structures in 1988 when the permit expired.

The Stanislaus National Forest developed an environmental impact statement and record of decision in 1998 that outlined management direction for the Emigrant Wilderness. The decision document allowed for the continued maintenance of eight dams. Under that plan the ten other structures would not be maintained but would be allowed to deteriorate naturally over time. Except for Y Meadow Lake (which has no fish), no lakes would have been eliminated due to the eventual deterioration of these ten structures. The record of decision received 14 appeals and was vacated in 1999 by the Regional Forester.

On November 8, 2000 the Regional Forester and CDFG agreed to a joint strategy for future management of the dams. This strategy outlined the need to maintain the eight dams identified in the Emigrant Wilderness management direction.

Recently, Mr. Doolittle and Regional Forester Brad Powell have had constructive dialogue regarding the Emigrant Wilderness dams. We want this dialogue to continue and would be willing to work with the Committee, Mr. Doolittle, the State of California, and other interested parties to resolve this issue.

H.R. 427, "Watershed of the Little Sandy River"

H.R. 427, if enacted, would add approximately 2,900 acres of Federal land in the Little Sandy River watershed to the Bull Run Watershed Management Unit. Currently, the Bull Run Watershed Management Unit is composed of approximately 95,000 acres of national forest system land near Portland, Oregon. In addition, H.R. 427 would amend Public Law 95–200 to prohibit timber harvest activities and general public access to the entire Bull Run Watershed Management Unit including the 2,900 acres added to the unit by this bill. Forest related restoration management activities would be precluded on 8,600 acres of national forest and Bureau of Land Management (BLM) administered lands. This includes management options such as thinning or selective harvests to reduce fuel hazards in high fire-prone areas. These restrictions may not be warranted for the Little Sandy River watershed.

The Administration believes that existing forest plans provide significant protection for the health of the Little Sandy River watershed and preservation of future options. Specifically, the Little Sandy River watershed is designated a Tier 2 Key watershed. This designation emphasizes high water quality, as well as fish and watershed restoration.

The point of diversion where Portland draws its water from the Bull Run River is upstream from the confluence with the Little Sandy River. A water supply option study conducted by the City of Portland in 1992 dismissed the option of developing the Little Sandy as a municipal water source because of issues related to water rights, cost of development, limited capacity, and impacts to a variety of resources. Therefore, in the foreseeable future it is unlikely that the water of the Little Sandy will be used as a municipal water source. A Regional Water Supply Plan completed in 1996 by 27 water providers also dismissed the option of the Little Sandy Basin as a water supply source at that time but advocated protection. In addition, if municipal water rights were ever obtained for the Little Sandy River, the requirement under the Endangered Species Act (ESA) to maintain in-stream water flows for the recovery of Federally listed fish would probably restrict water depletion even for municipal use.

The Oregon Resources Conservation Act of 1996 (Division B of P.L. 104–208) directed the Secretary of Agriculture to study the portion of the Little Sandy River watershed within the Bull Run Watershed Management Unit. The Forest Service, in consultation with the City of Portland, a private citizen-based Provincial Advisory Committee, and other interested parties, completed the study and submitted it to Congress in 1998. The study recommended that the area continue to be managed under the direction of the NWFP. The reasons cited by the study are as follows:

- The Little Sandy River has not been and currently is not planned to be used to provide drinking water; and
- The waters of the Little Sandy River may be needed to provide for the needs of fish species being considered for listing under the ESA.

Since that time, both Chinook salmon and winter steelhead in the Sandy River Basin were listed under the ESA.

BLM has expressed concern with the terminology in section 3, Land Reclassification, and other references to land classification in H.R. 427, urging that the use of public lands classification terminology should remain consistent with existing usage and statutes.

There are many environmental safeguards already in place for the Little Sandy River and other sensitive watersheds in the Pacific Northwest. We would like to

discuss the concepts put forward in this bill with the Committee to determine how we can meet the concerns of the Oregon delegation under existing authorities.

In conclusion, I want to re-emphasize that, although there are points of concern related to these three bills, both the Department and the Agency are committed to working cooperatively with the Committee and the bill sponsors toward solutions that will meet our mutual concerns and objectives.

This concludes my testimony. I would be happy to answer any questions that you may have.

Mr. MCINNIS. Thank you. I will start. When was it first brought to the Forest Service's attention that there was a problem with these boundaries in regards to this specific problem?

Ms. COLLINS. I think we have been—we have known, as we have been working through some of these issues with access on a case-by-case basis, that there have been issues regarding whether or not these water systems were in the wilderness, and when they were in the wilderness, what their rights were for access. So every time we have gotten a request, we have been dealing with it, I think, on an individual basis. Because they are in the wilderness, based on the technical language of the Wilderness Bill of 1984, we were treating them as part of the wilderness, granting access based on what rights they had to access at the time the bill was created.

And that means it is different for each one, so in terms of recognizing it as a problem, I think a lot of people have known that this has been an issue and a point of tension probably since the wilderness bill was created.

Mr. MCINNIS. I guess my point, where I am going, Ms. Collins, is that if the responsibility for the problem rests with the Forest Service, I would expect that the Forest Service would be cooperative upon the first contact that there is a problem and work to resolve it in that manner.

Mr. Chairman, do you have any questions?

Mr. HANSEN. Well, not really, except hopefully what Ms. Collins said from the Forest Service, that we could work this out. Frankly, as I look at over 20 years of passing a lot of wilderness legislation, I sometimes wonder if we should just draw the line a little higher and not put any of that in wilderness, you know, just—but we have got in this habit of cherry-stemming. I really don't know if that was the intent of the law. We could have put it much higher, put a lot less acreage in and not done that.

We have got a number of—a piece of legislation pending that will be coming before these committees about cherry-stemming. I really wonder if that is the right thing to do, but it seems to put a few more acres in, make a few people happy. But on this one, if I thought this would have been a hassle, I am sure we would have moved that line up much higher and made sure that the wilderness line was above where the water system came in, but that is water under the bridge now, not much we can do about it.

But I appreciate the comments of the Forest Service. I am sure we can work this out. I would appreciate you examining the bill very carefully and seeing if you have any heartburn with it because it gets reported out of the Committee.

Ms. COLLINS. I would like to do that. Thank you.

Mr. MCINNIS. Mr. Inslee.

Mr. INSLEE. Thank you, a couple questions.

I have been advised that there is one provision in the bill that affects other wilderness areas and access to water systems in other wilderness areas in Utah. Could you explain what the impact of that would be on other wilderness areas?

Ms. COLLINS. Well, that is that Section 5 that I was talking about a minute ago, and what we are concerned with there is that the term, "other systems" or "other systems in general" could be broadly interpreted to apply to all wilderness areas in the State of Utah, not just the Mount Nebo, and not just these water systems, or not even necessarily just water systems. And again, I think it is just a matter of us sitting down and looking at that language. It might have just been a convenient word to pick, but has some other connotations to it. So I think we do have to be careful with the language we use, so that it does not get more broadly applied.

Mr. INSLEE. Well, I hope that gets resolved. I would echo your concerns in that regard. Is there anything that you could suggest that would not be too onerous a provision, if the wilderness boundary is adjusted, to have some parameters on the type of maintenance or construction that is done in the area that could help maintain the basic character of the watershed? In other words, does it make sense to you perhaps to talk about parameters of what type of construction methods to use, or, you know, where to put these lines? Is there a way to at least consider how to do this from a method that doesn't damage the watershed or the rest of the wilderness?

Ms. COLLINS. We have—if this bill were to be enacted, we would have to amend our forest plans for those access roads into those areas. And so what we would have to do is go through an environmental process to determine exactly, in a very public way, how a road would be upgraded and at what level. So all of that would be done and it would be done in the watershed context. That is part of that planning process that we would have to go through should this bill be enacted.

Mr. INSLEE. Would it make sense to do that now as part of this process, to define with some parameters what type of road or what type of pipe or what areas to use before you redraw the boundary?

Ms. COLLINS. You know, I just don't know how to answer that. I am not really sure if that would make sense in part because how we manage those roads outside a wilderness system does come under all the other environmental laws that we would have to go through and be obligated to go through under the National Environmental Policy Act.

So, if we were to do that, we would be taking that on as part of rewriting this bill.

Mr. INSLEE. Thank you.

Mr. MCINNIS. Mr. Peterson?

Mr. PETERSON. No questions.

Mr. MCINNIS. Mr. Holt?

Mr. HOLT. No, thank you, Mr. Chairman.

Mr. MCINNIS. Ms. McCollum?

Ms. MCCOLLUM. Looking at some comments that were made here, provided in the packet, and when looking at moving the boundaries, one of the comments that was in here is the Forest Service would need to—if the boundaries were moved, they would

need access on the roads to maintain the water systems. And the comment that was made by this individual was the assumption that the Forest Service could certainly close those roads to the general public except for the maintenance that the county would need to get into the water facilities.

So are you saying that, when you are talking about upgrading roads in that, are you talking about upgrading them just for routine maintenance, or are you talking about looking at upgrading—I am kind of taken aback by your comments, because a road for routine maintenance for maintaining those facilities certainly sounds different than what you were talking about.

Ms. COLLINS. We may not have to upgrade anything, and that would be part of that analysis. We might, in places where this is a municipal watershed and there may be a need to do something to maintain that, a lot of that is the process we would have to go through as we do that NEPA process. But again, that would have to be done for each one of those individual access points. One of them I think is a trail and will probably stay a trail, for example.

Ms. MCCOLLUM. Do you know if the Forest Service has any other record of doing this type of—

Ms. COLLINS. Cherry-stemming?

Ms. MCCOLLUM. —road maintenance in the past? And if you have, have you had pressure for other outside groups other than counties or maintenance facilities to come in with off-road vehicles or other access, with motorized vehicles butting up into and going into the wilderness area?

Ms. COLLINS. I think every time—and this is one of the reasons as we develop wildernesses, we are reluctant to do cherry-stemming, because it introduces a potential use into an area that is natural, and you end up with some law enforcement issues. All of those are administrative Forest Service issues that we end up managing through—I have managed a number of wilderness areas, and when you have close access to a wilderness, you are always managing those kinds of problems, and so, yeah, that is an issue.

Ms. MCCOLLUM. Mr. Chair, if the Forest Service could provide—could provide you and the Committee maybe some examples of success stories or problems that they have had with this, that would be helpful for me.

Ms. COLLINS. I would be happy to do that.

Mr. MCINNIS. I might add to that, that remember, as I understand it, this wasn't supposed to be in the wilderness area anyway, and the reason it is in the wilderness area now is because it was a mistake. And now to go on and demand higher standards of the people whose right it was to access it in the first place because they were mistakenly put in a wilderness is patently unfair on its face. So I think we need to keep that in mind.

Second of all, I can tell you in my district, which is primarily Federal and public lands, a lot of those rights are not owned by the Government, and water out in my area, as you may know, it is considered blood. And the fact that they own water rights, they have a right to go up there under our Colorado law, to maintain and to quantify until you put those rights to a beneficial use. So I don't think that the Government ought to look like we are really bending over and doing somebody a favor to let them have a trail to go up

and maintain their water facilities on rights that they own that have been recognized by the Federal Government since the beginning of water time, so to speak, in Colorado.

Ms. MCCOLLUM. Mr. Chair, I wasn't disagreeing with that philosophy, with that statement. I was just trying to find out, is after those roads have been put in, what other pressures those property people, accessing the property, probably don't want other folks fooling around up in there either. I just want to know what kind of pressures the Forest Service gets in, and what is going to be the cost of us maintaining and policing this if we need to.

Mr. MCINNIS. And certainly that is an appropriate question. I just have a little sensitivity when it comes to water and the Federal Government's reign over our access to our water rights. And as I would reiterate here, this was never intended to be in the wilderness in the first place, and I just don't want a higher standard put on these people.

With that, I do thank the witnesses on our first—oh, go ahead.

Mr. INSLEE. Mr. Chairman, if I could have one more question.

Mr. MCINNIS. Certainly.

Mr. INSLEE. Thank you. The desire here by the proponents is to make this available for maintaining these water systems. On the other hand, if you do take it out of wilderness, it could end up, for a wide variety of recreational and other purposes that were not associated with the intent of this bill.

If we were to design a system where you basically took it out of wilderness, allowed mechanized access to maintain, if necessary, these water systems, but did not open it up for other purposes, what would be your recommendation, the best way to do that? What would you call it? How would you define it? Do you see what I am getting at?

Ms. COLLINS. What would we call the sections that are inside, that are cherry-stemmed out?

Mr. INSLEE. Correct. In other words, if we wanted to design a product to allow the mechanized maintenance of these systems, but not open it up to all these other purposes that otherwise might be available on Forest Service land, how would we define it? What would be the best way to structure it, in your view?

Ms. COLLINS. I would probably have to get back to you and talk to you to provide more information on that. But off the top, I would say that we would manage those as we would manage any right to access other places. It is different because it is inside a wilderness, but we still have all the authorities to gate in cases where we need to gate to keep the general public out, so that the permittee can use the site. And again, I think, if you look at all of these individual—all eight of these, you will find that each one has a little different story and a little bit different need, so coming up with an answer or a name for all of them may not be the right thing.

But again, doing the right thing, we could come up with some ideas about how to do that for each one of those.

Mr. INSLEE. I would ask you to explore that, and perhaps we can talk again in that regard.

Ms. COLLINS. That would be great.

Mr. INSLEE. Thank you.

Ms. COLLINS. Be happy to do that.

Mr. MCINNIS. No further questions. And again, I thank the witness. Ms. Collins, if you would remain there, I think you are a witness on all three bills, so it will save you having to continue to come to the table.

Ms. COLLINS. Okay.

Mr. MCINNIS. If there are any additional questions for the witnesses, I would ask the members to put it in writing, and the witnesses can respond. We will keep the record open for 10 days for those responses.

Mr. MCINNIS. Mr. Brougher, you may come on up to the witness stand. I would like to introduce our second panel. We are going to have Mr. Doolittle, who is on the dais, Mr. Steve Brougher, Issues Coordinator for the Central Sierra Club of Wilderness Watch, and of course, we have Ms. Collins again for this bill.

[The prepared statement of Mr. McInnis follows:]

Statement of The Honorable Scott McInnis, Chairman, Subcommittee on Forests and Forest Health, on H.R. 434

I would like to thank my friend and colleague Congressman Doolittle for his work on the Emigrant Wilderness Protection Act.

H.R. 434 would give the Secretary of Agriculture the authority to enter into a cooperative agreement with non-federal entities to retain, maintain and operate at private expense the 18 small check dams and weirs—each of which are largely unnoticeable—located within the Emigrant Wilderness boundary. The work would be done under terms and conditions established by the Secretary and without use of mechanized transport or motorized equipment. The bill authorizes $20,000 to be appropriated to cover administrative costs incurred by the Secretary to comply with the National Environmental Policy Act.

Although not specifically indicated within the legislation, it is widely believed to have been the intent of Congress when it passed the Emigrant Wilderness Act in 1974 to preserve the 18 "check dam" structures. Among others, the Chief Recreation Officer for the Stanislaus National Forest, has repeatedly gone on record as stating it was his belief these dams were to be maintained. Additionally, report language for the 1974 Act explained:

> Within the area recommended for wilderness designation, there are drift fences (5 miles) which will be maintained, but several cabins and barns will be removed within ten years. Two snow cabins will be retained. The weirs and small dams will likewise be retained. (House Report No. 93–989, p.10. April 11, 1974)

In my opinion, the more compelling reason for supporting this legislation is the many ecological benefits associated with the continued existence of these small structures. These scarcely noticeable dams have for decades provided a consistent flow of water to lakes, streams and wild meadows, which in turn have provided important habitat for fish and various plant and animal species, including endangered species. To remove these structures in the name of protecting the environment, when in fact their removal will harm a number of species and other natural processes, seems to me to be counterintuitive.

Again, I commend Mr. Doolittle for his hard work and leadership on this legislation and I look forward to working with him to secure its enactment during the 107th Congress. I look forward to hearing my colleague Congressman Doolittle's testimony, as well as the testimony provided by Ms. Collins of the Forest Service and Steve Brougher of the Central Sierra Wilderness Watch.

Again, I would remind the witnesses that we expect compliance with the five-minute rule, and if you will be outside that, you may submit your testimony for the record, and it will appear in full in the record. I now recognize Mr. Doolittle. Mr. Doolittle, you may proceed.

STATEMENT OF THE HONORABLE JOHN T. DOOLITTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLITTLE. Mr. Chairman, I thank you and the members for allowing me to rejoin my old committee.

This bill has been—actually it has been—this is the fourth time I am introducing it. It has been passed out of the House twice, once with two negative votes and once unanimously in the last Congress, and it was also passed out of the Senate Policy Committee as well. The bill has never cleared the Senate. In one case a hold was placed on it by one of the Senators for some mysterious reason. And then last time the Clinton Administration prevailed upon a friendly Senator to put a hold on it. So I just wanted to indicate to the members it is not new legislation. It deals with a heavily-utilized area in my district called the Emigrant Wilderness.

I am going to ask, Mr. Chairman, that the pictures I have be distributed to the members. I don't think I have one for every member, but we have enough that you will all see them, and I will just refer for a moment. These are small—there are 18 small dams that were constructed between 1921 and 1954, that were constructed in cooperation with two agencies, the U.S. Forest Service and Civilian Conservation Corps, and then local volunteers.

When we say "dams" that may create an image of Hoover Dam or Grand Coolee Dam, but these are very small structures. They are made out of the local materials, and as you can see, the ones you are looking at in those pictures are pretty representative with the exception of one dam, which is 25 feet high and is the tallest. For the other 17 structures, there is no structure that is over 10 feet tall.

If you take a look—now, there are pictures on both sides of this handout—and if you will look at pictures 5 and 6, those are pictures of Middle Emigrant Lake, and that dam that you see there is—and by the way, in picture 6, it is in the extreme lower right-hand corner, you can see the top of the dam, and then you can see, on picture 5, you know, a full view of the dam from downstream. It is an 8-foot tall structure, and look at the amount of water that is impounded by it there. This has created tremendous habitat for fisheries for endangered species, and this is hot, dry country in California in the summertime. And but for the presence of these dams, this would be pretty much dried up. It would be just hot, dry, arid country.

So they are very popular for people to hike in there, and by the way, to make a tour of these, you have an 8-hour ride one way, even to get in to see them. So it is pretty much for the hardy, who even make it up there.

This was not a wilderness at the time these structures were built, but at the time the wilderness debate happened and this area was placed in the wilderness, these structures were not found to be inconsistent with this. They were described by Senator Cranston as substantially unnoticeable, and indeed, they are, and yet, they provide a lot of benefit.

Well, the Forest Service, a few years ago, had made a determination that they were going to allow these structures to deteriorate so that there wouldn't eventually be any of them. That would be

a real loss, and if that were to happen, the effect of that would be to further concentrate visitors into other areas of the Emigrant Wilderness. That would be very undesirable. And I would note, Mr. Chairman, that my fellow colleague from California, George Miller, who at the time was Ranking Member on the Committee, was an enthusiastic supporter of this bill precisely for this reason. He felt that there was, you know, a very beneficial effect to these. There is huge local support in Tuolumne County, where most of these are, and that is where this Fred Leighton, the man who kind of spearheaded this effort years ago, is from.

So I would bring this bill to you again, Mr. Chairman. Well, even the local environmental groups support it except for one, as far as I know, and you are going to hear from that one in a minute. I would—I appreciate your hearing me out on this, and would ask for your favorable consideration.

[The prepared statement of Mr. Doolittle follows:]

Statement of The Honorable John T. Doolittle, a Representative in Congress from the State of California, on H.R. 434

Mr. Chairman, I wish to thank you for holding this hearing on an important piece of legislation, H.R. 434, the Emigrant Wilderness Protection Act. As you know, this legislation was designed to provide for the maintenance of 18 small dams and weirs within the Emigrant Wilderness. As the Committee knows, this is the fourth Congress I have introduced this legislation, and versions of this legislation have garnered broad bipartisan support, including from this Committee's past Ranking Member, Representative George Miller. The bill passed the House by a margin of 424–2 in the 105th Congress, and unanimously during the 106th. On both occasions, my Emigrant Wilderness bill was approved by the Senate Committee on Environment and Public Works, only to suffer defeat from threats of "holds" to be placed by the Clinton Administration.

The Emigrant Wilderness" 18 check dam system was built between 1921–1954 through the combined efforts of the U.S. Forest Service, the California Conservation Corps, and local volunteer groups. The system works to enhance the high elevation lake fisheries and species habitat by keeping year-round flows in the streams. Most of these structures go unnoticed unless you know exactly where to look for them. They were built with the natural rock from the surrounding area, and they are insignificant in size, mostly ranging from 3-5 feet in height.

H.R. 434 will allow a non-federal entity to pay the costs of maintaining and repairing these substantially unnoticeable structures by allowing the Secretary of Agriculture to enter into a cooperative agreement providing a non-federal entity the opportunity to conduct the necessary maintenance.

By providing for the continued maintenance of all 18 dams, we will protect the stream flow system within the Emigrant Wilderness that for over 70 years has maintained an ecosystem of lakes, streams, and meadows of which many species, including the great American Bald Eagle, depend upon. It is clear that these small structures are important, as the California Department of Fish and Game has stated in an appeal to the U.S. Forest Service that "survey results on file with the Forest Service attest to the fisheries" benefits from the dams, including increased volume of water with acceptable levels of dissolved oxygen and temperatures that support trout populations. In addition, the downstream release of water during dry years has significant benefits to aquatic life and the streams" fisheries.—

Furthermore, when Congress debated the Emigrant Wilderness Act of 1974, there was extensive dialogue concerning these structures, and it is clear from reading transcripts of those past proceedings that Congress intended them to be maintained, and that structures were consistent with the 1964 Wilderness Act as they were "substantially unnoticeable."

Mr. Chairman, if these small, unnoticeable dams are allowed to deteriorate, many of the lakes and streams will dry up during the summer and fall months, resulting in negative impacts on the ecosystem, fisheries, and the area's tourism economy. Again, I thank you for holding this hearing. It is my hope that we can move this bill forward with the same resounding support it had in past Congresses.

Mr. MCINNIS. Thank you. Mr. Brougher, you may proceed for five minutes.

STATEMENT OF STEVE BROUGHER, ISSUES COORDINATOR, CENTRAL SIERRA CHAPTER OF WILDERNESS WATCH

Mr. BROUGHER. I thank you, Mr. Chairman, and members of the committee.

My name is Steve Brougher, and I am a volunteer with Wilderness Watch, a national nonprofit organization, dedicated to preservation of America's designated wilderness. I am here to testify on behalf of Wilderness Watch about the concerns we and 20 other local, state and national organizations have expressed with H.R. 434, a bill to require the operation and maintenance of 18 dams in the Emigrant Wilderness.

I began working in the Emigrant as a Wilderness Ranger in 1975, the year of wilderness designation. I became intimately familiar with this special place, and developed throughout my 22-year career, as a wildlife biologist and wilderness manager, a thorough understanding of the importance of preserving such remnants of our wildland heritage. I took seriously my obligation as a public servant to uphold the intent of Congress so eloquently expressed in the Wilderness Act, and have continued to work for proper protection since retiring.

Much of the information you will hear about the value of this dam from the proponents of this bill is unsubstantiated opinion contrary to the facts. From my years of experience, I can say unequivocally that these dams are not essential for providing recreational opportunities, for sustaining a fishery, or for the ecological health of the Emigrant Wilderness, nor are they of any economic importance for local businesses. They do adversely affect the wilderness values.

But do not take my word for it. This information is readily available to anyone interested in knowing the facts in reports by the Stanislaus National Forest that I have cited in my reporting documents.

The premise of H.R. 434 is to clarify the intent of Congress that these dams were to be maintained and operated in perpetuity. I provided a discussion of congressional intent in my supporting documents. Simply put, congressional intent for the dams to remain is a spurious argument that negates key underpinnings of the Wilderness Act and is not supported by the legislative history. Public Law 93-632 contained no special provision for maintenance of the dams, but states that the area will be administered in accordance with the Wilderness Act.

The purpose of the Wilderness Act was to preserve some areas in their natural condition, untrammeled by man and without permanent improvements. The Act also directs that Wilderness will be administered in a way that preserves the Wilderness character, and specifically prohibits structures and installations.

H.R. 434 completely frustrates the intent of the Wilderness Act by putting nonconforming uses back into the area. Did Congress intend to undo the very purpose of the legislation it passed when it designated the wilderness? Two examples will illustrate the fallacy of this illogical argument and how it would play out across the

entire National Wilderness Preservation system. Some wildernesses contained old homesteads that were logged, plowed, etcetera. Should we assume that Congress intended for these old homesteads to be restored, the encroaching forest cut back, the buildings reconstructed? Many wildernesses experienced off-road vehicle use prior to designation, and the evidence of that use remains. Should we assume that Congress intended for ORV use to continue in these areas today?

The wilderness resource is a condition where wild nature prevails without human intervention or artifacts. This resource once existed throughout this nation, now greatly reduced from its original extent. Dubious arguments about the historical nature of the dams overlook a much larger historical perspective of national significance. The framers of the Wilderness Act recognized the historical significance of the wilderness resource to the development and character of this country, and took action to preserve the last remnants of this historical legacy for future generations. The dams are 80-years old or less, compared to the thousands of years that the natural environment of the Emigrant has developed and flourished without them.

H.R. 434 is an ill-conceived bill that will degrade important wilderness values and set a terrible precedent for the entire National Wilderness Preservation system. Special legislation to override the Wilderness Act opens the door for similar efforts to chip away at this vital conservation law, incrementally degrading the values the Act was intended to protect. It also interferes with an established 8-year planning process for the Emigrant Wilderness and would shut out many citizens who have a legitimate interest in the outcome of this issue. And despite past assurances that the dams would be maintained at no cost to the Government, H.R. 434 contains a provision authorizing the appropriation of $20,000 for administrative costs, thus requiring taxpayers to pay the cost of degrading the wilderness values of the Emigrant Wilderness.

Maintaining these dams is the antithesis of wilderness. Their purpose is to trammel the hydrology and ecology of the area for illusionary recreation benefits, not to preserve the wilderness character. To realize the powerful vision of the Wilderness Act, we must be committed to the idea that we respectfully leave areas where wild nature can flourish. This type of action will slowly erode what has been preciously attained, making it easier to make more changes of increasing significance. Eventually the wildlands we thought were protected in a natural state in perpetuity will be reduced to nothing more than recreational parks that cater to comfort and convenience. Thank you.

[The prepared statement of Mr. Brougher follows:]

Central Sierra WILDERNESS WATCH
POST OFFICE BOX 669, TWAIN HARTE, CA 95383

TESTIMONY FOR HEARING ON H.R. 434
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH
WEDNESDAY, APRIL 25, 2001

STEVE BROUGHER, ISSUES COORDINATOR
CENTRAL SIERRA CHAPTER, WILDERNESS WATCH

Good afternoon Mister Chairman and distinguished members of the Committee. My name is Steve Brougher and I am a volunteer with Wilderness Watch, a national non-profit organization dedicated to the preservation of America's designated wilderness. I am here to testify on behalf of Wilderness Watch about the concerns we and 20 other local, state and national organizations have expressed with H.R.434, a bill to require the operation and maintenance of 18 dams in the Emigrant Wilderness.

I began working in the Emigrant as a wilderness ranger in 1975, the year of wilderness designation. I became intimately familiar with this special place and developed throughout my 22 year career as a wildlife biologist and wilderness manager a thorough understanding of the importance of preserving such remnants of our wildland heritage. I took seriously my obligation as a public servant to uphold the intent of Congress so eloquently expressed in the Wilderness Act, and have continued to work for proper protection since retiring.

Much of the information you will hear about the value of these dams from the proponents of this bill is unsubstantiated opinion contrary to the facts. From my years of experience I can say, unequivocally, that these dams are **not** essential for providing recreational opportunities, for sustaining a fishery or for the ecological health of the Emigrant Wilderness, nor are they of **any** economic importance for local businesses. They **do** adversely affect wilderness values. But don't take my word for it - this information is readily available, to anyone interested in knowing the facts, in reports by the Stanislaus National Forest that I have cited in my supporting documents.

The premise of H.R. 434 is to clarify the intent of Congress that these dams were to be maintained and operated in perpetuity. I have provided a discussion of congressional intent in my supporting documents. Simply put, congressional intent for the dams to remain is a spurious argument that negates key underpinnings of the Wilderness Act and is not supported by the legislative history. P.L. 93-632 contained no special provision for maintenance of the dams, but states that the area will be administered in accordance with the Wilderness Act.

The purpose of the Wilderness Act was to preserve some areas in their natural condition, untrammeled by man and without permanent improvements. The Act also directs that wilderness will be administered in a way that preserves the wilderness character and specifically prohibits structures and installations. H.R. 434 completely frustrates the intent of the Wilderness Act by putting non-conforming uses back into the area. Did Congress intend to undo the very purpose of the legislation it passed when it designated the Emigrant? Two examples will illustrate the fallacy of this illogical argument and how it would play out across the entire National Wilderness Preservation System:

- Some wildernesses contain old homesteads that were logged, plowed, etc. Should we assume that Congress intended for these old homesteads to be restored, the encroaching forest cut back, the buildings reconstructed?

- Many wildernesses experienced off-road vehicle use prior to designation and the evidence of that use remains. Should we assume that Congress intended for ORV use to continue in these areas today?

The wilderness resource is a condition where wild nature prevails without human intervention or artifacts. This resource once existed throughout this nation, now greatly reduced from its original extent. Dubious arguments about the historical nature of the dams overlook a much larger historical perspective of national significance. The framers of the Wilderness Act recognized the historical significance of the wilderness resource to the development and character of this country and took action to preserve the last remnants of this historical legacy for future generations. The dams are 80 years old or less, compared to the thousands of years that the natural environment of the Emigrant has developed and flourished without them. It is far more critical to preserve this historical legacy of natural landscapes than a few insignificant structures that have existed in a mere blink of time.

H.R. 434 is an ill-conceived bill that will degrade important wilderness values and set a terrible precedent for the entire National Wilderness Preservation System. Special legislation to override the Wilderness Act opens the door for similar efforts to chip away at this vital conservation law, incrementally degrading the values the Act was intended to protect. It also interferes with an established 5-year planning process for the Emigrant Wilderness and would shut-out many citizens who have a legitimate interest in the outcome of this issue. And, despite past assurances that the dams would be maintained at no cost to the government, H.R. 434 contains a provision authorizing the appropriation of $20,000 for administrative costs, thus requiring taxpayers to pay the cost of degrading the wilderness values of the Emigrant Wilderness.

Maintaining these dams is the antithesis of wilderness - their purpose is to trammel the hydrology and ecology of the area for illusionary recreation benefits, not to preserve the wilderness character. To realize the powerful vision of the Wilderness Act, we must be committed to the idea that we respectfully leave areas where wild nature can flourish. This type of action will slowly erode what has been preciously attained, making it easier to make more changes of increasing significance. Eventually the wildlands we thought were protected in a natural state in perpetuity will be reduced to nothing more than recreational parks that cater to comfort and convenience. Wilderness is intended to protect natural ecosystems and the benefits they provide to our society, not just a few narrow interests who do not understand or believe in the value of preserving wild environments.

Thank you for this opportunity to speak on behalf of the Emigrant Wilderness and the many people in this country who want it preserved in a natural condition. I hope you will make the right decision that supports the true intent of Congress, embodied in the promise of the Wilderness Act, "...to secure for the American people of present and future generations an enduring resource of wilderness."

Key Points Regarding H.R. 359

H.R. 359 is a bill before the 106th Congress that would require the maintenance of 18 dams in the Emigrant Wilderness. Misleadingly titled "Emigrant Wilderness Preservation Act of 1999", **H.R. 359 is an unnecessary and inappropriate action that seriously diminishes the wilderness values of the Emigrant Wilderness and the intent of wilderness preservation! Following are the key points regarding this issue:**

Congressional Intent - The stated purpose of H.R. 359 is to "clarify" congressional intent at the time the Emigrant Wilderness was designated. House and Senate Committee reports from 1974 did not state the dams were to be maintained. Former Senator Alan Cranston has written that the dams were not significant enough to preclude designation of the Emigrant as wilderness, but that there was no intention for them to be maintained, stating in 1974 Senate testimony that "...they amount to nothing that cannot be dealt with by time and removal." P.L. 93-632 designating the Emigrant contains no special provision for maintenance of the dams and states that it will be administered in accordance with the provisions of the Wilderness Act.

Wilderness Act - H.R. 359 significantly compromises the intent and integrity of the National Wilderness Preservation System (NWPS). The stated purpose of the Wilderness Act is to assure that some areas within the United States are not "occupied and modified" by human activity, and are preserved and protected in a natural state. The Act defines wilderness as "untrammeled by man", places that are protected and managed to preserve natural conditions and without permanent improvements. The Act directs that wilderness areas and any allowable uses are to be administered so as to retain the wilderness character of the area and specifically prohibits structures, unless necessary for administrative purposes. Special legislation to override this intent sets a precedent that opens the door to additional modification and gradual erosion of the NWPS.

Value of the Dams - The dams do not provide essential benefits, but do adversely affect wilderness values. A detailed study of the dams by Forest Service scientists clearly shows that the dams are not essential for maintaining a viable fishery and have little or no recreational or economic value. Seven of the 18 dams have been found to be eligible for the National Register of Historic Places, but federal law provides for protection of historic values without requiring that they be maintained. The dams significantly "occupy and modify" the wilderness environment, altering natural processes and conditions, and compromising the values and purposes of wilderness stated in the Wilderness Act.

Public Interest - H.R. 359 does not represent the majority of public sentiment or serve the broadest public interest. A five-year planning process by the Forest Service included a broad-based public involvement effort that included citizens from both the local community and throughout the country, and significant opposition to maintenance of the dams was expressed. H.R. 359 unfairly overrides this process and public participation in resolution of this issue. Despite past assurances that the dams would be maintained at no cost to the government, H.R. 359 contains a provision authorizing the appropriation of $20,000 for administrative costs, thus requiring taxpayers to pay the cost of degrading the wilderness values of the Emigrant Wilderness.

SENATOR ALAN CRANSTON
27080 Fremont
Los Altos Hills, CA 94022
Tel: 415-948-6556
FAX: 415-948-6516

November 3, 1997

The Honorable Diane Feinstein
United States Senate
Washington, DC 20510

Dear Diane:

It has recently come to my attention that legislation has been introduced by Congressman John Doolittle to require the maintenance and operation of 18 dams in the Emigrant Wilderness, located on the Stanislaus National Forest. The premise of H.R. 1663 is to clarify the intent of Congress, at the time the Emigrant Wilderness was designated, that these dams were to be maintained. As the author of legislation to designate the Emigrant Wilderness, I strongly disagree that there was any such intent and I am greatly concerned about the implications of this bill for the Emigrant Wilderness and the National Wilderness Preservation System.

I believe a quick review of the legislative history contradicts Congressman Doolittle's assertion that it was clearly congressional intent for the dams to be maintained. H.R. 12884 was introduced in 1974 and contained several wildernesses, including the Emigrant. The accompanying House Report 93-989 referred to the Forest Service proposal, stating that some drift fences would be maintained, some cabins would be removed and that the dams would be retained (i.e. not removed). It did not state that they were to be maintained and operated in perpetuity. H.R. 12884 itself specifically provided for certain non-conforming structures and activities in three other wildernesses, but did not do so for the Emigrant dams. When H.R. 12884 was referred to the Senate, it was substantially amended in committee (many areas dropped, some added, acreages changed, etc.). It is significant that Senate Report 93-1043 recognized the existence of the dams, but made no express reference to congressional intent that the dams would remain.

At this same time, I had also introduced S.111 specifically for the Emigrant Wilderness. My bill included some additional acreage that had been excluded from H.R. 12884 because of the presence of some minor improvements, including several mining claims and a few of the dams. At a hearing before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs on March 19, 1974, when asked if the acreage difference had to do with those improvements, I responded **"Yes, and they amount to nothing that cannot be dealt with by time and removal."** That was clearly my intent regarding these improvements, both within the exclusion area as well as the wilderness as a whole. I did not, and do not, believe that these structures were significant enough to preclude any of the area from becoming wilderness, but I certainly did not intend that they would continue to be maintained. Rather, I expected that they would be left to disappear over time.

The final version of all this legislation was enacted as PL 93-632 on Janurary 3, 1975. Many changes were made from the original bills, including removal of all special provisions for non-conforming uses. Section 5 states that "Wilderness areas designated by this Act shall be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas." This, then, is ultimately the intent of Congress for managing the Emigrant Wilderness and the structures therein!

Much progress has been made in protecting California wildlands and I am very pleased to have been a part of that endeavor. The pending bill is not in the best interests of wilderness preservation, and it disturbs me to think that our wilderness legacy could be diminished by legislation such as H.R. 1663. I am concerned that actions such as this are a means to gradually undo the protections sought by passage of the Wilderness Act in 1964 and weaken the National Wilderness Preservation System. Careful consideration was given to the dams when the Emigrant was designated over 20 years ago, but Congress instead chose to recognize the greater value of wilderness preservation and did not provide for their maintenance. As then, there is no good reason now to perpetuate these structures in contradiction to the requirements of the Wilderness Act. It is my hope that you will oppose H.R. 1663 and continue to uphold our proud tradition of securing "...for the American people of present and future generations the benefits of an enduring resource of wilderness."

Best regards to you.

Ever,

Alan Cranston

Central Sierra WILDERNESS WATCH
POST OFFICE BOX 669, TWAIN HARTE, CA 95383

March 21, 1998

The Honorable Diane Feinstein
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

I have seen Congressman Doolittle's February 23, 1998, letter to you responding to Senator Alan Cranston's letter of November 5, 1998, and I am writing to address the issues the Congressman raises on this matter.

Mr. Doolittle correctly points out that the Department of Agriculture's proposal for the Emigrant states that continued maintenance and operation would be allowed for **ten** flow maintenance dams under permit to the California Department of Fish and Game (notably, it states **ten**, not all eighteen of the dams). That same proposal also states that some drift fences will be maintained for managing livestock, but that cabins and barns will be removed within 10 years of wilderness designation (almost 25 years later, several of these remain and in some cases, have had extensive restoration work performed on them). The proposal also states that two snow survey cabins are necessary for administrative reasons, but that "Efforts will be made to find a suitable alternative so these may be removed" (they still remain at this time).

However, while House Report 93-989 (April 11, 1974) provides similar wording for retention of the drift fences and removal of the cabins and barns, it makes no mention of maintenance and operation of the dams, but instead states only that the dams will be "retained" (the same term is used for the snow survey cabins, which may eventually be removed when they are no longer necessary). Senate Report 93-1043 (July 30, 1974) also makes reference to removal of the cabins and barns (and retention of the snow cabins), but in regards to the dams simply states that they are "substantially unnoticeable" (no mention of maintenance **or** retention).

It is also instructive to look at the evolution of the legislation that culminated in P.L. 93-632. In the House, H.R. 12884 included 15 areas (12 in National Wildlife Refuges and 3 in National Forests) to be designated as wilderness, including the Emigrant. When it was passed by the House, this bill included special provisions to continue preexisting non-conforming uses in two of the refuge areas, but none for the Emigrant dams. In the Senate, H.R. 12884 was significantly amended, eliminating all the National Wildlife Refuge areas, increasing the acreage for the three National Forest areas (including the Emigrant) and adding three new ones. This amended bill contained no special provisions. After passing the Senate in this amended form, the legislation went back to the House where it was again amended to the final version that became P.L. 93-632. This final version restored all but one of the National Wildlife Refuge areas (increasing the acreage of three, reducing the acreage of one)and added two new ones, plus it dropped two of the National Forest areas added by the Senate and decreased the acreage of the third. The final bill also omitted the original special provisions for non-conforming uses and

provided that these areas would be administered according to the provisions of the Wilderness Act.

The point of all this is to show that it is not possible to refer to any one report or bill to draw conclusions about congressional intent. Individual statements should not be considered out of context - it is necessary to look at the progression of the entire record and the final bill to get a complete picture of congressional intent. Many changes were made from the original bill to the final. Regarding the Emigrant dams, the emphasis changed from the Forest Service proposal for the Emigrant through the progression of testimony and committee reports. There is recognition in the reports that the dams were "substantially unnoticeable", did not detract from the wilderness qualities of the area and could be "retained", but there was never any endorsement of the proposal that they should continue to be maintained and operated. This is consistent with Senator Cranston's testimony and the points he made in his letter.

In the March 19, 1974, Senate hearing testimony, Senator Cranston paints a picture of inconspicuous structures being reclaimed by the natural processes ("covered with moss and lichens") that are the **essence** of wilderness. He goes on to state that the dams, as evidenced by these remarks, are nothing that nature won't deal with ("...they amount to nothing that cannot be dealt with by time and removal"). The dams have continued to disappear into the landscape in the nearly 25 years since the Emigrant was designated (and they are now no longer under permit to the California Department of Fish and Game). **To the contrary, H.R. 1663 intends to make these dams conspicuous--fully maintained and operational--both visually and ecologically!**

Congressman Doolittle's letter noticeably omits any mention of Senator Cranston's statement about "time and removal" in the hearing minutes, but does make reference to the discussion about use of the phrase "substantially unnoticeable" and retention of the snow survey cabins. Senator Cranston felt that these cabins met the criteria of "substantially unnoticeable" and stated that "...those particular buildings could remain." The snow survey cabins are necessary administrative structures specifically allowed for in Section 4(c) of the Wilderness Act and it is important to note that the original proposal indicated that these structures would be removed when they were no longer needed. Nowhere in that discussion is there any reference to maintenance and operation of the dams.

Congressman Doolittle has entirely confused the Wilderness Act's "entry criteria" (Sec. 2(c)), where the phrase "substantially unnoticeable" appears, with the Act's management criteria (Sec. 4(c)). **This is a fundamental point that Mr. Doolittle avoids, and which sets up the terrible precedent his legislation represents!** The dams are "substantially unnoticeable" from the standpoint of not precluding the Emigrant from being designated, but their continued maintenance and operation is inconsistent with the management of wilderness. Ernie Dickerman, a charter member of The Wilderness Society and one of the architects of the Wilderness Act described it this way:

> "It is part of the genius of the Wilderness Act that it embodies two quite separate sets of standards. First, there are standards for suitability of an area to be designated for wilderness. These may be referred to as the entry criteria for an area to come into the wilderness system. These standards are found solely in Section 2(c) of the Act, the definition of "wilderness."
>
> "Second, there are the standards for the management of wilderness areas once designated. This is a wholly separate set of standards, and is found in Section 4(c) of the Act, as supplemented by Section 4(a) and (b), and in special cases by Section 4(d)."

"A great deal of confusion results from failure to carefully distinguish these two sets of criteria. The point is simply this: Under the practical, less-than-pure standards for designation of wilderness, certain evidence of past disturbance and existing non-conforming uses may be included within a new wilderness area. But once that area is designated and comes under the Wilderness Act, it is to be managed under the standards of Section 4(c), which proscribe new adverse uses or disturbances within wilderness areas."

"What it boils down to is this: Certain past disturbances may be accepted under this entry criteria of the Act, but similar disturbing actions may not be newly initiated within a designated wilderness under the management criteria."

Did Congress, in the committee reports, intend to undo the very purpose of the legislation it passed when it designated the Emigrant? **H.R. 1663 completely frustrates the intent of the Wilderness Act by putting non-conforming activities back into the area.** A few examples will illustrate the fallacy of this approach:

- Some Wildernesses contain old homesteads that were logged, plowed, etc. Should we assume that Congress intended for these old homesteads to be restored, the encroaching forest cut back, the buildings reconstructed?
- Most eastern Wildernesses were once (or twice) logged and evidence of past logging remains. Should we assume that Congress intended that we would again log these Wildernesses?
- Many Wildernesses experienced off-road vehicle use prior to designation and the evidence of that use remains. Should we assume that Congress intended for ORV use to continue in these areas today?
- The Forest Service used motorized equipment for trail maintenance in administrative "wilderness" prior to the Wilderness Act. After the Act, the agency's management criteria changed substantially. It has always been recognized that it isn't "business as usual" once an area is designated.

That it was congressional intent for the Emigrant dams to remain is a spurious argument that is not supported by the legislative history and effectively negates key underpinnings of the Wilderness Act--preserving areas without structures, where natural processes are allowed to operate free of human manipulation. Congress recognized the Emigrant dams as substantially unnoticeable in designating the Emigrant Wilderness, but made no provision for continued operation and maintenance. They chose, instead, to the honor that which is necessary to assure "an enduring resource of **wilderness**."

I hope this has been a useful discussion that helps to clarify congressional intent regarding the Emigrant dams and wilderness in general. I would be happy to clarify any point on this matter.

Sincerely,

Steve Brougher
Chapter Issues Coordinator

April 15, 2001

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Dear Senator Boxer:

On behalf of our organizations, we are writing to express our strong opposition to H.R.434, legislation introduced by Congressman John Doolittle that would require reconstruction and operation of 18 dams in the Emigrant Wilderness on the Stanislaus National Forest. We do not believe it was congressional intent for the dams to be maintained and ask that you oppose this short-sighted legislation in order to preserve the Emigrant Wilderness as intended by the Wilderness Act of 1964!

We have been notified that a hearing has been scheduled for April 25 by the House Subcommittee on Forests and Forest Health. Dam proponents have provided much erroneous information about this issue and one of our representatives will testify to provide a better understanding of the problems with this bill. We will also be in communication with your staff so that we can provide you with a clear understanding of the facts of this issue and the extent of our concerns.

H.R. 434 directly contradicts the intent of the Wilderness Act to ensure preservation of wild lands without permanent improvements, where natural processes prevail. The Emigrant Wilderness was designated to ensure that it is not "occupied and modified", a place "...in contrast with those areas where man and his own works dominate the landscape...where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." This also sets the context for recreational use of wilderness - that is, a **natural** environment which provides "use and enjoyment...**as wilderness**..." These dams are permanent structures which are clearly prohibited by the Wilderness Act, as well as mechanisms for trammeling the natural environment in the Emigrant Wilderness.

The Emigrant Wilderness is part of a national system providing benefits to all citizens. H.R. 434 removes this issue from a five-year Forest Service planning process that was open to everyone and is the proper means for resolving it. The bill also authorizes the appropriation of $20,000 for Forest Service administrative costs associated with dam maintenance, thus requiring taxpayers to pay the cost of degrading the wilderness values of the Emigrant Wilderness. The unsubstantiated opinions expressed by a vocal minority of local interests who wish to reconstruct and operate these structures should not be allowed to override the broader national interests of wilderness preservation.

H.R. 434 compromises the intent of a landmark conservation law that was passed with nearly unanimous bipartisan support over thirty years ago! Please help uphold the promise of the Wilderness Act "...to secure for the American people of present and future generations the benefits of an enduring resource of wilderness."

Thank you for the opportunity to express our views and concerns on this matter.

Sincerely,

Note: All of the following signatories represent California-based organizations or are California-based representatives of national organizations.

Steve Brougher
Central Sierra Chapter
Wilderness Watch

Jay Watson
CA/NV Regional Director
The Wilderness Society

Vicky Hoover
CA/NV Regional Wilderness Committee Chair
Sierra Club

Paul Spitler
Executive Director
California Wilderness Coalition

David Edelson
Attorney
Natural Resources Defense Council

Steve Evans
Conservation Director
Friends of the River

Martin Litton
Chairman
Sequoia Alliance

Brian Huse
Director, Pacific Region
National Parks & Conservation Assoc.

Janet Cobb
President
Yosemite Restoration Trust

Sally Miller
President
Friends of the Inyo

Glenda Edwards
Co-chair
Clavey River Coalition

John Buckley
Executive Director
Cent. Sierra Environmental Resource Center

Peter Browning
Coordinator
High Sierra Hikers Association

Charles Little
Upper River & Education Coordinator
Tuolumne River Preservation Trust

Steve Tabor
President
Desert Survivors

Lloyd Carter
President
California Save Our Streams Council

Norbert Rupp
President
League to Save Sierra Lakes

Scott Hoffman
Director
Sierra Nevada Forest Protection Campaign

Craig Thomas
Conservation Director
Center for Sierra Nevada Conservation

Jane Baxter
Director
Range Watch

Pete Bell
Vice President
Foothill Conservancy

April 18, 2001
The Honorable Barbara Boxer
United States Senate
Washington, DC 20510

Dear Senator Boxer:

We, the undersigned, are writing to you about H.R. 434, introduced by Congressman John Doolittle to require maintenance of 18 dams in the Emigrant Wilderness. We feel that Congressman Doolittle has misrepresented his legislation as reflecting the sentiment of the vast majority of citizens in Tuolumne County and visitors to the Emigrant Wilderness, and ask you to **oppose H.R. 434!**

We are writing collectively as residents of Tuolumne County who were members of a citizens working group organized by the Forest Service in 1993 to assist them in the development of a new management plan for the Emigrant Wilderness. This working group was designed to include a wide diversity of interests and perspectives, and members of the group were selected at a public meeting by citizens of both this community and from outside the local area. Our responsibility was to represent not only the interests and concerns of the local community, but also the broader national interest in protecting the Emigrant as part of the National Wilderness Preservation System.

The intent of this process was to create a forum where all issues relevant to the Emigrant Wilderness could be openly discussed and recommendations made on how the Emigrant should be managed based on the requirements of the Wilderness Act. Written comments were solicited from the public and over the course of a year members of the working group spent many hours of their time, meeting over twenty times and participating in three field trips with the Forest Service to look at issues on the ground. All meetings were open to the public and were well attended by citizens from the local community and elsewhere. Throughout this process, it was obvious that the issue of the dams was very contentious, but a community effort was made to understand the differing perspectives and resolve the issue in a way that would be best for protection of the wilderness resource.

Eventually it was necessary to disband the group because of conflict with the Federal Advisory Committee Act, but opportunities for citizen involvement continued. A draft management plan was released in 1996 for public review and comment and, of the many comments received, those that referred to the dams were significantly split on whether to maintain the dams or not. This is information directly available from the Forest Service, not unsubstantiated opinion. It was at that time that some local people, including a few members of the former working group, asked Congressman Doolittle to introduce legislation to require maintenance of the dams. It was evident throughout the planning process that these individuals were intent on maintaining the dams, regardless of the impact on the wilderness resource, dismissing any dissenting viewpoint and proclaiming themselves to be the majority opinion despite evidence to the contrary. In this way they were attempting to override the process that so many citizens had spent time and energy participating in, and to impose their position at the expense of the wilderness resource. They have also ignored information in a detailed study of the dams by Forest Service scientists that contradicts their claims that the dams are essential to providing recreational, fisheries and economic benefits.

Despite frequent rhetoric about the need to allow the community and all citizens a greater role in federal land management decision-making, Congressman Doolittle has chosen to circumvent an effort to do just that and cater to the desires of aggressively vocal interests that do not support the intent of wilderness preservation. Regretfully, local officials and media have aligned themselves with this perspective, ignoring the available information and diversity of opinion on this issue.

Our intention with this letter is not to advocate a specific position on the disposition of the dams, but rather to object to H.R. 434 and the way public opinion has been portrayed by Congressman Doolittle and supporters of his bill. Not only is it is unfair to all the concerned citizens who have participated in this process for almost five years, but also sets a bad precedent that undermines the very law that was passed to ensure that areas would be set aside and managed to preserve wilderness values. We feel that the argument of congressional intent to maintain the dams is very circumspect and that the established planning process should be allowed to go forward as the appropriate way to resolve this issue.

H.R. 434 effectively disenfranchises many citzens, both locally and nationally, who have a legitimate interest in this issue and the protection of their wilderness lands that the Wilderness Act mandates. It is also important to remember that the Emigrant, and all wilderness, belongs to all the citizens of this country, not just those who use it or live in the local area.

We ask that you oppose H.R. 434 so that **everyone** may participate in helping "...to secure for the American people of present and future generations an enduring resource of wilderness."

Sincerely,

Note: Each of the following signees participated as primary or alternate members of the Emigrant public working group representing the subject areas highlighted below.

Ross Carkeet
California Licensed
Professional Forester
P.O. Box 634
Twain Harte, CA 95383
Primary Member for
Fish and Wildlife

George Caldwell
Llama Breeder
15301 Tuolumne Rd.
Sonora, CA 95370
Primary Member for
Alternative Stock Use

Peggy Dylan
Business Owner
P.O. Box 669
Twain Harte, CA 95383
Alternate Member for
Recreational Stock Use

Don Foster
Elementary School
Teacher
154 Roble Road
Sonora, CA 95370
Alternate Member
for Backpacking

Robert Hohn
High School
Science Teacher
P.O. Box 490
Tuolumne, CA 95379
Alternate Member for
Wilderness Philosophy

Clay Knopf
Carpenter
14485 Kebra Lane
Sonora, CA 95370
Primary Member for
Wilderness Ecosystems

Brent Pettey
Reference Librarian
25510 Bambi Lane
Cold Springs, CA 95335
Primary Member for
Wilderness Philosophy

Dr. Robert Pollard
Veterinarian
16615 Isom Lane
Sonora, CA 95370
Alternate Member for
Alternative Stock Use

Lynn Proctor
Retired Biologist
P.O. Box 1667
Twain Harte, CA 95383
Alternate Member for
Fish and Wildlife

Dr. Ben Schifrin
Emergency Physician & Wilderness Guidebook Author
17360 Highgrade Lane, Sonora, CA 95370
Primary Member for Backpacking

Mr. MCINNIS. Thank you. Ms. Collins?

STATEMENT OF SALLY COLLINS, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE

Ms. COLLINS. Again, we are looking forward to working with you on this particular bill as well.

To summarize again, H.R. 434 would require the Secretary of Agriculture to enter into a cooperative agreement to provide for the retention, maintenance and operation, at private expense, of 18 dams and weirs within the boundaries of the Emigrant Wilderness in California.

Now, these small rock and mortar dams have deteriorated over time as maintenance levels have decreased. Some of these structures are in poor condition, are leaking significantly, or have washed out or no longer function. The remaining structures are in fair to good condition. Because of the age and overall character of some of the dams, several are now eligible for listing on the National Register of Historic Places.

During the 1970's and 1980's, maintenance of the dams was shared between the Forest Service and the California Department of Fish and Game. The California Department of Fish and Game ceased maintaining or operating 11 of the structures, which is what our memorandum of understanding provided for, in 1988 when the permit expired.

The Stanislaus National Forest developed an environmental impact statement and record of decision in 1998, that outlined the management for all of the Emigrant Wilderness, not just these particular dams. A decision document allowed for the continued maintenance of eight dams. The record of decision received 14 appeals, but that decision, at least the portion of the decision related to these dams, was vacated by the Regional Forester in 1999. This is significant, because at the current time, there is no decision document directing what to do about any of these 18 facilities.

On November 8th, the Regional Forester met with California Fish and Game, and agreed to a joint strategy for the future management of these dams. This strategy outlined the need to maintain eight dams in the Emigrant Wilderness.

Now, recently, there have been discussions between Congressman Doolittle and Regional Forester Brad Powell. I think as of last Friday, the Forest Supervisor met with Congressman Doolittle and some others, and then Brad Powell may be meeting again tomorrow. I just met with Mr. Powell on this a few minutes ago, actually.

We want this dialogue to continue, and are willing to work with the Committee, Mr. Doolittle, and the State of California, and any other interested parties to try to resolve this issue, and that is where I would like to leave that.

Mr. MCINNIS. Thank you.

Mr. Doolittle, do you have questions?

Mr. DOOLITTLE. Well, maybe just an observation, Mr. Chairman. Where there is water, there is life. I don't think anything would be served by allowing these structures to deteriorate, and they are deteriorating because they have been precluded by the Forest Service from being maintained since that decision was made a few years ago.

All we are asking for is—these dams were built by the Forest Service in conjunction with volunteers and the CCC, and the volunteers would like to be able to go in and maintain them. At one point they actually hauled all this material up there, you know, rough country, upland country, eight hours to travel into, and once they got there with all of this, they were informed that they would not be allowed to carry out the task of restoration. People arranged to take off time for—you know, to get vacation time off. It was a major volunteer effort. And when they went to all this trouble, they were thwarted. And that just seems to me tragic. It would make—it would just concentrate undue use in other parts of the wilderness area, where having them would make it much more desirable all the way around.

So that would be my only comment, and I appreciate the offer of the Forest Service to work together, and look forward to doing that.

Mr. MCINNIS. Thank you. Ms. McCollum?

Ms. MCCOLLUM. Thank you, Mr. Chair. I heard in the testimony from the Forest Service, you talked about maintaining with private funds, and then there was a combination of the State of California and the Federal Government at one point in time. Can you comment on the appropriation of the bill? Currently we are not putting any dollars into maintaining these, and this would be something new?

Ms. COLLINS. No. Currently we are not, and to—there is much more that has to be done. There is maintenance and actually upgrading of the facilities, because many of them are deteriorated, which would be an initial investment. There are planning dollars to do the environmental documentation around that, because, as I said, there is no planning document or NEPA document in place to do anything on any of those sites right now, and that has to be completed. And then there is an annual maintenance fee. All of that takes money, and I think the partnership with California does offer an opportunity to negotiate some of that for some of these sites. They are not willing to do all of them. They are willing to consider—I don't even think that they have gotten to that point in the negotiations, but clearly they have an interest in some of the facilities, and so that would be the next step, to work with them on partnering on some of that, and we have other people interested in helping with that.

Ms. MCCOLLUM. Mr. Chair, if I may, another question. Could you comment on whether or not there are exotic species that are part of the reason why the dams need to be—or people would wish to keep them in place?

Ms. COLLINS. Yes. There is at least one species, and I am going to see if I can remember it. It is a frog. It is a yellow-legged frog, and I do not remember the prefix of it, but there is one species that is living in some of the meadows up there, and there may be others as well. And we can get you that information if you would like that. Would you like us to do that?

Ms. MCCOLLUM. Well, I asked about exotic, not endangered.

Ms. COLLINS. Okay.

Ms. MCCOLLUM. There are no exotic species then?

Ms. COLLINS. Oh, exotic fish species in the sense—

Ms. MCCOLLUM. We are talking about the dam and the water, so, yes.

Ms. COLLINS. Got you, yeah, in the wilderness. I cannot answer whether or not they have been putting exotic species in there, but I can get you that answer.

Ms. MCCOLLUM. Mr. Chair, if there is someone else who could answer it? I would think that the Forest Service, testifying before on this important issue, would know whether or not there was exotic fish species, but Mr. Chair, I believe the gentleman at the table can answer that question. That is my last question.

Mr. MCINNIS. Ms. McCollum, maybe you can help me, because I am not clear on your question as it has been stated. I do not know what you mean by "exotic." Now, my understanding of exotic is it is an imported species that—

Ms. MCCOLLUM. Right. Something that is not natural to the ecosystem, that is correct.

Mr. MCINNIS. So your question, is there something in those waters that is not natural to those waters as a result of those dams; is that correct?

Ms. MCCOLLUM. Yes.

Mr. MCINNIS. Can you answer the question, now rephrased?

Ms. COLLINS. The State of California has been seeding those lakes with young fish for a long time, but I cannot tell you at this time whether they are exotics or not, but I will get you that answer. It could be that Steve knows, but I do not know.

Mr. BROUGHER. I would be happy to, if that is appropriate.

Mr. MCINNIS. Mr. Doolittle, could you add anything to assist Ms. McCollum?

Mr. DOOLITTLE. Well, I really cannot because the lakes have been stocked, but they are stocked with trout that do exist in this general area. I don't know necessarily, you know, in the specific little lakes that were created, but they are in the Sierras. There is an issue now about maybe not stocking some of the lakes that are in the habitat of the yellow-legged frog, which is now endangered, and that the fish are eating the frogs, so Fish and Game is looking at that issue, and there may be some areas. But I don't think they are looked upon as exotic species.

Ms. MCCOLLUM. Mr. Chair?

Mr. MCINNIS. Go ahead, Ms. McCollum.

Ms. MCCOLLUM. Mr. Chair, if the other witness—

Mr. MCINNIS. I think you need to turn on your microphone.

Ms. MCCOLLUM. It is my voice. Mr. Chair, if I could ask the other testifier if they are familiar with bringing fish that are not part of the ecosystem into the dam and water area, if they have any information?

Mr. BROUGHER. Yeah, I can speak to that. Historically, the high country of the Sierra Nevada did not support fish above about 7,000 feet, except in the southern end of the range. The Emigrant Wilderness, therefore, fish were not native to the lakes of the high country there.

Fish were introduced into that area beginning in about the turn of the century or the turn of the 20th century, and the species that are stocked there are rainbow trout, eastern brook trout, golden trout, which is native to the Sierras, but not to that region, and

occasionally brown trout. So the fishery that we are talking about in the Emigrant Wilderness that these dams were built to support are not native to that area, and they are indeed preying upon and responsible for a decline in the yellow-legged frog.

Mr. MCINNIS. What was the last part, they are responsible for what?

Mr. BROUGHER. That the introduction of those fish are in large part responsible for the decline of the mountain yellow-legged frog.

Ms. COLLINS. I also have been told that what they have been introducing there is brown trout.

Mr. DOOLITTLE. Mr. Chairman, I would add that these fish are very tasty for the endangered species bald eagles that thrive in those areas because of those lakes.

Mr. MCINNIS. Mr. Simpson?

Mr. SIMPSON. Thank you, Mr. Chairman. Frankly, I find this discussion kind of bizarre. As I understand it, these dams were built before the Wilderness Act went into effect, and the Wilderness Act, Congress clearly has the power to make designations within—when it creates a wilderness, to preserve these dams or to take them out, or to do whatever they want to do, and apparently they made the decision to leave those dams in place when they created this wilderness.

And now you want to go in and remove those dams, so you want us to trammel upon the land to make it appear that it was never trammeled on? I mean, this is bizarre, as far as I am concerned.

Mr. BROUGHER. Would you like me to respond to that?

Mr. SIMPSON. Yeah.

Mr. BROUGHER. Okay. Yes, they were present before they became wilderness, and at the time of designation they were recognized as being present. But Congress did not write into legislation any exception to the provisions of the Wilderness Act. There are times when that does occur. In this case, they chose not to do that. They chose to recognize the dams were there, that it did not detract from making the area wilderness, but that they did not make any special provision to continue maintenance of these dams. Instead, they have a provision in that bill that says that the wilderness will be managed according to the provisions of the Wilderness Act.

Our position on this is not to remove the dams, but rather just to leave them, no longer maintain them, and allow nature to take its course, and over time, to restore these areas back to a more natural condition.

Certainly right now many of these dams have fallen apart, have been overgrown with vegetation. It would require a substantial disturbance to these areas not only to rebuild them, but then to continue to operate them with fluctuating water levels as they were designed to do.

Mr. SIMPSON. Do these dams destroy your wilderness experience?

Mr. BROUGHER. Well, for me they do, and for a lot of people, they do. And it is not just a matter of personal—you know, personal like or dislike, it also has to do with the intent of the Wilderness Act to manage areas in a natural condition, that is, in a way in which nature can take its course, in which humans do not manipulate, actively manipulate the environment to create a certain effect.

Mr. SIMPSON. I look at these pictures, and I kind of—I find it strange that they would degrade your wilderness experience. Beavers make dams and I guess they don't degrade the wilderness experience, but if you stack a couple rocks together, that is a problem, which is what they are. You don't think that when they recognized these dams in designating this a wilderness area, that their intent was to maintain them, that they said, "Yeah, those dams are there and we are just going to let them fall apart", that that was their intent?

Mr. BROUGHER. No, I don't believe that was the intent. If you look at the legislative history, the complete legislative history—and I am not going to go into all the details of that; I have provided that in my supporting documentation, it would take a while to discuss it all—but if you look at that entire history, I think that you will come to the conclusion that Congress had not intended—I mean, they saw the dams, they discussed them, there was discussion of retaining them. Ultimately, in the final bill, that was not done.

We also have correspondence from former Senator Cranston, indicating—he was a sponsor of a bill for the Emigrant Wilderness—indicating that he did not feel that there was congressional intent, I mean he was involved, but he had no intent for these dams to be maintained in perpetuity.

Mr. SIMPSON. Thank you, Mr. Chairman. I find this just really a strange situation, where you go in and create a wilderness, you preserve a wilderness area that obviously has some human activity that has occurred on it, and then our intent is to pretend that no human activity has ever occurred on it. I mean, I find that a bizarre situation, I really do. I can understand going into an area where there is true wilderness, where humans have not impacted, they have not built dams, have not built roads, that type of thing, and saying, "We are going to preserve this as a wilderness." But you can go to the City of Blackfoot, Idaho and say, "We want to make this a wilderness. We are going to tear down all the buildings or let them fall down by nature." I find that contrary to the Wilderness Act. So I don't have any more questions. I am still trying to figure out what the heck is going on.

Mr. MCINNIS. Mr. Doolittle, do you want to do a quick wrap-up?

Mr. DOOLITTLE. Let me just do a quick wrap-up. In the Committee report for the 1974 Wilderness Act, it says the following, quote: "Within the area recommended for wilderness designation, there are drift fences (5 miles), which will be maintained, but several cabins and barns will be removed within 10 years. Two snow cabins will be retained. The weirs and small dams will likewise be retained."

Now, that was in 1974, and in 1977 a former historic Chairman of this Committee, Mo Udall, there was a bill passed out of here that pertained to wilderness, and in the language of the bill it says the following. Well, actually, this goes right to the—this is the counterpoint to Mr. Brougher's testimony. This is what it says in the Committee report, quote: "Numerous other aspects of the so-called purity issue have been debated over the past several years, and especially during the hearings on H.R. 3454"—of which this is the report for. "In some instances, the strictest interpretation of the

Wilderness Act has led to stringent 'purity criteria' which have prejudiced the potential recommendation of an area for further wilderness consideration. In others it has led to public opposition to wilderness proposals based on what is and what is not perceived to be, sometimes erroneously, permissible in wilderness areas, and of the provisions of the 1964 Wilderness Act. After more than a decade of experience, the Committee recognizes the problems with different interpretations the Wilderness Act creates. The Committee was pleased to receive the new Administration's less stringent interpretation of the Wilderness Act, and agrees that this new direction is in order. To further clarify matters, the Committee considers it appropriate to comment in some detail on some of the issues that current policies attempt to resolve and to offer its guidance as to how the Wilderness Act should now be interpreted as it relates to certain uses and activities."

I'm just going to skip down to the one that pertains, fisheries enhancement. "Fisheries enhancement activities and facilities are permissible and often highly desirable in wilderness areas to aid in achieving the goal of preserving the wilderness character of the area, as stated in Section 4(b) of the Wilderness Act. Such activities and facilities include fish traps, stream barriers, aerial stocking, and the protection and propagation of rare species." End of quote from the bill.

So, Mr. Chairman, that quote reveals there is a split. Amongst most of the mainstream environmental community, certainly locally, heavily supports this bill. As you can see from the pictures, those are very desirable areas that would add to most people's view of a wilderness experience. Clearly, it is not purity. Purity would result in hot, dry steep slopes during the fall and late summer.

So I thank you for this opportunity to have this hearing, and look forward to working with you.

Mr. MCINNIS. I thank Mr. Doolittle. I also thank the witnesses on our second panel. The witnesses may have some additional questions, and if you do, please ask for a response in writing. We will hold the record open for 10 days in regards to that. Thank you panel.

Mr. MCINNIS. I will now introduce our third panel. On Panel 3 we have the Honorable Earl Blumenauer from Oregon, and Mike Rosenberger, Administrator, Bureau of Water Works, Portland, Oregon. Again, I would remind the members that your statements are limited to five minutes. Congressman, you may proceed.

[The prepared statement of Mr. McInnis follows:]

Statement of The Honorable Scott McInnis, Chairman, Subcommittee on Forests and Forest Health, on H.R. 427

I thank the gentleman from Oregon, Mr. Blumenauer, for taking the time to testify before the Forests Subcommittee on H.R. 427.

H.R. 427, the Little Sandy Watershed Protection Act, would, in part, extend the boundary of the Bull Run Management Unit to include the hydrologic boundary of the Little Sandy watershed, an area spanning approximately 2,600 acres.

Up front, I must say that I have real concerns with this legislation. In my opinion, it is critical that local land managers be given maximum flexibility to manage their lands. After all, they know these resources a lot better than the folks back here in Congress. And as most land managers would attest, you never know when you're going to need to adjust your management strategy for any number of unforeseen reasons. This legislation would restrain that flexibility in the case of the Little Sandy by statutorily imposing inflexible restrictions that, under the existing

management plan, already exist. In my mind, Mr. Blumenauer, a case has to be made as to why this designation is actually needed, again, recognizing that local forest managers have already gone to great pains to protect this resource.

Having said that, I look forward to hearing the testimony of my colleague Mr. Blumenauer, as well as the comments of Michael Rosenberger of the City of Portland and Sally Collins of the Forest Service.

STATEMENT OF THE HONORABLE EARL BLUMENAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. BLUMENAUER. Thank you, Mr. Chairman. I appreciate your courtesy, and the opportunity to make a presentation with you this morning, this afternoon. It seemed like this morning when we started.

The subject of today's bill, the Little Sandy Watershed Restoration Act, is something that I have been working on, beginning with efforts with Senator Mark Hatfield in 1996, to deal with the protection of the Bull Run Sandy River Watershed area that provides water to almost one-quarter of Oregon's population.

The legislation that is before you today is the result of extensive work. It has the unanimous support not only of the House delegation, but there is companion legislation that has been introduced by the two U.S. Senators, in fact, passed the Senate in the last session of Congress.

It speaks to an area where there is 109 years of history dating back to a proclamation from President Harrison, 109 years ago. Ninety-seven years ago was the first congressional action. This is an effort that is designed to protect the water and the fragile fish habitat. There is, as near as I can tell, no objection to the proposal that we have entered into before you that would extend the boundary of the Bull Run Management Unit to include the hydrologic boundary of the Little Sandy Watershed. It protects a critical area of potential drinking water, habitat for the Portland Metropolitan area. It extends protection of water quality to deal with some of our efforts at fish recovery under the ESA in the metropolitan area, and it would authorize Clackamas County to seek watershed restoration projects, and maintain the balance in terms of resources within the Oregon O&C counties.

It is something that is important to the City of Portland that I represent, but also to people in the metropolitan area, and represents the sort of balanced thoughtful approach to protect habitat, protect water resources, and work cooperatively with the Federal Government as a partner.

I would like, if I could, to introduce Mike Rosenberger, who it is my privilege to work with when I was Portland's Commissioner of Public Works, a gentleman with long history in this issue, who can speak to the specifics of the proposal.

I will remain in case there are any questions of observations you wish to direct to me.

[The prepared statement of Mr. Blumenauer follows:]

Statement of The Honorable Earl Blumenauer, a Representative in Congress from the State of Oregon, on H.R. 427

Mr. Chairman, and members of the Subcommittee, I am Congressman Earl Blumenauer, representing the 3rd Congressional District in Oregon. I appreciate the

opportunity to come before you today, to describe our efforts to protect the Little Sandy Watershed. As you know, my distinguished colleagues, Senator Ron Wyden and Senator Gordon Smith, have introduced an identical measure in the Senate (S. 254), and I appreciate the Committee moving so rapidly on this matter.

Perhaps no resource is more fundamental to the livability of our communities than clean, safe drinking water. Fresh, pure water is critical for life and health and is not necessarily a renewable resource. There is no environmental goal that should have higher priority than protecting our valuable sources of drinking water. To ensure the health of our families today and of our communities in the future, we must act to ensure that our water supplies are protected and used wisely.

H.R. 427 recognizes that the Bull Run Watershed is the Portland area's cleanest and most reliable drinking water source, serving nearly one million residents. Established in 1892, the Bull Run Reserve was hailed as a drinking water source that could be shielded from human activities that pollute water. After its first municipal use in 1895 a "phenomenal decrease" in typhoid fever resulted. Protection of water quality and quantity, as well as preservation of the forest, was enhanced in 1904 under President Roosevelt's Trespass Act, which allowed only those who affirmatively protected the forest and its streams to enter the reserve.

However, during the 1950's, these protections were threatened when illegal logging began in the Bull Run. Logging was also extended to the Little Sandy Watershed, and by 1993, more than 350 miles of roads were built, mostly to facilitate logging, and sediment from these activities flowed into drinking water reserves.

In 1996, Congress established partial protection for the "Bull Run Management Unit" (BRMU) through the Oregon Resources Conservation Act. Since then, citizens, the City of Portland, and officials throughout the region have championed enacting permanent protections for the public lands in the Bull Run Management Unit and the Little Sandy Watershed. In fact, work to protect Bull Run began with the efforts of former Senator Mark Hatfield. A bill to include the Little Sandy watershed in the Bull Run Management Unit was introduced in both the 105th and 106th sessions of Congress.

The bill before you today, H.R. 427, extends the protection of Bull Run Management Unit by nearly 2600 acres to include the Little Sandy drainage and provides for consistent land management protections for all lands within the Bull Run Management Unit. Why must we protect the Little Sandy? It is a potential future source of drinking water for the Portland area. It is also a critical habitat for endangered fish species, including steelhead, cutthroat trout and chinook.

I am aware that some have raised concerns with this bill, and I would like to take a moment to address those. Last year, during a hearing in the Senate, the U.S. Forest Service testified that it stood in opposition to the legislation on the grounds that adding additional protection for the Little Sandy was not warranted. They claim the Northwest Forest Plan provides adequate protection for this important resource and to the federal lands within the Bull Run Management Unit. Yet as of today, 37% of the Little Sandy Watershed has been lost to timber harvest, and much of that was through damaging clearcut methods. Such practices can have a detrimental effect on water quality and water quantity, not to mention the fragile forest ecosystem that, particularly in the Little Sandy, supports several species of endangered fish that are listed under the Endangered Species Act, as well as probably countless smaller organisms that have never been surveyed. Under H.R. 427, we will finally achieve a lasting, permanent, and meaningful protection for the Little Sandy and all of the lands within Bull Run Management Unit.

Opponents also point to studies from the last decade which they claim dismiss the option of the Little Sandy as a future potential drinking water source. I am fortunate to be joined today by Mike Rosenberger, chief administrator for the City of Portland's Bureau of Water Works. His testimony describes why it is critical that the City maintain a full range of potential options for the future when it comes to managing a sustainable, long-term vision for drinking water, not just in Portland, but throughout the region. But I would also add that I think, given the challenges of meeting future demand for a clean, reliable drinking water supply, and fulfilling our Endangered Species Act requirements, local governments and their citizens deserve to have every possible tool at their disposal. By securing permanent protection for the Little Sandy, H.R. 427 provides just such a tool.

This bill enjoys strong support from the City of Portland. As one who believes that government at all levels must work together more effectively, I see this effort as a model for that kind of cooperation. In addition, the bill is supported by local citizen groups, and local, statewide, and national environmental organizations.

The abundant water supply of the Pacific Northwest has been a blessing, but it is also a responsibility. Protecting it is an obligation that we must not evade.

[Additional material submitted for the record by Mr. Blumenauer follows:]

Bull Run Heritage Foundation

Ralph Crawshaw, MD
President
2525 NW Lovejoy
Suite 404
Portland, OR 97210

(503) 222-8811

April 21, 2001

Mr. Scott McGinnis
Chair, Subcommittee on
Forests and Forest Health
1337 Longworth
Washington, D.C. 20515-6205

Dear Representative McGinnis,

I write for myself and our members seeking your strong and sustained support for HR 427, the Little Sandy Watershed Protection Act. We have literally spent years working to accomplish what this bill promises, extending the boundary of the Bull Run Management Unit to include the hydrologic boundary of the Little Sandy watershed, the better to assure the highest quality drinking water possible.

President Benjamin Harrison initiated the federal government's set aside of144,000 acres of federal land accomplished through the 1902 "No Trespass" Act creating Portland's watershed. Subsequent administrative action reduced the watershed to 66,000 acres. A fact that justly alarms citizens with the fear of completely undoing the original intent of the federal act.

Our organization works diligently with city, regional, state and federal leaders as well as citizen groups to protect our unique heritage. Individually and as a community we see HR 427 as a fulfillment of our desire to pass this incredible gift on to future generations.

Thank you for your efforts in supporting HR 427.

BOARD OF DIRECTORS
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William Preble
Vernon Ryles

Sincerely,

Ralph Crawshaw MD

Ralph Crawshaw, M.D.

CITY OF
PORTLAND, OREGON
BUREAU OF WATER WORKS

Erik Sten, Commissioner
Michael F. Rosenberger, Administrator
1120 S.W. 5th Avenue
Portland, Oregon 97204
Information (503) 823-7404
Fax (503) 823-6133
TDD (503) 823-6868

The Honorable Scott McInnis
Chairman

The Honorable Jay Inslee
Ranking Minority Member

Subcommittee on Forests & Forest Health
1337 Longworth House Office Building
Washington, D.C. 20515-6205

Dear Mr. Chairman and Congressman Inslee:

Thank you for the opportunity to testify April 25, 2001 on H.R. 427, which provides further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, and to present this supplementary material to the Subcommittee for your review.

The City of Portland appreciates your leadership in providing for consideration of this very important legislation and it is hopeful that our oral and written testimony, along with that of Congressman Blumenauer, and the attached helps to answer any questions the Subcommittee might have regarding the purpose or impact of H.R. 427.

City Commissioner Erik Sten, who oversees the Water Bureau as an elected member member of the City Council, will be in Washington later this month and looks forward to meeting with your staff to review H.R. 427 and assisting the Subcommittee in any way possible regarding the next steps in the legislative process for this bill.

Thank you for your time and consideration.

Sincerely,

Michael Rosenberger

MICHAEL ROSENBERGER
Director

CITY OF
PORTLAND, OREGON
BUREAU OF WATER WORKS

Erik Sten, Commissioner
Michael F. Rosenberger, Administrator
1120 S.W. 5th Avenue
Portland, Oregon 97204
Information (503) 823-7404
Fax (503) 823-6133
TDD (503) 823-6868

H.R. 427
To provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit

Response to Subcommittee Questions

Michael Rosenberger
Director
Portland Water Bureau

1. ***Why is the Forest Service's current management plan for the area not adequate - why is H.R. 427 needed if the City of Portland is working effectively with the Forest Service and why are the additional legislative protections of H.R. 427 necessary for the Little Sandy?***

The City of Portland enjoys a cordial and productive relationship with the Forest Service, which has shown steady improvement in recent years. But despite this cooperative spirit, the City strongly believes that absent H.R. 427, appropriate protections for the Little Sandy, as well as for some acres of the main drainage of the Bull Run that presently do not have ORCA protection, will not be present.

Historically, the Bull Run drainage and this portion of the Little Sandy have always been managed together. Only since the passage of the Oregon Resources and Conservation Act of 1996 (ORCA) has there been the requirement for differential management. The City believes that a consistent management approach should be restored. H.R.427 is designed to reestablish this historic consistency of management between the main Bull Run drainage and the areas surrounding it.

The City of Portland also strongly believes that the provisions of the Northwest Forest Plan are not sufficient to provide the necessary protections to the Little Sandy. Congress concurred on this point with respect to the Bull Run in ORCA in 1996. We believe comparable protections are warranted for the Little Sandy, as the responses below explain in greater detail.

The Bull Run serves over 25 percent of Oregon's population and because Portland is a rapidly growing area, reliance on the Bull Run water supply will only grow. The history of City of Portland and Congressional collaboration to expand necessary protections in this area dates back

to 1892. We are extremely pleased to have received bipartisan support within the Oregon Congressional delegation to continue to do so with H.R. 427.

Without the protections afforded by H.R. 427, the long term certainty necessary to ensure the quality and quantity of the Bull Run water supply will not be in place. The question as to whether the Little Sandy watershed will in whole or in part be harvested for timber will never be put to rest.

The citizens in Portland are especially concerned that the Little Sandy watershed be protected because it protects the water supply from fire and human sources of contamination. It also buffers the southern boundary of the Bull Run from the ongoing development in the Highway 26, Mt. Hood corridor.

In summary, the City of Portland needs to plan for its future regional investments. H.R. 427 will add certainty to the future management plans of a valuable regional resource.

2. How have the lean Forest Service budgets in recent years affected Forest Service activities in the Bull Run and Little Sandy Watersheds?

During the last 5 years the Mt. Hood National Forest's budget has been reduced 10 to 12% per year and staffing levels have been reduced 8 to 10% per year. This pattern of declining federal resources has meant that the Forest Service conducts very few routine operation and maintenance activities in the Bull Run Management Unit. Two specific examples include:

- the elimination of $220,000 in funding for a staff position to manage Bull Run specific planning, water quality monitoring, coordination and ongoing work with Portland on projects; and

- the reduction in funding for maintenance of the federal government's 330 + mile road system from more than $750,000 per year in the early 1990s to just over $30,000 this year. The road and drainage systems in the watershed represent the largest single threat to water quality and fish habitat in the Bull Run Management Unit. Current and reasonably anticipated funding levels for these efforts seem unlikely to increase in the foreseeable future.

Because of these budget shortfalls and the inconsistent management direction for the Little Sandy watershed in particular, few resources are being expended by the Mt. Hood National Forest to maintain the road and drainage systems present in that sub-basin. Indeed, the City of Portland believes it is not a question of *if* road and drainage system failures will occur, it is a question of *when* and *how badly* these systems will fail.

In addition, many of the former logging roads that are not maintained presents a risk to water quality and quantity. The Bull Run Watershed is one of only a handful of water sources in the United States providing water to a major metropolitan area that are unfiltered. H.R. 427 makes an important contribution to the protection of this precious resource.

In summary, given the declining resources of the Forest Service, a coordinated management approach under H.R. 427 would stabilize vital resources and allow the City of Portland, in cooperation with the Forest Service, to move forward for the benefit of the entire region.

3. Is the Little Sandy necessary for future regional drinking water needs?

Several years ago, Portland and neighboring governmental jurisdictions conducted a Regional Water Supply Plan. They endorsed a Regional Water Supply Plan strategy that included the Little Sandy. The Plan conclusion states, "(the group)...also advocates protection of the Little Sandy Basin as potential long-term municipal water supply source in case alternative source options become non-viable."

Specific circumstances impact the planning process. As an example, the Regional Water Supply Plan considered expanded water diversions from the Clackamas River as a potential water source, but the viability of that option is called into question by recent listings of salmon and steelhead as threatened species. Similarly, the Regional Plan assumed the Willamette River would be a water source. Subsequent analysis and the strongly stated views of the region's citizenry, however, make it clear that the region may not accept the Willamette as a major source of drinking water.

4. What protections to endangered species or ecosystem restoration would H.R. 427 provide that could not be achieved in other ways? Has the listing of salmon under the Endangered Species Act for the Pacific Northwest made Little Sandy protections under H.R. 427 more necessary?

If, in planning for the future of a growing metropolitan region, the Little Sandy is not used as a municipal drinking water source, then the strongly held view of Portland elected officials and community leaders is that the Little Sandy should be managed as protected fish habitat for threatened steelhead and Chinook salmon.

The City of Portland led the region in the creation of a Sandy River Basin Partnership. The Partnership includes the Forest Service, BLM, US Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Environmental Quality; Oregon Department of Fish and Wildlife; Office of Governor John Kitzhaber; the City of Portland; as well as citizen and fishery resource groups. The Partnership has developed a vision of the Little Sandy as prime, protected fish habitat due to its inclusion in the Bull Run Management Unit. The protections included in H.R. 427 are necessary to advance this goal.

Indeed, the Partners are enthusiastic about potential success in terms of the Endangered Species Act and the Clean Water Act because the watershed has such significant areas under federal protection such as wilderness areas, Wild and Scenic River designation, and the protected reserve of the Bull Run Management Unit.

The Sandy River Basin Partners are building consensus that a higher level of protection is needed for two reasons:

- First, the Sandy River Basin is essentially the back yard of more than 2 million people who live and work in the fast growing Portland metropolitan area. As such, the pressures on the basin will continue to grow as more and more people choose to use the area for recreation, development, and economic gain; and

- Second, given its proximity to a major metropolitan area, the Sandy River has provided and, if the partners are successful, will continue to provide some of the best recreational fishing opportunities in the nation.

5. The Forest Service seems concerned that H.R. 427 would restrict "public access" to the Little Sandy, thereby denying recreational opportunities, which have already been eliminated in the Bull Run. Why should this public access be restricted?

The vast majority of the Little Sandy watershed is already closed to public access and has been so for more than 100 years. It is important that public access continue to be restricted because of the threat of vandalism, pollution and fire that comes from human use.

The protection of these few additional acres and the closure of them to public access also eliminate the need for roads or trails that require federal funds for development and maintenance. The citizens of the Portland metropolitan region have a very strong commitment to the public closure of these lands and the issue of opening them to public access has not been raised during the past 20 years.

6. Describe the Fire reduction plan for the Bull Run Watershed and Little Sandy Watershed. Will the public management restrictions of H.R. 427 hinder fire management activities?

The Bull Run Management Unit is the subject of a very focused and long-standing fire prevention strategy that involves:

- fire look outs;
- a coordinated response between the Zig Zag Ranger District, Oregon Department of Forestry, and City of Portland staff; and,
- the elimination of human-caused sources of fire through strict control of public access and activities within the Management Unit.

As with other activities, funding levels for fire suppression has declined until very recently. This fact prompted the City of Portland to conduct both a Bull Run fire history study and a review and evaluation of the availability of aerial fire suppression resources should a fire occur in the watershed. The fire history study revealed that a natural cycle of a major fire occurs roughly every 350 years. The conditions during this worst-case fire event are rare in that specific wind and weather conditions must align to produce a rapid and relatively complete burn over the entire drainage.

The potential consequence of a fire in the Bull Run is significant in that the Bull Run is an unfiltered surface water source. Post fire erosion would likely increase turbidity in the Bull Run to a point where it would not be available for drinking, and the use of back-up supplies would be necessary. Traditional fuel reduction strategies applicable to drier eastside forests, such as prescribed burns, aren't effective in the more dense and wet west-side cascade forests, making fire prevention the key management tool. Thus access restrictions, and buffer areas around the main water supply drainage become such important components of an overall plan to minimize fire danger to the watershed.

7. Why is it important for the protections provided to the Bull Run Watershed and the Little Sandy Watershed is the same?

Please see answer to Question One

8. Is the City of Portland "reaching out beyond its boundaries" by seeking protections for the Little Sandy through H.R. 427?

The City of Portland has an uncontestable water right in the Little Sandy dated 1909. The City of Portland also has the statutory mission to protect the drinking water for 25% of Oregon's population. In doing so, it works with federal agencies, advocacy groups, and citizens. The Little Sandy Watershed and the Bull Run Management Unit were once managed as one. The City of Portland believes this should continue and the same management policies should apply on both sections. The Little Sandy provides an important function as a buffer and as high quality fish habitat.

9. Why is the City concerned about future logging in the Little Sandy when there has not been any since the early 1990's?

The official land management direction for the Little Sandy allows the Forest Service and BLM to plan and execute timber sales in this watershed. Although the Mt. Hood Forest Supervisor made an administrative decision 3 years ago to move the forest's timber harvest program to the east side, that decision can be reversed at any time. The potential of a timber harvest, whether or not it has happened in the recent past, makes planning in the larger watershed extremely difficult.

The Bureau of Land Management has in the recent past undertaken planning for a timber sale in the Little Sandy. Until there is clarity and certainty about the future of these lands, long term planning for the road and drainage network necessary to support access for the desired management objectives and fire protection can not be completed and programs to implement these plans cannot get underway.

10. Who are some of the supporters of these additional protections?

- Senator Gordon Smith
- Senator Ron Wyden
- Representative Earl Blumenauer
- Representative David Wu
- Representative Darlene Hooley
- The Portland City Council
- American Lands Alliance
- Bull Run Heritage Foundation
- Citizen's Interested in Bull Run, Inc.
- Oregon Natural Resources Council
- American Lands Alliance
- Audubon Society of Portland
- Hells Canyon Preservation Council
- Oregon PeaceWorks
- Oregon Wildlife Federation
- Sierra Club-Oregon Chapter
- Sierra Club
- World Wildlife Federation
- The Wilderness Society

Mr. McINNIS. Thank you, Mr. Blumenauer.

Mr. Rosenberger?

STATEMENT OF MICHAEL ROSENBERGER, ADMINISTRATOR, BUREAU OF WATER WORKS, CITY OF PORTLAND, OREGON

Mr. ROSENBERGER. Thank you, Congressman Blumenauer.

Mr. Chair and members of the Subcommittee, I am Mike Rosenberger, Administrator of the Bureau of Water Works of the City of Portland, Oregon. I also serve as president of the Association of Metropolitan Water Agencies, an organization of public water utilities serving 110 million people in the United States.

The mission of the Portland Water Bureau includes water supply and distribution, as well as being a leader on watershed protection issues such as water quality, habitat, and species protection in the Bull Run Management Unit. I am here on behalf of Commissioner Sten today, who regrets his inability to attend due to pressing matters before the city council.

The Little Sandy Protection has been a very high priority for Commissioner Sten and the rest of our city council. On behalf of the citizens of Portland and the surrounding region, I thank you for taking the time to conduct this important hearing so early in the year. I would also like to thank our Oregon delegation, especially Congressman Blumenauer.

I am very pleased to be here today to lend Portland's strongest possible support to H.R. 427. The Bull Run Management Unit provides water to a quarter of Oregon's population. Today we ask for protection of the Little Sandy portion of the watershed so that all of the lands in the Bull Run Management Unit can be managed together to meet our community's water supply needs and support recovery of threatened fisheries' resources. The map attached to my written testimony provides an overview of how the Little Sandy Watershed relates to the larger picture.

It is important that we have our management agreement secured by law so that we have the utmost certainty we need in order to do proper planning for fish recovery and potential future water supply. The law will not constitute a loss of privilege for any entity. Instead, it will give land managers clear direction.

The protection provided by H.R. 427 insures consistency across the entire Bull Run Management Unit. Land managers will manage this important watershed for both water supply and the threatened and endangered species, including salmon and steelhead. This bill will help protect the quality and quantity of water supply because protected for us, provide cooler, higher-quality water, and a more natural release of water through snow melt and local groundwater inflow.

This law will be one of the foundations of the City of Portland's major initiative to assist in the recovery of threatened and endangered salmon and steelhead in an area that is rapidly growing and developing. The Sandy River basin, of which the lands and waters of the Bull Run Management Unit are a part, represents some of the best habitat in the entire lower Columbia River system.

Because Congress has consistently been willing to help, the Bull Run Management Unit is the envy of water systems all over the country. Few actions are seen as being so clearly beneficial in

providing high-quality drinking water and supporting viable populations of fish and wildlife, as lands and waters protected from development and unsupervised human access.

Mr. Chairman and members of the committee, thank you again for your time, consideration and leadership. I look forward to working with you toward the goals we share and would be pleased to answer questions.

[The prepared statement of Mr. Rosenberger follows:]

NOTE: Responses to questions submitted to Mr. Rosenberger for the record were not available at the time of printing. Copies will be retained in the Committee's official files.

Mr. Chair, and members of the Subcommittee, I am Michael Rosenberger, Administrator of the Bureau of Water Works of the City of Portland, Oregon. I also serve as President of the Association of Metropolitan Water Agencies, an organization of water utilities serving 110 million people in the United States.

The mission of the Portland Water Bureau includes water supply and distribution as well as being a leader on watershed protection issues such as water quality, habitat and species protection in the Bull Run Management Unit.

I am here today on behalf of Commissioner Erik Sten who regrets his inability to attend due to pressing matters before the City Council today. As you may know, under our Portland commission system, elected city council members such as Commissioner Sten are given executive responsibilities for administering the City's Departments. The Little Sandy protection has been a very high priority for Commissioner Sten and the rest of our City Council.

On behalf of the citizens of Portland and the surrounding region, I thank you for taking the time to conduct this very important hearing so early this year. I know this is a very busy period in the Congress and many priorities are competing for your attention. We appreciate your consideration.

I also want to acknowledge the Oregon delegation for their strong leadership on this issue over the years. We were pleased that this legislation received unanimous bi-partisan support in the other body last year and look forward to working with this Committee this year to earn its support and work towards final enactment as soon as possible. I would also like to thank Congressman Earl Blumenauer for being with us today and for being a sponsor of this bill, along with Representatives Peter DeFazio, David Wu and Darlene Hooley. I am very pleased to be here today to lend Portland's strongest possible support to H.R. 427 at this important stage in the legislative process.

Portland's Legacy of Leadership and Watershed Protection

Mr. Chairman, more than 100 years ago, Portland citizens and elected officials took steps to protect the Bull Run Watershed, the source of Portland's drinking water supply. Their efforts led to:

(1) President Harrison's proclamation establishing the Bull Run Reserve in 1892;
(2) the adoption by Congress of the Trespass Act in 1904.
(3) the passage by Congress on the last day of the session in 1977, of the Bull Run Act (Public Law 95-200) which focused on the development of a new partnership between the City and the Forest Service for managing the watershed; and
(4) the 1996 passage of the Oregon Resource Conservation Act protecting the largest portion of the Bull Run management unit from timber harvest.

These last two measures were very significant accomplishments begun by one of Oregon's greatest civic leaders, Senator Mark Hatfield, and enjoyed full bipartisan support of our congressional delegation in both Houses.

Regarding that measure, it is important for you to know that since the passage of the *Oregon Resource Conservation Act,* the working relationship between the City of Portland and the United States Forest Service has never been better. The law provides a strong basis for us to work cooperatively together to address the watershed's needs. The Act has provided much needed clarity and direction to our efforts. We have had tremendous success in working together to address floods, mudslides and other natural occurrences and have just begun a strong partnership to address the needs of endangered species. In fact, three weeks ago today, Mt. Hood National Forest Supervisor Gary Larsen joined the Water Bureau and the Bull Run Heritage Foundation before the Portland City Council. Our purpose was to recommend adoption of a Council Resolution (Resolution 35981, attached) reaffirming the City's long-standing commitment to protecting the land and water resources of the Bull Run Management Unit. The Council unanimously approved the resolution, noting that only a few short years ago, such an action would have been the subject of considerable debate instead of a model of community consensus and collaborative problem solving.

Little Sandy Watershed Protections in H.R.427

The Portland region has been blessed with visionary leaders who have always done what is necessary to protect our precious water heritage. I am here to support taking the final step to complete the job of ensuring that the

entire Bull Run Management Unit receives the highest level of protection we can provide. That next step is H.R.427.

The Bull Run Management Unit provides water to a quarter of Oregon's population. Today, we ask for protection of the Little Sandy watershed portion of the watershed so that all of the lands in the historically significant Bull Run Management Unit can be managed together to meet our community's water supply needs and support recovery of threatened fishery resources. Mr. Chair, the map attached to my written testimony provides an overview of how the Little Sandy Watershed relates to the larger picture and why it must be protected for future generations.

Here's what H.R. 427 does:

1) Protects about 25,000 acres of land. The Oregon Resource Conservation Act provided protection to more than 65,000 acres of federal lands that drain to the Bull Run drainage. The provisions of H.R. 427 extends consistent land management protections to the remaining 22,000 acres of federal land already in the Bull Run Management Unit and adds nearly 2,600 acres of public lands in the Little Sandy watershed to the Management Unit.
2) Provides a basis for consistent management throughout the Management Unit. We are striving to provide a consistent and conservative approach to managing these important lands for the long-term benefits of water users and threatened fish. Presently, the management activities under the Oregon Resource Conservation Act are limited to activities needed to protect water quality and water quantity, to maintain existing facilities, and to provide for any future power transmission route should additional storage and generating capacity be developed in the Bull Run.

It is important that we have our management agreement secured by law so that we have the utmost certainty we need in order to do proper planning for fish recovery and potential future water supply. The law will not constitute a loss of privilege for any entity; instead it will give land managers clearer direction.

The protection H.R.427 provides consistency across the entire Bull Run Management Unit. Land managers will manage this important

watershed for both water supply and threatened and endangered species including salmon and steelhead. This bill will help protect the quality and quantity of water supply because protected forests provide cooler, higher quality water and a more natural release of water through snowmelt and local groundwater inflow.

This law will be one of the foundations of the City of Portland's major initiative to assist in the recovery of threatened and endangered salmon and steelhead in an area that is rapidly growing and developing. The Sandy River basin, of which the lands and waters of the Bull Run Management Unit are a part, represents some of the best habitat in the entire Lower Columbia River system.

There is a tremendous amount of effort being made in this watershed. For example, as a key element of our species recovery efforts, an agreement was reached in 1999 between the City and Portland General Electric (PGE), for the removal of the Bull Run Hydroelectric Project on the Little Sandy. It is estimated that Portland General Electric will spend more that $15 million to voluntarily remove 2 dams: the Marmot and the Little Sandy. It is important that as they make these enormous investments for fish, that they know that the rest of the watershed is vigorously protected. In addition to this effort, the City of Portland, PGE, and federal, state, and local interests are working cooperatively in the basin on a broad number of issues to recover threatened species.

These local actions and initiatives place the protections contemplated by Congress in this legislation in a broader context and will be a critical addition to our overall plans.

In working with our delegation to develop this legislation, we have endeavored to involve all of the public and private elements of the community that share an interest in the future of water quality and the Little Sandy River watershed.

Conclusion

Mr. Chairman, because Congress has consistently been willing to help, the Bull Run Management Unit is the envy of water systems all over the country. Few actions are seen as being so clearly beneficial in providing high quality drinking water and supporting viable populations of fish and

wildlife as lands and waters protected from development and unsupervised human access.

We hope Congress will continue to build on history and our unique partnership through swift passage of H.R.427. We can protect the Little Sandy watershed for the shared benefit of the communities of people, fish and wildlife, which depend on the lands and waters of the Bull Run Management Unit.

Mr. Chairman and members of the Committee, thank you again for your time, consideration and leadership. I look forward to working with you towards the goals we share and would be pleased to take any questions.

RESOLUTION No. 35981

Adopt a Source Water Protection Policy Statement re-affirming Council commitment to managing the Bull Run Watershed Management Unit as a protected watershed dedicated to the production of pure,clear,raw potable water (Resolution).

WHEREAS, the City of Portland has obtained its drinking water supply from the Bull Run watershed for more than 100 years;

WHEREAS, the citizens of Portland place a strong and abiding community value on protecting the Bull Run water supply;

WHEREAS, the City of Portland has worked with the U.S. government to manage the Bull Run watershed as one of the most protected water supply watersheds in the United States;

WHEREAS, the federal Bull Run Trespass Act of 1904 set aside the Bull Run watershed to protect it from settlement and entry;

WHEREAS, Public Law 95-200 directs the USDA Forest Service to consult and coordinate with the City of Portland to ensure management programs, practices, and standards on watershed lands are protective of drinking water quality;

WHEREAS, the federal Oregon Resource Conservation Act (ORCA) of 1996 limited timber management activities in the Bull Run watershed to those needed to support water quality, water quantity, and the development, operation, and maintenance of hydropower and water supply facilities;

WHEREAS, the Forest Service, through its recent application of its various laws and policies, has demonstrated a high level of commitment to water quality in the Bull Run;

WHEREAS, no timber harvesting or road-building has occurred in the watershed for almost a decade;

WHEREAS, the current Forest Service management direction is to obliterate roads in the watershed that pose a risk to water quality and are no longer needed for protection, operation, or maintenance of the watershed;

WHEREAS, the federal Safe Drinking Water Act Amendments of 1996 endorsed source water protection as a key link in a multiple barrier approach to ensuring a high quality drinking water supply;

WHEREAS, the federal Environmental Protection Agency and the State of Oregon endorse source water protection measures as a preferred means to protect drinking water sources so that necessary treatment processes can be simpler and the results of treatment will be more reliable;

WHEREAS, the City of Portland has maintained a superior compliance record with state and federal drinking water standards;

WHEREAS, the City of Portland has modernized drinking water treatment and disinfection practices numerous times in response to health research, technological advancements, and regulatory standards;

WHEREAS, microorganisms such as *Giardia* and *Cryptosporidium* are present in low concentrations even in protected watersheds, and recent health research has shown that *Cryptosporidium* poses a measurable risk to certain sensitive human populations;

WHEREAS, federal Safe Drinking Water Act surface water treatment regulations, meant to protect the public from harmful microorganisms, will require continuing improvements in the use of treatment technology, including potential filtration of currently unfiltered sources such as the Bull Run;

WHEREAS, continued dedication to source water protection will minimize long-term future capital and operating costs of treatment improvements, including potential filtration, by limiting the amount of natural and human-caused contaminants in the untreated source water;

WHEREAS, one of the reasons to consider filtration as a potential treatment technology for the Bull Run supply is to increase the City's ability to reliably meet the public health and safety needs of its customers under changing weather conditions, and water demand and environmental compliance requirements;

WHEREAS, the City of Portland, in cooperation with the U.S. Geological Survey and the USDA Forest Service, maintains a sophisticated water quality monitoring system in the watershed;

WHEREAS, the City of Portland anticipates continuing improvement in water quality monitoring and modeling to comply with the Endangered Species Act and Clean Water Act, as well as the Safe Drinking Water Act;

WHEREAS, the City of Portland has made clear, in numerous resolutions and ordinances over the years, its preference for protecting and using water sources with the highest possible raw water quality;

35981

WHEREAS, the City of Portland adopted the Regional Water Supply Plan in 1996 and one of the key policy objectives in the plan was to utilize sources with the "highest raw water quality;"

WHEREAS, the Regional Water Supply Consortium has endorsed source water protection as an important means to secure reliable high quality water supplies for the region; and

WHEREAS, the Bull Run water supply is a valued resource for the residents of the Portland metropolitan area and serves the needs of approximately 25 percent of the population of the State of Oregon;

NOW, THEREFORE, BE IT RESOLVED, that:

1. The Council hereby announces and endorses a Source Water Protection Policy for the Bull Run Watershed Management Unit, re-affirming the Council's continuing intent that the resources of the Bull Run Management Unit are managed to continue to provide a highly-protected water supply for the Portland area.

2. The Council finds that the protection measures for the Bull Run watershed put in place over the last one hundred years constitute a rich and lasting legacy for the City, the state and the nation. Vigilant efforts by our community to protect this resource should be rewarded by continued vigilance in the 21st Century, regardless of changes in treatment technology applied.

3. The Council directs the Water Bureau to implement this policy, in coordination and cooperation with the USDA Forest Service, and to use all necessary measures to ensure that raw water quality from the Bull Run watershed remains as good or better than that currently existing.

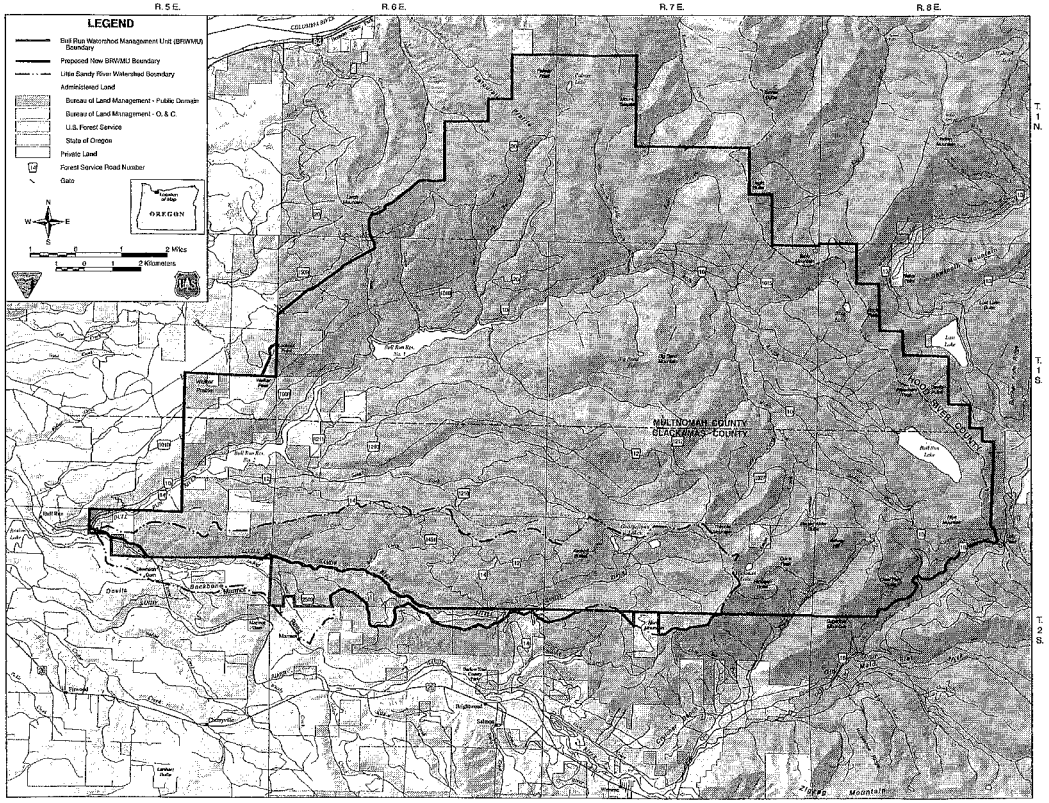
4. The Council directs the Water Bureau to seek formal endorsement of this Source Water Protection Policy by the Forest Service, thereby also re-affirming their continuing intent that the resources of the Bull Run Management Unit be managed to continue to provide a highly-protected water supply for the Portland area.

Commissioner Erik Sten
PWB:RCM
March 28, 2001

Adopted by the Council
APR 0 4 2001

Gary Blackmer
Auditor of the City of Portland
By Susan Parsons

Little Sandy River Protection Act



Mr. MCINNIS. Thank you.
Ms. Collins?

STATEMENT OF SALLY COLLINS, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE

Ms. COLLINS. I am delighted to be on a panel with fellow Oregonians. I have been hearing about this from the other side of the mountains for kind of a long time. And again we support the intentions and interests that have been discussed here, and feel like there is a huge opportunity for us to resolve any differences.

I just think there are a few things that we need to consider as we look at this bill. Again, if enacted, H.R. 427 would add approximately 2,900 acres of Federal land in the Little Sandy Watershed to the Bull Run Watershed Unit. Currently the Bull Run Watershed Unit has 95,000 acres of National Forest System land near Portland, and in addition, what this would do is it would prohibit timber harvest activities and general public access to the entire Bull Run Watershed Management Unit. Now, right now the public can't access the Bull Run Management Unit. As you know, most watersheds, commercial watersheds, don't allow people in there for protecting the water, but right now, the Little Sandy area within the Bull Run Watershed Unit is available for public access, and there are people that use it for that purpose.

In addition, forest-related restoration, forest management activities would be precluded from a total of 8,600 acres of National Forest and BLM land that would be included in this buffer area, and the concern there would be, and what needs to be acknowledged or recognized is that the actions we could take as a management agency to reduce fire hazards to the watershed may not be possible with this bill, and may not be warranted.

The Administration really believes that the existing forest plans, including the Northwest Forest Plan, provide protection for the health of the Little Sandy Watershed and the preservation of future options, and specifically the Little Sandy Watershed is designated as a Tier 2 Watershed. I had managed under this Northwest Forest Plan when I was in Oregon, and can assure you that that provides high water quality as well as fish and watershed protection and restoration opportunities.

Let me just talk a little bit about the opportunity for this to be part of the water system in Portland. First of all, the point of diversion where Portland draws its water from the Bull Run Watershed is upstream from the confluence of the Little Sandy River. A water supply option study conducted by the City of Portland in 1992 dismissed the option of developing Little Sandy as a municipal water source. Because of issues related to water rights—there are no water rights right now that they have to that—cost of development, limited capacity and the impacts to a variety of resources. In addition to that a regional water supply plan was completed in 1996 by 27 water providers that also dismissed the option of Little Sandy Basin as a water supply source at that time. But it can advocate a protection—

Mr. MCINNIS. Ms. Collins, may I interrupt you for just a second?
Ms. COLLINS. Sure.

Mr. MCINNIS. I am just trying to get a picture of what you are saying. Are you telling me that the diversion to Portland is not within the watershed, it is upstream from the watershed?

Ms. COLLINS. It is the—right. It is upstream from the confluence of the Bull Run Watershed. So anything that we do in this area, in other words, would not have an impact on the water qualify in Portland.

Mr. MCINNIS. Thank you.

Ms. COLLINS. Does that make sense? It is not part of the water quality—the water that goes into the water system in Portland right now.

Mr. BLUMENAUER. And the point I was making, Mr. Chairman, is that is not where the region is now. We are looking at this as a potential water source for the region, and we—the region—and Mr. Rosenberger can go on in greater detail in terms of where we were 10 years ago, and looking at other options, this is very definitely a part of what the region is looking at, and the City of Portland, to try and provide water for a large and growing metropolitan area, where water is in fact in short supply, and dealing with our strategies for restoration of habitat. There have been a lot of changes that have taken place in the course of the last 10 years.

Mr. MCINNIS. Well, Congressman, I just don't—

Mr. BLUMENAUER. And we will be happy to detail those as you see fit.

Mr. MCINNIS. I just have some reluctance in seeing a municipality reach outside the point of diversion for additional control over possible water into the future. My understanding, you have no water rights in that area. This is from the testimony, and I stand corrected if you correct me, and that there are no water rights for you to access in the area.

Ms. Collins, by the way, I will come back to you to finish your statement. I didn't mean to interrupt, but this is a very critical point, because I assume from the testimony of Mr. Rosenberger, even the Congressman, that we are talking about the watershed of Portland, Oregon. And now that we are not, this has lost a lot of credence with me. I just am confused.

Go ahead, Mr. Congressman.

Mr. ROSENBERGER. Congressman, let me see if I can take a shot at this. We are talking about the Bull Run Management Unit, the entire Bull Run Management Unit, and Congressman Blumenauer talked about some of the history of that. Within the Bull Run Management Unit there is the Little Sandy Watershed and 22,000, 25,000 acres. The rest of the Bull Run Management Unit is the Bull Run Management Unit, and is managed under the auspices of ORCA, Oregon Resource Conservation Act. The Little Sandy Watershed portion of the Bull Run drainage is managed under the auspices of the Northwest Forest Plan. Part of our concern is that those are two different directions to land managers. And one of the main things of this bill is to have the entire Bull Run drainage managed under one set of rules, a consistent set of rules to that the Forest Service and the city, which as a matter of fact are working better together now than they have for years, have one set of standards to deal with water quality, water quantity, and the issues of endangered species.

Mr. MCINNIS. Mr. Rosenberger, in doing that, one, it is an area that you don't need today, as I understand the testimony. It is an area that it is—you hope by some, frankly, some wave of the magic wand, that you access water rights sometime in the future that as I understand aren't available today, you are going to limit public access, which the Forest Service has testified there is public utilization of this area right now, and more importantly than anything we have heard, is you are going to limit the Forest Service's capability to help manage that area for forest fires.

Mr. ROSENBERGER. Congressman, maybe I could speak to both of those.

Mr. MCINNIS. Let me do this. In all fairness, Mr. Rosenberger, I interrupted Ms. Collins, and I am now detracting from her time and her statement. Why don't I let her finish, and then we will come back to you and we will proceed with this discussion.

I am sorry, Ms. Collins, you may proceed.

Ms. COLLINS. I just had a couple more things I wanted to say. In addition, I was going through a couple of these studies that had been done. An additional study by the Forest Service in 1988, along with our provincial advisory committee that we have, an advisory committee of interested parties, we completed a study and submitted it to Congress at that time, which recommended that the area be managed under the Northwest Plan, which is all of those restrictions that I talked about, and cited two reasons. One, that the Little Sandy River has not been and currently is not planned to be used to provide drinking water. But second, that the waters of the Little Sandy River may be needed to provide for the needs of fish species being considered for listing under the Endangered Species Act. And since that time, both the Chinook salmon and the winter steelhead in the Sandy River Basin have been listed under ESA.

I guess the main point here is that there are many environment safeguards in place for the Little Sandy River, as well as other sensitive watersheds in the Pacific Northwest, and we are interested in discussing the concepts in the bill with the Committee to see if there is some common ground that we can't come to within existing authorities, and looking forward to doing that. Thanks.

Mr. MCINNIS. Well, Ms. Collins, let me then ask you—because I am still confused, so you have got to help me.

Ms. COLLINS. Okay.

Mr. MCINNIS. If we proceeded with the Congressman's request, what restrictions does it put on you under your current management philosophy or what you are currently managing?

Ms. COLLINS. Okay. If you can picture this 95,000 acres that is in the Bull Run Watershed, a portion of that, about, I don't know, 20 some thousand acres is included in this Little Sandy portion of that, and we would be adding 2,900. In that, we already—a portion of that watershed allows public access and allows some restoration activities, including timber harvest, which we have not done since 1992 and have no plans to do, but would like to have the option to do some restoration for fuels reduction. That is a potential. We have no plans, again, to do that. But it is a mechanism that will protect the watershed that we would like to keep intact if possible. So that is one.

And then the other one, and I really do commend—people are talking a lot, and I talked to Gary Larson, the Forest supervisor, last night, who has been working closely with you. And I think that we all have an understanding of this, but there are people that do use that for more primitive recreation opportunities since the rest of the watershed is not open, and this portion would be—remain open.

Mr. MCINNIS. Ms. Collins, let me ask you the following question, then I will go to my colleagues who are anxious to join the discussion.

Ms. COLLINS. Okay.

Mr. MCINNIS. But if we put this bill into place, what protections, outside of limitation of public access, what other protections would they need that you don't already provide in your current management of that area? What is to be gained by what they want to do other than perhaps stop public access?

Ms. COLLINS. Well, that is why, I think, when listening to the testimony, there is a huge opportunity for us to work together to meet our common interests, because currently with—and I am not sure when these discussions started, if they came before the Northwest Forest Plan or not, but with the protections in the Northwest Forest Plan for this particular kind of watershed, there is a great deal of resource protection for water quality as well as wildlife habitat.

Mr. MCINNIS. That currently exist?

Ms. COLLINS. Currently exist, yes, very high level.

Mr. MCINNIS. Thank you. Ms. McCollum?

Ms. MCCOLLUM. Thank you, Mr. Chair.

To the Congressman, could you tell me if there is any opposition from some of the other units of Government that would be in the Watershed? I don't know how you are exactly organized.

Mr. BLUMENAUER. To the best of my knowledge, the counties and cities that are affected, the county in which it resides and the others in the area, are united in support of this. Number one, this is an area that is in transition. I strongly disagree with the notion that—the Chairman's point that we do not have access to the water. Just speaking to the Chairman's point about water rights, we will be happy to provide you with information.

First of all, there are two dams that are being removed that were part of a private utility, as part of the restoration, and whether we think there is a claim for this municipality itself, there was a much larger area that has been involved historically. We will provide you with that documentation, Mr. Chairman. We think that there is a claim already.

It is also an area where there is serious evolution in the last 10 years in terms of trying to have species restoration. The Forest Service has been evolving over time with its attitude regarding this. This has been an area of fierce contention for the last 25 years that I have been involved in Federal Government and local activities. And I do agree with Ms. Collins' point in terms of it being an evolution. But I do think there is a strong case to be made, and the overwhelming public support is in support of this additional protection, and it has bipartisan support of both our senators, and as I say, our delegation.

Ms. MCCOLLUM. And so from what I am hearing from the Forest Service, I heard you say, "We have no plans, we have no plans, we have no plans" on many different issues. But I am hearing from the Congressman and from the person representing the water works area, that the City of Portland, working with the region, you are planning for the future so that a crisis does not come about. Did I hear that correctly, gentlemen?

Mr. BLUMENAUER. Yes. And this is not water just for the City of Portland. This is water that is provided to a quarter of the state's population, and goes—in fact, they are looking at regionalizing it beyond the 800,000 people that currently use water from this Bull Run Watershed, and looking for a cooperative effort that spreads it throughout the metropolitan area.

Ms. MCCOLLUM. And so you need one person to take the lead on it, one organization, one group to move forward, working with the other units, and Portland has taken the lead?

Mr. BLUMENAUER. And to have the highest level of protection, certainty and management, not differential levels. I mean, there are some good things, but it is not the best. This is one of two major unfiltered water systems in the United States—I think the only other one is in New York—that because of the purity of it, that has been able to be maintained. So people in both parties, private sector, public sector, are incredibly concerned about this, to be able to maintain the quality and the supply. And if there are details regarding management of the—it is not just 2,800 acres for forest fire protection. The City of Portland has an even higher area of concern for tens of thousands of acres, 65,000, that is in the Bull Run. So this is an ongoing discussion, and it is an area where the Forest Service has made a great deal of change in time, and I appreciate the evolution that they have taken, where they have learned that actually the local people had some pretty good concerns and issues, and they have modified their positions over time, and we appreciate that, and we think we ought to continue the discussions about fire protection, because that is something that is not just 2,800 acres. If we have problems in this watershed, it affects water for 800,000 people, maybe a million people or more, and it is more than just 2,800 acres.

Mr. MCINNIS. Thank you. Mr. Simpson.

Mr. SIMPSON. Mr. Chairman, thank you. I really don't have any questions, other than, as I understand it, this area that is managed by the Forest Service, is what you call Tier 2 protection, right?

Ms. COLLINS. I am sorry?

Mr. SIMPSON. It is a Tier 2 level, you mentioned in your testimony?

Ms. COLLINS. Yes, yes. It is a Tier 2 level watershed, which means it has got extra levels of protection in terms of buffering streams and that sort of thing for management activities.

Mr. SIMPSON. And as I understand it from the testimony, really, the only two things that we are really talking about that are different, other than bringing it under single management, would be access and potential harvest or fuels reductions, those types of things, timber management activities that might occur?

Ms. COLLINS. I would add one more. And that is the point that I think was made by the last study that was given to Congress,

and that is the concern that the water that is there, which is fairly limited in supply and quantity anyway, may be needed in terms of protecting these species that are listed under ESA.

Mr. SIMPSON. Okay.

Ms. COLLINS. That is the third point.

Mr. SIMPSON. I will tell you—and Congressman Blumenauer mentioned it just a minute ago—but if you have got 95,000 acres already under this watershed that you don't have a fire protection plan for, I would get on it right away, because I can tell you what forest fires have done to watershed quality in Idaho and other places, and the damage that has been created by forest fires. And if you don't do something about having a fuels reduction program in that area and in this other area, eventually lightning is going to strike there too.

Mr. BLUMENAUER. We have had it for 109 years, Congressman. There is an aggressive program. And in the other 95,000 acres, there is a higher level of protection, not the Tier 2, Congress has provided for it. And that is what we want, is the higher level of protection.

Mr. SIMPSON. Of forest fire protection?

Mr. BLUMENAUER. Of water quality overall.

Mr. SIMPSON. Does that include—in the 95,000 acres that you are talking about—and I cannot remember the names—but do you go in and thin forests out there, and reduce fuel loads and that type of thing, or does any activity occur in that area?

Mr. ROSENBERGER. The City of Portland and the Forest Service do have a forest fuels management program, as well as a forest fire—you know, or a lightning strike, a way of fighting fires.

One of the things that I would like to clarify, if I can back up just a second, is that the Bull Run Management Unit is mostly owned by the Federal Government and it is managed by the Forest Service, okay, in conjunction with Portland, you know, for the Bull Run Management portion, so it is under single management. The issue here is that two-thirds or so is managed under the provisions of ORCA, and the other one-third of so, mostly the Little Sandy Watershed, is managed under the auspices of a Tier 2 forest under the Northwest Forest Plan.

So one of the things that we want to get out of this is a consistent approach to the entire drainage. That is one of our objectives.

If I can go over to the side of something else here just for a second, just to sort of say where things are, because one of the issues of the Forest Service is the fact that six years ago or five years ago, in 1996, the results of a regional water supply plan said that the Little Sandy was down the list of priorities and would not be the most reasonable thing to develop for a water supply for the metropolitan area. And that was in relationship to some of the other sources in the local area that seem to be more viable.

Well, viability can be ephemeral. Five years later, one of the highly-touted water sources is questionable in the community relative to source water quality and community acceptance. ESA issues arise on some of the other more highly-rated potential sources that came out of the study. So these things kind of move around, and it seems like it is prudent to protect, to the highest

degree possible, a potential water source like the Little Sandy, to be protected as a potential drinking water supply, even at the same time as the expectation is that it is part of the comprehensive approach to address ESA issues in conjunction with the management of the Bull Run at the same time as we meet the water supply needs of the metropolitan community.

Mr. SIMPSON. Then the only increased protection that you are really talking about is access by people, isn't it? I mean, you said you had a forest management plan and a fire plan in the other area, working with the Forest Service and the City of Portland and so forth, so really what you are talking about is just people access?

Mr. ROSENBERGER. We are talking about people access as well as not harvesting timber, as in the rest of the Bull Run Management Unit under ORCA, so that it is consistent with that level of protection.

Mr. SIMPSON. And if they have no plans to harvest timber, then really we are just talking about—I mean, if they did not harvest timber, then it is just access?

Mr. ROSENBERGER. Well, Congressman, I think that what I would say is what you end up, when you put this in law, is you have certainty. It was 1992, I think, the last time that there was timber harvest in the Little Sandy Basin and that watershed. That is nine years ago. We have been using that basin for 109 years. We are planning for the next 109 years. And so what happened in the last nine may not be the best precursor of the future. So from our standpoint, if we can get certainty, if we can get something in the law, we have a much better foundation on which to make our strategic planning.

Mr. SIMPSON. Have you done active fuels reduction in the Bull Run area?

Mr. ROSENBERGER. Congressman, how active that is and how detailed it is is not something—I do not know the answer to that. I cannot describe that. I can provide that to you. Would that be helpful?

Mr. SIMPSON. Yes, it would.

Mr. ROSENBERGER. Okay.

Mr. SIMPSON. Thank you, Mr. Chairman.

Mr. ROSENBERGER. That goes beyond my technical ken.

Mr. MCINNIS. I thank the panel, and I also thank the Committee. As the Committee knows, if you have any further questions, you can ask the witness. We will hold the record open for 10 days for additional testimony.

The panel is excused and the Committee is adjourned.

[Whereupon, at 4:37 p.m., the Committee was adjourned.]

[Additional material supplied for the record follows:]

1. Letter submitted for the record by Denise Boggs, Executive Director, Utah Environmental Congress, on H.R. 451;
2. Letter submitted for the record by Frank Gearhart, President, Citizens Interested in Bull Run, Inc., on H.R. 427; and
3. Letter submitted for the record by Ivan Maluski, American Lands Alliance, et al., on H.R. 427.

April 23, 2001

Ms. Erica Rosenberg
House Resources Committee
Democratic Staff
Washington, DC 20515

Dear Ms. Rosenberg:

The Utah Environmental Congress (UEC) is submitting written comments on H.R. 451: A bill to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

The UEC does not support this bill and recommends that the House Natural Resources Committee reject it. The UEC was notified last week that a hearing was taking place on this bill. Congressman Hansen wrote this bill without any input from the environmental community or the public at large, that we are aware of. I requested a copy of the map that should accompany this type of bill and was told there wasn't one available for review at this time. I contacted Juab County in Utah and was told I would have to pay $25 for a map showing the township and range of the proposed changes. These are public lands and the public should not have to pay to view the proposed changes. The Forest Service also did not have a map available for the public to view.

Sections 2 (b) of the bill states that the lands added are "subject to valid existing rights", but fails to identify what those rights are and to whom they belong. The very title of the bill "and for other purposes" leads a reasoned person to believe that this bill involves more than the adjustment of a wilderness boundary. Mr. Hansen has conducted a closed process on the formulation of this bill and that alone lends suspicion to the process.

In addition, the UEC believes that changing wilderness boundaries is generally poor public policy. H.R. 451 would not add a single care to the Mt. Nebo Wilderness Area, but would simply swap lands around for "other purposes", although no one but Mr. Hansen seems to know what those purposes are.

There is simply no way for the public to make an informed decision on this bill since pertinent information has not been made available. Mr. Hansen is well known in Congress, as well as in Utah to hold hostile views toward the environment in general. The vague wording of the bill and the lack of maps defining the proposed changes make the bill suspicious in the least. Again, the UEC requests that the House Natural Resources Committee reject H.R. 451 for these reasons.

Sincerely,

Denise Boggs

Denise Boggs, Executive Director

1817 South Main Street #9 • Salt Lake City, UT 84115
(801) 466-4055 • Fax (801) 466-4057
www.uec-utah.org

CIIBRI

Citizens Interested In Bull Run, Inc.
PO Box 3426, Gresham, OR 97030-3205
Phone: (503) 665-4777
E-mail: ciibri@teleport.com
FAX: (503) 669-9429

April 20, 2001

Mr. Scott McGinnis
Chair, Subcommittee on
Forests and Forest Health
1337 Longworth
Washington, D.C. 20515-6205

Mr. Jay Inslee
Ranking Member, Subcommittee on
Forests and Forest Health
1337 Longworth
Washington, D.C. 20515-6205

Dear Gentlemen:

We are writing to urge your support for HR 427, the Little Sandy Watershed Protection Act. This bill will extend the boundary of the Bull Run Management Unit to include the hydrologic boundary of the Little Sandy watershed, secure water quality of a potential future source of drinking water for Portland metro area, and protect water quality and habitat of anadromous fish, including steelhead and Chinook, listed under the Endangered Species Act.

The Bull Run has been the primary source of water for Portland since 1895, and now provides water for 1/4 of the State's population. This is one of the few unfiltered water systems that provide pure, clean water in the United States.

We along with Portland area residents and local government officials have worked for sixteen years to protect the Little Sandy Watershed from logging and other hazardous activities that could negatively affect water quality. Passage of HR 427 is critical to achieving permanent, lasting protection of this important resource for present and future generations.

This bill is supported by local and federal government officials, including the City of Portland, City of Gresham, citizen groups, and local and national environmental organizations. We are pleased to add our support to HR 427. Thank you for helping us!

Sincerely,

Frank Gearhart

Frank Gearhart, President

April 19, 2001

Mr. Scott McGinnis
Chair, Subcommittee on Forests and Forest Health
1337 Longworth
Washington D.C. 20515-6205

Mr. Jay Inslee
Ranking Member, Subcommittee on Forests and Forest Health
1337 Longworth
Washington D.C. 20515-6205

Dear Gentlemen:

The groups signed below, representing hundreds of thousands of members and supporters of conservation organizations in Oregon and across the country, are writing to urge you support for Bull Run/Little Sandy legislation, HR 427.

The Bull Run Management Unit is the unfiltered source of drinking water for one quarter of Oregon citizens, contains splendid ancient forests, and is a haven for endangered and rare fish and wildlife. The citizens of the Portland metropolitan region have been working for years for full protection for the Bull Run watershed. These undersigned organizations have worked many years to achieve meaningful protections.

We urge your support for this valuable legislation. The time has come to enact this bill.

Sincerely,

Ivan Maluski
American Lands Alliance

Sybil Ackerman
Audubon Society of Portland

Ric Bailey
Hells Canyon Preservation Council

Regna Merritt
Oregon Natural Resources Council

Michael Carrigan
Oregon PeaceWorks

Joe Keating
Oregon Wildlife Federation

Mari Margil
Sierra Club – Oregon Chapter

Sean Cosgrove
Sierra Club

Bob Freimark
The Wilderness Society