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H.R. 5032 and H.R. 5180

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND
FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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LEGISLATIVE HEARING ON H.R. 5032 TO AUTHORIZE THE SECRETARY OF AGRICULTURE TO CONVEY NATIONAL FOREST SYSTEM LANDS IN THE MENDOCINO NATIONAL FOREST, CALIFORNIA, TO AUTHORIZE THE USE OF THE PROCEEDS FROM SUCH CONVEYANCES FOR NATIONAL FOREST PURPOSES, AND FOR OTHER PURPOSES; AND H.R. 5180 TO DIRECT THE SECRETARY OF AGRICULTURE TO CONVEY REAL PROPERTY IN THE DIXIE NATIONAL FOREST IN THE STATE OF UTAH.

Thursday, July 25, 2002
U.S. House of Representatives
Subcommittee on Forests and Forest Health
Committee on Resources
Washington, DC

The Subcommittees met, pursuant to call, at 10:15 a.m., in room 1334, Longworth House Office Building, Hon. Scott McInnis [Chairman of the Subcommittee on Forests and Forest Health] presiding.

Mr. MCINNIS. The Committee will come to order.

I apologize for the delay, but the House finished last night about 2:30 in the morning. So the absence of our members, they are probably all snoozing, trying to get some sleep.

The Subcommittees on Forests and Forest Health; Fisheries Conservation, Wildlife, and Oceans; and National Parks, Recreation and Public Lands is now in order.

The Subcommittees are meeting today to hear testimony on H.R. 5180, to direct the Secretary of Agriculture to convey real property in the Dixie National Forest in the State of Utah; H.R. 2386, outfitter policy of 2001; H.R. 1811, PILT and Refuge Revenue Sharing permanent funding Act; H.R. 5081, Property Tax Endowment Act of 2002; and H.R. 5032, to convey National Forest System lands in the Mendocino National Forest of California, to authorize the use of proceeds from such conveyances for National Forest purposes.

Two of the bills on our agenda today weren't jointly referred, H.R. 5180 and 5032. Because of members' schedules, H.R. 5180 will be first on the agenda, and 5032 will be at the end. Also, because of today's tight schedule, I am going to ask that each of the Ranking Members and Chairmen from the other Subcommittees simply submit their statements for the record. Thank you.

I ask unanimous consent that Representative Mike Thompson of California have permission to sit on the dais and participate in the hearing when he arrives. Hearing no objection, it is so ordered.

The first two bills on the agenda are the Chairman's H.R. 5180 and H.R. 2386.

I would like to introduce our witnesses from the Department of Agriculture and Interior. Ms. Sherry Barnett, Deputy Assistant Director, Renewable Resources, Bureau of Land Management, will be testifying on H.R. 2386. Ms. Abigail Kimbell, Associate Deputy Chief, National Forest System, will be testifying on each of the bills. I am going to ask that all of you remain at the witness table and testify on each of the bills with the other witnesses.

Our other witnesses for H.R. 5180 is Mr. Kirk Harrison, property owner, State of Utah; and on H.R. 2386, we will have Mr. Horn with America Outdoors, and Mr. Mackey, Public Policy Liaison, Outward Bound USA.

I would remind all the witnesses that we do restrict your comments to 5 minutes. I ask that you as a courtesy recognize that and would ask all the witnesses to go ahead and be seated at the table.

Welcome to the witnesses. I think we will go ahead and start right off. I have no opening statement, and any statement that I have I will go ahead and submit the comments for the record.

Mr. MCINNIS. I now recognize Ms. Barnett for her statement.

STATEMENT OF SHERRY BARNETT, DEPUTY ASSISTANT DIRECTOR, RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT

Ms. BARNETT. Mr. Chairman, thank you for the opportunity to testify today on H.R. 2386, the Outfitter Policy Act of 2001.

The Department appreciates the need to establish consistent terms and conditions for outfitter and guide services and the continuing need to enhance opportunities for recreational use of public lands. Outfitters and guides are important partners to the Department. More than just visitor service providers, outfitters and guides are critical Ambassadors and extensions, if you will, of the public land agencies in providing safe and enjoyable trips or activities for millions of visitors using their public lands.

The Department supports the purpose of H.R. 2386 and shares a common goal to develop consistent terms and conditions while facilitating public opportunities for recreational use and enjoyment of the public lands. However, we note that the Department is currently developing new regulations that we believe will address many of the purposes of this legislation. Also, the Department does have concerns with some of the provisions as outlined in the current bill. We look forward to working closely with the Committee to address them so that we can provide the best services to both outfitters and visitors on our public lands.

We also want to ensure that these policies are beneficial to the visiting public, are fair and equitable and are efficient, consistent, collaborative, convenient and accountable.

Outfitters and guides are critical providers of visitor services, ranking from river rafting, back country horse pack trips, wilderness adventures, dog mushing, and a variety of other activities on the public lands.

To manage these outfitting services provided by public entities, long-term policies and regulations, including a permit system, have been in place for many years for all agencies within the Department. While outfitters and guides are important providers to visitors to the U.S. Fish and Wildlife Service refuges and Bureau of Reclamation projects, the majority of outfitter and guide permits, well over 3,000, are issued and managed by the Bureau of Land Management into the large acreage and the diverse resources managed by the BLM throughout the Western States.

The Department is committed to further enhancing our regulatory framework as identified in H.R. 2386. Recently, BLM has been reviewing policies and procedures and developing updated regulations for managing the partnerships between outfitters, guides, and the Department. Most of the goals in H.R. 2386 are currently contained in existing BLM regulation and policy and are further addressed in the new regulations now under review.

H.R. 2386 proposes a term of 10 years for all outfitter permanents. The Department can support a term of a permit for up to 10 years as outlined in the legislation, providing that flexibility is allowed for agencies such as the B L M to respond to changes in resource conditions or other reasonable and substantial changes such as resource management plan updates or other unforeseen changes in public demand in a given field location.

While the Department recognizes that small business owners, such as most outfitters and guides, often face the need for more stability in order to secure financing, insurance and other demands, it is important that the agency retain the flexibility to manage the issues with outfitters and guides, specifically issues that could affect visitor safety, resource responsibilities, or some other change in the original permit. Such a policy would balance the principles of efficiency and convenience, while ensuring that the visiting public benefits and B L M is accountable to the public for the resources that it manages.

H.R. 2386 addresses allocation of use. For the B L M, the proposed 508 location of use provisions in the bill are a conflict with current regulations and policy.

Under current law and policy, B L M allows outfitters and guides as much freedom as possible under a special recreation permit to operate and use lands as they need to operate their business and provide services to the visitors. Specific allocations are only granted when there has been an established limit of use allowed in a particular area as a result of analysis, public involvement, consultation through the resource management plan process, and an environmental impact statement.

Although an allocation of use may be more secure, such a policy would compromise the principles of fairness, efficiency, and accountability; and it may not be beneficial to the visiting public. We

would be happy to work with the Committee on this issue to better balance these principles so that the outfitters can maximize their operations while providing quality visitor services.

The Department is concerned about provisions for temporary permits. The Department suggests temporary permits should have terms not exceeding a year. This method has worked well. It is fair, consistent, efficient; it requires accountability; and it provides flexibility to the Department so that we can maintain the highest standards required under existing law and policy for visitor protection and resource management. The allocation of use for temporary or transferred permits as allowed for in H.R. 2386 raise similar concerns as expressed earlier for permanent permittees.

We would also like to work with the Committee on the provision in the legislation for approval of transfer permits to ensure timely processing.

H.R. 2386 contains many positive goals and procedures for outfitter and guide services on public lands managed by the Department.

Mr. Chairman, while we discussed most of our concerns today, let me assure you, we stand ready to assist and address remaining issues so the purposes of this legislation can be realized for the many partners that provide outfitter and guide services to many of the public land users. We have offered our concerns today in the spirit of maintaining the highest standards for the public and permittees providing outfitter services. Thank you for the opportunity to appear today to discuss these issues with the Outfitter Policy Act of 2001. I will be happy to answer any questions.

Mr. MCINNIS. Thank you very much.

[The prepared statement of Ms. Barnett follows:]

Statement of Sherry Barnett, Deputy Assistant Director, Renewable Resources and Planning, Bureau of Land Management, U.S. Department of the Interior

Mr. Chairman, thank you for the opportunity to testify today on H.R. 2386, the Outfitter Policy Act of 2001. The Department appreciates the need to establish consistent terms and conditions for outfitter and guide services on public lands and the continuing need to enhance public opportunities for recreational use of Public Lands. Outfitters and guides are important partners to the Department. More than just visitor service providers, outfitters and guides are critical ambassadors and "extensions" of the public land agencies in providing safe and enjoyable trips or activities for thousands of visitors using their public lands.

The Department supports the purpose of H.R. 2386 and shares a common goal to develop consistent terms and conditions while facilitating public opportunities for recreational use and enjoyment of public lands. However, we note that the Department is currently developing new regulations that we believe will address many of the purposes of this legislation. The Department does have concerns with some of the provisions as outlined in the current Bill. We look forward to working closely with the Committee to address them so that we can provide the best services to both outfitters and visitors on our public lands.

Relationship of H.R. 2386 to Existing Regulations and Policies

Outfitters and guides are critical providers of visitor services ranging from river rafting, backcountry horse pack trips, wilderness adventures, and a myriad of other activities on public lands. To manage the outfitting services provided by private entities, long-term policies and regulations, including a permit system, have been in place for many years for all agencies within the Department. For the BLM these are codified as regulations (43 CFR 8372) and are managed through a Manual and Handbook to maintain consistency across the 262 million acres the agency manages. H.R. 2386 also affects other agencies within the Department: the U.S. Fish and Wildlife Service (USFWS), and the Bureau of Reclamation (Reclamation). At the

USFWS, most outfitter or guide permits are handled through a permit system on a case by case method that considers biological soundness, economic feasibility, effects on other refuge programs, and public demand. Reclamation manages its outfitters and other visitor services, through commercial concession operations under a licensing authority using a special recreation permit. While outfitters and guides are important providers to visitors to USFWS refuges and Reclamation projects, the majority of outfitter and guide permits—well over 3,000—are issued and managed by the BLM due to the large acreage and diverse resources managed throughout the western states.

Recently, BLM has been reviewing and updating policies and procedures to develop updated regulations for managing the partnership between outfitters, guides, and the Department. These regulations have not yet been finalized, but most of the goals in H.R. 2386 are currently contained in existing BLM regulation and policy as well as further addressed in the new regulations now under review. The Department is committed to further enhancing our regulatory framework as identified in H.R. 2386. We also want to ensure that these policies are beneficial to the visiting public, fair and equitable, efficient, consistent, collaborative, convenient, and accountable.

Special Recreation Permits

Section 6(e)(1)(D) of H.R. 2386 proposes a term of 10 years for all outfitter permits. The Department can support the term of a permit for up to 10 years as outlined in the legislation providing that flexibility is allowed for agencies such as the BLM to respond to changes in resource condition or other reasonable and substantial changes such as Resource Management Plan (RMP) updates or other unforseen changes in public demand in a given field location. While the Department recognizes that small business owners, such as outfitters and guides, often face the need for more stability in order to secure financing, insurance, or other demands, it is important that the authorized officer in an agency has the flexibility to manage issues with an outfitter or guide that may affect visitor safety, resource responsibilities, or some other change in the original permit. Such a policy balances the principles of efficiency and convenience while ensuring that the visiting public benefits and that BLM is accountable to the public for the resources that it manages.

Allocation of Use

H.R. 2386 addresses Allocation of Use in Sections 4(2) and (9). For BLM, the proposed allocation of use provisions in the Bill are a conflict with current policy and regulations. BLM issues permits on a first-come, first-serve basis until the affected area's desired use level is reached. The desired use level is determined primarily through the RMP process which is the primary tool under the Federal Land Policy and Management Act (FLPMA) to allocate use of Federal lands managed by the BLM. Under current law and policy, BLM allows outfitters and guides as much freedom as possible under a special recreation permit (SRP) to operate and use lands as they need to operate their business and provide services to the visitors. Specific allocations are only granted when there has been an established limit of use allowed in a particular area due to analysis, public involvement, and consultation through the RMP and associated Environmental Impact Statement (EIS). The provisions for allocation of use currently in H.R. 2386 conflict with these existing policies and laws and may also have the unintended consequence of limiting competition in a certain area, thereby compromising the competitive approach that currently provides the highest quality services for visitors. In addition, allocation of use could be contrary to the public interest currently protected under FLPMA by providing an implied or perceived "right and ownership" to the outfitter's permit contrary to current provisions. Although allocation of use may be convenient, such a policy also would compromise the principles of fairness, efficiency, accountability, and may not be beneficial to the visiting public. We would be happy to work with the Committee on this issue to better balance these principles so that the outfitters can maximize their operations while providing quality visitor services.

Temporary Permits

The Department is concerned about provisions for temporary permits. The Department suggests temporary permits should have terms not exceeding one year. Currently, a probationary period is granted to maintain the highest safety and resource protection values for visitors, while providing new outfitters and guides the opportunity to grow their business. If an outfitter's performance is found to be satisfactory, a second one year extension is easily granted. This method, which is fair, consistent, efficient, and requires accountability, has worked well while providing flexibility to the Department to maintain the highest standards required under existing law and policy for visitor protection and resource management.

Transfer of Temporary Permits

The allocation of use for temporary or transferred permits, as allowed for in H.R. 2386, raise similar concerns as expressed earlier for permanent permittees. We would like to work with the Committee on the provision in the legislation for the threshold for automatic approval of transfer permits. As written in H.R. 2386, the 90 day threshold for automatic transfer may cause unintended problems for both the agencies and the outfitter permittees in complex cases or in the case of unforseen workload issues.

Fee Structure Issues

While many of the provisions in H.R. 2386 for fees are consistent with current regulation, a fee structures based on whether a permittee can conduct a "successful business venture"may not be fair and equitable, consistent, efficient, and accountable. While the agencies strive to work in the most reasonable way to accommodate the needs of running an outfitting or guide service, fees for commercial operations on public lands must provide a fair market return to the American public. Existing regulation provides a fair and equitable fee structure that has been working well for both outfitters and the Department's land managing agencies.

Access to Records and Performance

We would like to work with the Committee to clarify the provisions in H.R. 2386 for access and auditing of business records and performance evaluation procedures. While we agree with the principle of accountability and with most of the provisions in H.R. 2386 for these activities, we would like to suggest some clarification amendments to protect the public interest in these permits and maintain the highest and fairest methods for managing the outfitter and guide services provided to the public.

Conclusion

H.R. 2386 contains many positive goals and procedures for outfitter and guide services on public lands managed by the Department. Mr. Chairman, while we discussed most of our concerns today, let me assure you we stand ready to assist and address remaining issues so that the purposes of this legislation can be realized for the many partners that provide outfitting and guide services to millions of public land users. We have offered our concerns today in the spirit of maintaining the highest standards for the public and the permittees providing outfitter services.

Thank you for the opportunity to appear today to discuss these important issues in the Outfitter Policy Act of 2001. I will be happy to answer any questions you may have.

Mr. MCINNIS. Mr. Horn.

STATEMENT OF WILLIAM P. HORN, AMERICA OUTDOORS

Mr. HORN. Thank you, Mr. Chairman. I appreciate the opportunity to appear on behalf of America Outdoors.

America Outdoors is a professional association of over 600 outfitters, guides, dude ranchers, and others who provide a wide range of outdoor recreation services to the public. Substantial segments of the public need and rely on guides and outfitters to provide recreational access to the public lands.

Indeed, the primary purpose of this bill is to ensure the accessibility to public lands by all segments of the population by assuring that quality recreational services are available. Indeed, the outfitted public, if you will, is the prime beneficiary of this measure; and we are fortunate that this element of the public has strongly supported Chairman Hansen's bill.

I know that the Committee is in receipt of a letter from one noteworthy public user of guide services. Former Secretary of the Interior, Cecil Andrus, under President Carter, has written the Committee endorsing H.R. 2386 as a necessary and beneficial act to facilitate guide services and public access to public lands.

The need for this bill arises from the inconsistent rules and policies implemented on the ground that often hinder or prevent guides

and outfitters from providing quality services. Its inconsistent administration creates almost crippling uncertainties for many individuals; and we are able to provide this Committee with a litany of horror stories, if you will, that demonstrate the need for clear statutory guidance, statutory guidance that presently does not exist.

We note that Congress has previously established statutory standards for the administration of guide and outfitter permits on National Park Service lands. America Outdoors is persuaded that it is fully appropriate to set similar legislative standards for other public land systems, including national forests, BLM lands, and wildlife refuge units.

Now, the Outfitter Policy Act provides some of the basic terms and conditions necessary to sustain the substantial investment often needed to provide the level of service demanded and needed by the public. The bill also provides the agencies ample flexibility to adjust use, impose reasonable terms and conditions on permits, and to assure that the permit and permit administration is consistent with agency resource management plans and policies.

We fully appreciate the need to protect and conserve the basic public land resources upon which guides and outfitters and the outfitted public have a chance to recreate. We need to state clearly and unequivocally that the bill does not allocate use opportunities for guides and outfitters. Allocation issues remain at the discretion of the land managing agencies under its other statutory and regulatory frameworks. There are no use ownership rights confirmed by this measure on permits issued, and the allocations that are issued may be changed subject to due process during the term of the permit. Any charges to the contrary that this bill creates use ownership in permits is trumped-up nonsense and belies a misreading of the legislation.

One critical feature of the bill is its provision for performance-based renewal. Each outfitter is to be evaluated annually according to the services provided and rated by the agencies as good, marginal, or unsatisfactory; and an outfitter with more than one annual unsatisfactory rating does not earn the right to renewal. Consistent good performance is necessary to achieve that right, and the way the bill is written in essence is that an outfitter needs to bat 900. They need to provide satisfactory services 9 years out of 10 in order to assure a performance-based renewal. We believe that is an important incentive, but it sets a very, very high bar to assure that the public is being provided quality services during the terms of a permit.

Now there have been questions about the need for the legislation, and some have contended that the agencies have sufficient authority. We, unfortunately, continue to encounter grossly inconsistent on-the-ground circumstances and an utter lack of stability in too many areas, and we are convinced that statutory guidance provided by this measure will indeed help eliminate these inconsistencies.

On behalf of America Outdoors, we greatly appreciate the leadership of Chairman Hansen and other members of the Committee for introducing H.R. 2386; and we look forward to working with the Subcommittees, the Committee, and indeed the agencies to refine

the measure and hope that it can be enacted within the context of this Congress. Thank you.

Mr. MCINNIS. Thank you, Mr. Horn.

[The prepared statement of Mr. Horn follows:]

Statement of William P. Horn, America Outdoors

Mr. Chairman: On behalf of America Outdoors, I appreciate the opportunity to appear before the Committee to register our strong support for H.R. 2386, the Outfitter Policy Act.

America Outdoors is a professional association of outfitters, guides, dude ranchers and others who provide a wide range of outdoor recreation services to the public. With over 600 member entities, it represents outfitters and guides as well as the public they serve to maintain access to recreation resources while pursuing a goal of responsible shared use of our precious natural heritage.

Substantial segments of the public need and rely on guides and outfitters to provide recreational access to public lands. These outfitters and guides provide opportunities for outdoor recreation for many families and groups who would otherwise find the backcountry inaccessible. To ensure accessibility to public lands by all segments of the population, quality recreation services must be available to the public. That is the primary purpose of the Outfitter Policy Act.

The outfitting business is highly competitive. Multiple operators provide the same or similar services at most resources. H.R. 2386 assures competition that drives quality services and will provide a level, consistent regulatory playing field for those outfitters. Present inconsistent rules and policies often hinder or prevent guides and outfitters from providing quality services, and inadequately provide for evaluation of guide/outfitter operations to encourage and assure quality services. Inconsistent administration of existing policies also creates often crippling uncertainties for quality operators.

Congress has previously established statutory standards for administering guide/outfitter permits on National Park Service (NPS) lands. Therefore, it is appropriate to set similar legislative standards for other public land systems including National Forests and public domain administered by the Bureau of Land Management.

Congress has previously determined that guides and outfitters need reasonable permit terms and conditions and has addressed in NPS concessions legislation permit length, performance evaluation, renewals, fair fees, and regulated transfer of permits. The Outfitter Policy Act provides the basic terms and conditions necessary to sustain the substantial investment often needed to provide the level of service demanded by the public. However, the bill provides the agencies ample flexibility to adjust use, conditions and permit terms, which must be consistent with agency management plans and policies for the resource. A stable, consistent regulatory climate which encourages qualified entrants to the guide/outfitting business and gives the agencies and operators clear directions are among the goals of the bill.

We need to state clearly and unequivocally the bill does not allocate use opportunities to guides and outfitters. Allocation issues remain at the discretion of the land managing agencies. There are no "use" ownership rights associated with permits since use allocations may be changed, subject to due process, during the term of the permit. Also, Section 5 of the bill specifically protects the rights of private citizens to use their public lands without the services of a guide or outfitter.

America Outdoors has worked hard and long with Federal agency officials on this measure. Over a two-year period more than 125 technical and substantive changes were incorporated into the draft legislation to accommodate agency interests. For example, references to "profit" were changed to "successful business venture" to reflect the agency concerns that the legislation should not infer any right for a outfitter/guide to realize a profit. Language setting a two-year probationary period for new authorized outfitters was added. The liability section was completely rewritten to balance the interests of the agencies and those of the outfitters. Most importantly, amendments were added to expressly authorize changes in permit terms and conditions, at agency discretion, to reflect changed environmental conditions or circumstances. Our review of H.R. 2386 indicates that the agencies concerns are fully reflected in its text.

The bill provides for performance-based renewal. Each outfitter is evaluated according to the services provided and rated "good," "marginal," or "unsatisfactory." An outfitter with more than one annual "unsatisfactory" rating does not earn the right of renewal. Consistent good performance enables an outfitter to obtain renewal of a permit without engaging in a new round of bidding. This renewal system encourages outfitters to provide quality services by providing them with incentive to

maintain a high level of service. By allowing an outfitter to "earn" renewal through quality outfitting services, the agencies can ensure that outfitters maintain quality operations and invest the capital needed to provide these services.

There have been questions about the need for this legislation. Some have contended that the agencies have sufficient authority to achieve these goals and no statutory guidance is necessary. Unfortunately, outfitters and guides continue to encounter grossly inconsistent directions from land managers and an utter lack of stability in too many areas. Last week we learned of a case that is symptomatic of the problems this bill would correct. Two years ago an outfitter was directed by the Forest Service to upgrade the facilities at one of its camps. As a result, the outfitter invested thousands of dollars in new tents, tent frames, and a small boardwalk system which were all approved by the responsible Federal official. The agency also directed the outfitter to work with a state agency on water quality issues. The state agency insisted that traditional pit toilets were inadequate and ordered that a small septic system be installed. At substantial cost, the outfitter complied.

Then a new Federal District Ranger assumed office. The outfitter was informed that the upgraded facilities were insufficiently "temporary" and would have to be either substantially scaled down or removed. Additionally, the new official objected to the septic system, questioned the jurisdiction of the state agency in the matter, and has told the outfitter that the septic system will likely have to removed at the outfitter's cost. To make matters worse, this outfitter is presently operating on annual permits and the Ranger has specified that compliance will be an "ongoing process" and that "annual modifications (to his permit) are highly likely." The outfitter faces bankruptcy if compliance with the new edicts a complete reversal of the prior directions is enforced. These kinds of horror stories come up often and demonstrate the need for statutory standards. At present, the agencies have almost unfettered discretion which can be too readily abused.

In addition, as noted earlier, Congress has twice addressed these issues with respect to outfitter and guide operations on National Park Service lands. Statutory standards were first established in 1965 in the original concessions Act and that system was amended with 1998 legislation. It is clearly appropriate to set similar statutory standards for other public land systems.

America Outdoors greatly appreciates the leadership of Chairman Hansen and other Members of the Committee for introducing H.R. 2386. The case for this legislation is clear and we stand ready to work with Committee in any way that we can to secure enactment of this important bill.

Mr. McINNIS. Mr. Mackey.

STATEMENT OF CRAIG W. MACKEY, PUBLIC POLICY LIAISON, OUTWARD BOUND USA

Mr. MACKEY. Thank you. Good morning, Mr. Chairman, and members of the Committee.

I am Craig Mackey and I represent Outward Bound USA, a nonprofit educational institution and a leader in wilderness and experiential education. For over 40 years, Outward Bound has had the privilege of conducting extended back country expeditions to teach young people leadership, self-reliance, and outdoor skills. Federal lands and waters are our classrooms.

I represent a leader in wilderness education. I also speak to you as an outfitter. All of Outward Bound's use on Federal lands is fully authorized commercial or outfitted use.

Since 1994, Outward Bound has worked with the outfitter community, Congress, and the Federal land agencies on concessions and permit reform. Through numerous negotiations and bills, Outward Bound has focused on five consistent themes:

No. 1, the key roll educators like Outward Bound and other outfitters play in providing a vast array of quality opportunities and experiences on Federal lands.

No. 2, the growing role outfitters play in furthering agency objectives, such as education, interpretation, safety, and resource protection.

No. 3, the need for and benefits of congressional action in establishing the foundation and philosophy for outfitted activities and use on Federal lands.

No. 4, the tangible benefits to the public, the outfitter, the manager of a performance-based system for the award and renewal of special use permits.

And, No. 5, inherent to this performance-based system is the subordination of fees or revenue generation for the agencies or the Federal treasury.

I am here to testify this morning because all five of these themes are embodied in H.R. 2386. And why is it important to testify this morning?

First, we support the codification of outfitting and guiding in law. The connection between the outfitter and the American public is undeniable. Americans continue to look to public lands for adventure and renewal. Many look to outfitters to provide the access, the equipment, the expertise, and the interpretation. What the outfitters seek is recognition of these partnerships and the value they provide to both visitors and our Federal system of public lands.

Second, we are here to promote accountability and incentives. Accountability, incentives, and performance are intertwined. The goal should be to identify and retain outfitters who will team with the agencies in providing quality visitor services, education and interpretation, resource protection, and a fair return to the government.

Third, we are concerned about trends evolving in the field. Outfitters are not afraid of competition. We operate daily in a highly competitive market-based economy. We are concerned about competition for competition's sake. The market is competitive, turnover exists, and turnover is not always healthy. Regional permit administrators will tell you that business failures among new permittees are a leading administrative and fiscal drain for the agencies.

Outfitters are not afraid of appropriate fees. Outward Bound may pay more fees on more Federal units than any single entity in the country, and we do so willingly for the privilege of operating on the greatest system of public lands in the world. We are concerned about competitive or open fee bidding for the permits. The danger is the enhancement of Federal or field office revenues at the cost of quality programs and services, and let me provide one quick illustration.

Service is at the core of Outward Bound. Young people repair trail or build bridges to learn teamwork, citizenship, and community values. Outward Bound wrote the book on safety protocols for wilderness adventure and outdoor education programs. We raise over $2 million a year in scholarship funds to promote economic, ethnic, gender, and age diversity in our programming on public lands; and we teach with at least two instructors on every course to maximize safety and educational paradigms.

Each of these elements is at the core of Outward Bound, woven into our mission part of how we do business. Each has become a formal or de facto partnership with our public lands, but all would be jeopardized by fee bidding. If the goal is management based on

common mission, partnerships, incentive, and performance, what the agencies need is a strong program to evaluate outfitters. This includes the authority and will to eliminate inappropriate practices and bad outfitters. It also includes the tools and capacity to clean up illegal outfitting. The agency will find quality outfitters willing to work under tough compliance standards if afforded the incentives of performance-based renewal.

I would be happy to answer any questions. Thank you.

Mr. MCINNIS. Thank you, Mr. Mackey.

[The prepared statement of Mr. Mackey follows:]

Statement of Craig Mackey, Public Policy Liaison, Outward Bound USA

Mr. Chairman and members of the Committee, Outward Bound would like to thank you for the opportunity to address this hearing on the Outfitter Policy Act.

I represent Outward Bound USA, a non-profit educational institution and a leader in wilderness and experiential education. For 40 years, the Outward Bound system has teamed with America's wild lands to provide adventure-based education to youth and adults. Outward Bound has the privilege of conducting extended backcountry expeditions primarily on public lands to teach leadership, personal development and wilderness values.

The Outward Bound system in this country comprises five wilderness schools and two urban centers. We operate in 25 states and scores of forests, ranger districts and resource areas. From the Carolinas to Alaska; from the forests of New England to the Sierras; Outward Bound has four decades of experience dealing with an astonishing array of permits, policies and administrative procedures.

Outfitted Use

I speak to you today representing a leader in the non-profit wilderness and experiential education communities. I also speak to you and an outfitter and guide. Outward Bound as is the case with sister organizations such as the National Outdoor Leadership School (Lander, WY) and Wilderness Inquiry (Minneapolis, MN) operates as a full "commercial" user of Federal lands. As a non-profit, educational organization we compete for and hold Federal concessions authorizations in the same manner as for-profit members of the outfitting and guiding industry. All of Outward Bound's operations on Federal lands are fully authorized concessions or permits for which we compete for use, comply with administrative procedures and pay appropriate fees.

At this juncture, I should state that the Outward Bound system is in full support of this classification as commercial users of Federal lands. In valuing our ongoing partnerships with land managers and America's wild lands, Outward Bound recognizes the need for and merits of proper administration and management of these resources. This includes competing for and defending our use; performing as an accountable user of public resources; protecting the public health and safety; paying an equitable and appropriate share of the cost of administration and management; and working with land managers to educate the American people on natural resources, public lands, responsible recreation and wilderness values.

Effective and efficient permit administration should work to strengthen these relationships by recognizing and sustaining the highest quality visitor services and partnerships.

Partners on Public Lands

Wilderness educators such as Outward Bound and other members of the outfitter community play vital roles in working with Federal resource managers to meet the demand for quality educational and recreational opportunities, and in meeting agency missions related to interpretation and resource protection.

The importance of outfitters and guides as partners and service providers is acknowledged by the Forest Service in its publication in 1997 of a staff reference entitled "Guidebook on Outfitting and Guiding":

> On the public lands of the United States, and in particular the National Forests, outfitter and guides provide visitors seeking their assistance a quality experience as an extension of the agency's mission. Outfitting and guiding provides a small fraction of the total visitor days experience on the National Forests, but it is an important segment to the visitor, the agency, the resources and the economy of the communities where outfitters are based.

Through legislation such as H.R. 2386, Congress must establish the foundation or the vision from which the agencies and their private-sector partners can collaborate to meet the public's goals and aspirations in utilizing their public lands. The agencies' challenge is to identify and retain those permittees that will:

- Partner with the agency in providing quality visitor services.
- Partner with the agency in protecting the resource.
- Partner with the agency in providing educational and interpretive services.
- Provide a reasonable return to the agency.

Public Lands: A Spectrum of Values, Benefits and Opportunities

Public lands and waters host an incredible range of values and benefits. The American people draw from and visit their public resources in a broad array of ways and means. An increasingly diverse America looks to public lands to satisfy ever broadening wants and needs.

In frontcountry, backcountry and wilderness management, agencies staff needs to recognize that each unit holds an inherent range of values: recreational, educational, biological, cultural, spiritual, historical and others. In addition to resource protection, a fundamental element of each agency's mission is to identify, manage for, provide interpretive services about, and accommodate public interest in the elements that constitute each unit's inherent values.

Key provisions of H.R. 2386 relating to performance-based renewal, fee considerations, etc., will allow educators, outfitters and guides to provide diversity in the commercial opportunities offered on public lands and the people who enjoy them.

The Outfitted Public

By choosing to visit public lands under the guidance of trained, professional instructors, Outward Bound students become members of the outfitted public. For many of our students this is their first exposure to Federal lands and certainly to the vast tracts of wilderness and backcountry America has to offer. Given the young age of our students, parents are looking for the experience and safety offered by professional programs such as Outward Bound. Older students come for the Outward Bound experience, but also to learn the wilderness ethic, stewardship and safety skills that will allow them to be intelligent, efficient users of our public resources.

Given the dramatic decline in agency field staff assigned to wilderness and backcountry management, Outward Bound has now become a de facto provider of educational, interpretive and safety information on resources where we operate.

People want to know more about the wild lands they visit. This knowledge makes a difference in their lives. It increases their own quality of living. The majority of Americans polled recently by Roper Starch believe that even the unstructured experiential aspects of outdoor recreation play a positive role in reducing various key social concerns, such as childhood obesity, parent/child communication, and tough social problems such as juvenile crime, underage drinking, and illegal drug use. Lessons learned in wilderness make us less tolerant of urban decay when we return home, and more prepared to take effective action to improve our communities:

> The importance of recreational use as a social force and influence must be recognized and its requirements met. Its potentialities as a service to the American people, as the basis for industry and commerce, as the foundation of the future economic life of many communities, are definite and beyond question.
>
> ROBERT Y. STUART
> FOREST SERVICE CHIEF, 1928–33

Who will teach these important lessons to visitors to public lands? Too few personnel in the field and an overwhelming workload have distanced rangers from their role as hosts in parks, forests, and on public lands. Agency personnel simply cannot reach out to each of the millions of families and individuals that visit each year. Face to face interpretive talks in visitor centers are an important component of the educational effort, but these are not the same opportunities to educate as those teachable moments that occur from one minute to the next on an extended outfitted expedition.

Codification of Outfitting and Guiding

Given the historical and ongoing role of outfitting and guiding on Federal lands, and the sizeable and growing body of Federal regulation, Congress needs to play a direct role in establishing the philosophy and direction of Federal oversight. Congress has established and updated statutes for administering outfitter activities in the National Park Service.

H.R. 2386, by establishing similar legislative guidelines for the Forest Service and Bureau of Land Management, will provide direction and consistency for outfitters and the outfitted public.

If providing the public with high quality commercial recreation and education services while preserving the resource for future generations are the goals; Federal statute and agency regulation must:

- Recognize both the role and value of outfitters and guides in providing access to and enjoyment of quality recreation and education experiences.
- Recognize the outfitters need for a reliable and stable business climate. Beginning with reliable and consistent permit mechanisms, resource managers have an obligation to work with commercial operators in a manner that is consistent with the development and operation of successful, competitive, long-term business operations.
- Establish incentives for managers and concessioners to effectively meet public demand for commercial services on public lands while satisfying agency mandates for resource protection. For outfitters and guides, the foundation should be performance-based permit renewal based on a system of regular performance evaluations.
- Create incentives for sound resource management and stewardship. Incorporation of resource protection and visitor education elements in performance standards will establish outfitters as full partners in ensuring these resources remain unimpaired for future generations.
- Recognize and accommodate the full spectrum of outfitted services provided on these Federal lands. For most outfitters, the full range of "market forces" is a daily reality, including strong competition and the need to excel through superior customer service.
- Recognize the undeniable role fees will play in the future of authorized use on public lands. The goal should be to ensure that franchise and user fees equitably compensate for the privilege of operating a business on public lands. Return to the government, while a fundamental element in the awarding and renewal of permits, should not supplant customer service and resource protection as the primary factors in these processes. Fees should be applied equitably across all public land users and user groups. Fees should stay with the resource or collecting agency. Franchise and user fees should be used to supplement, not supplant, congressional appropriations.

Each of these elements is represented in H.R. 2386.

Performance as the Foundation

In the long run, effective management is predicated on determining the public demand for goods and services and identifying and retaining quality operators to meet those demands. A system which provides incentives for the resource manager and the permittee will prove to be the most effective and efficient, serve the needs of the manager and permittee, and, most importantly, serve the long-term goals of providing quality visitor services and protecting the resource.

H.R. 2386 provides the framework for performance-based renewal and places fee or revenue generation as a secondary consideration in the award and renewal of outfitter permits.

Contractual agreements, based upon a program of formal performance evaluations coupled with performance-based permit renewal, represent the most effective means of ensuring permitting practices meet both agency objective and the public's needs.

The awarding of a permit is typically based upon three primary factors:

- The experience, related background and past performance of the outfitter.
- Response to prospectus requirements for quality visitor services.
- The offeror's financial capacity.

Herein lie the incentives for both the manager and the concessioner. These factors offer significant and substantial opportunities for competition in the awarding, renewal or denial of concessions. Categories 1 and 2 offer managers the opportunity to identify non-compliant, dangerous or illegal performance, as well as to reward exemplary performance.

The system must be anchored upon the value that commercial operations can provide to the public and to the land itself. Fees must remain subordinate to other performance-related aspects of the evaluation system. Outfitters are not afraid of competition, evaluations or reasonable fees. We are afraid of competition for competition's sake and evaluations that weigh general Federal revenue enhancement above quality service

What is at stake here is relatively straightforward. Should the award of a Federal permit be based upon on-the-ground performance or how much money a prospective outfitter can offer the Federal Government? Are consolidation of the outfitting in-

dustry and enhancement of Federal revenues the goal or should we establish permit administration policies that recognize and enhance:

- Common missions
- Partnerships
- Diversity in opportunities offered and publics served
- Incentives and performance?

I will close with one illustration: Outward Bound, as a non-profit educator, has well-defined institutional missions related to diversity on our courses. The Outward Bound system in the United States raises over two million dollars annually in scholarship funds to promote economic, ethnic, gender and age diversity among our students.

Agency documents, speeches and memos detail the desire to attract and educate new, diverse populations of American in the enjoyment and preservation of Federal lands.

The more agency concession, permit and fee policies promotes incentives, common missions and partnerships, the more emphasis Outward Bound can place on diversity. To the extent the agencies promote revenue generation and competition through fee bidding, Outward Bound is forced to downplay scholarships and focus on boosting course costs.

Performance-based renewal and consideration of fees as a secondary factor as outlined in H.R. 2386 will allow Outward Bound and other educators and outfitters to operate as effective and efficient providers of quality programs on Federal lands.

Mr. MCINNIS. I want to compliment on Outward Bound. Two of my three kids went there. And my brother, ironically—kind of an interesting story—was one of the first people—I think I have told you this. I am not sure.

Mr. MACKEY. I was wondering if you were going to tell your Outward Bound story.

Mr. MCINNIS. It could be of interest.

Outward Bound was really the first, I think, in the field out there. My brother went to Outward Bound probably in 1965, maybe 1963, when Outward Bound was first started.

Mr. MACKEY. I think it was 1963. It started in Colorado, in Marble, Colorado in 1961.

Mr. MCINNIS. Which—our whole family lives about 30 miles from Marble.

Mr. MACKEY. Right.

Mr. MCINNIS. And of interest, he and his—for the group here. He and another young man were climbing with their instructor up Maroon Bells, which is known for its rotten rock, meaning that it peels off kind of like an iceberg at times. And a rock came off the top and, unfortunately, cut the instructor's head off, close to it. And here are these two kids, 14 and 15—and I think you probably only had one fatality or maybe two during the entire history, and that was the first one.

Outward Bound was tough. They—some campers down below saw what had happened. These two young men managed to get off the mountain, and they went up and brought the instructor down. Then they brought another instructor up and everything went back to camp except the two kids and the instructor. The instructor and Outward Bound make them hike, go right back up past the same spot, because Outward Bound was sure they would never climb again if they didn't force them up.

Mr. MACKEY. It is called getting back in the saddle.

Mr. MCINNIS. Yeah.

Mr. MACKEY. I am not sure we would do that today.

Mr. MCINNIS. Well, I don't know. Now, today, maybe we are too politically correct. But I will tell you, in all three cases I think it was a life experience for them.

You do an outstanding job with Outward Bound. I can commend you, and also our former director here, Mr. Udall, who did an excellent job while he ran Outward Bound in Colorado. I know you are proud to have Outward Bound out here.

Mr. MACKEY. For good or bad, he is the reason I am sitting here this morning.

Mr. MCINNIS. Well, that is probably debatable. But I think—because I think you are both good. And I think, in either case, Outward Bound is well served.

So, I appreciate you coming. I know it is a little off the subject there, but I am proud of you guys out there and gals.

Let me move now to Ms. Kimbell, who will offer testimony on both the outfitter bill and H.R. 5180.

I hate to start off this way, Ms. Kimbell, but I am reading today's newspaper, a little comment about one of your district rangers in regards to the Chairman of the whole Committee, who says on the bill:

What's Hansen—referring to our Chairman—got to lose? It's his last term. He's going to do something nice to cut the government's throat.

It is from a ranger, Devon Kilpack. You might pass on to Mr. Kilpack that his comments are seen as unfortunate and misplaced and that it is probably more appropriate he let you speak for the Forest Service instead of him.

Ms. KIMBELL. Mr. Chairman, I only learned of those comments moments before coming in the room. They are most unfortunate, and they do not reflect the attitude and the relationship-building need of the agency, certainly not of the region or the forest.

The regional forester was contacted this morning. I will be visiting with the forest supervisor immediately upon leaving here. Those comments were most unfortunate; and, again, they do not reflect the attitude of the agency.

Mr. MCINNIS. Thank you. You may proceed, and thank you for being here today.

STATEMENT OF ABIGAIL KIMBELL, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM

Ms. KIMBELL. Thank you.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on these two bills. I would like to briefly discuss the Outfitter Policy Act of 2001 and H.R. 5180, conveyance of certain lands on the Dixie National Forest.

H.R. 2386, the Outfitter Policy Act of 2001, establishes terms and conditions for use of Federal lands by outfitters. The Department of Agriculture supports the purpose of H.R. 2386 but would like to work with this Subcommittee to resolve several important issues that we feel would make this an even better bill.

There are millions of people who lack outdoor skills yet want to experience the beauty and diversity of their public lands. Many of these Americans seek out the skills and experience of commercial outfitters and guides to help them enjoy a safe and pleasant jour-

ney through spectacular forests and deserts and over rivers and lakes often found only on Federal lands. Without outfitters and guides, many of our citizens and international visitors would never experience the awesome grandeur of America's great outdoors.

For more than half a century, the Forest Service has had a positive working relationship with the outfitter guide industry. We currently have approximately 6,000 permit holders who provide very necessary and sought-after services. These services include hunting and fishing trips, llama treks, Jeep tours, whitewater rafting, prehistoric treks, and many, many other opportunities. The providers of these services range from traditional small-family operations to large commercial entities, small local government programs, large educational institutions, both non-profit and for profit.

Commercial outfitters and guides serve as an extension of the agency by introducing the public to their lands and by providing positive environmental understanding and teaching skills to enjoy the outdoors. In fact, outfitters and guides have often gone above and beyond the requirements of their permits. One example is the Raft Alone program in our Region 4 where police officers raft with at-risk youth.

In addition, as the agency has become more involved with various tourism associations, we have learned that many international groups wish to provide eco-tourism trips to the United States to visit our public lands.

This positive relationship continues, but increasingly complex challenges in managing the national forests, aged business practices, competing demands have placed an increased burden on the agency and its outfitters and guides and is affecting this critical relationship. This challenge can be illustrated by the explosion in the types of outfitter and guide activities competing for a limited resource, increased competition within the general public for space, increased activism by the public on how they wish to see their public land managed, and, again, those aged business practices creating inefficiencies in the day-to-day program administration. There is also the need to update agency policy, including obtaining market value for rights and privileges granted in the use authorization.

Because of these challenges, I can understand why venerable, well-established businesses feel threatened and devalued.

Our challenge is to manage this program by having an efficient business management approach and a balanced administrative system that addresses public concerns and provides a pleasant, safe, and healthy visitor experience while protecting the environment. In addition, we must address local and national program management issues protecting the interest of the government, while using appropriate business practices that allow business stability for our outfitters and guides. We have been working with all interested parties and other agencies for the last couple of years to resolve these issues, and we would like to expedite that process.

Ms. KIMBELL. On H.R. 5180, H.R. 5180 directs the Secretary of Agriculture to convey approximately 560 acres of National Forest System land within the Dixie National Forest to Kirk Harrison. The conveyance is intended to be a fair market value for all right, title, and interest of the United States using appraisal standards

acceptable to the Secretary. While we do not oppose the bill, we believe it may be unnecessary. We have been working with Mr. Harrison since the 1990's and are optimistic that a solution can be found that satisfies his needs.

Mr. Harrison owns property in the town of Pinto, located in Washington County in Southwest Utah. Pinto consists of approximately 767 acres of private property, including Mr. Harrison's property, and is surrounded by the Dixie National Forest. The Forest Service has thoroughly reviewed Mr. Harrison's title claims and, under existing laws and authorities, is unable to approve or give validity to these claims. In addition, there are a number of other factors that must be taken into consideration.

All of the Federal lands surrounding Pinto and subject to this bill lies within the East Pinto grazing allotment currently used by two local families. Removing acres from the allotment would result in a prorated reduction in permitted numbers of cattle of approximately 98 percent.

The property of another landowner in the Pinto area is partially bordered by Harrison's property and otherwise adjacent to National Forest System lands. If the proposed 560 acres were transferred to Mr. Harrison, the other landowner's property would be totally surrounded by Mr. Harrison's property and without guaranteed access.

In addition, conveying 560 acres to Mr. Harrison would place all known sources of water in the Pinto Valley on private land. Water rights of others and their use of those rights could be affected if this land goes into private ownership.

The sale of up to 560 acres to Mr. Harrison would increase the amount of private land in Pinto by over 70 percent. The future subdivision of this land could change the rural character of the area and create additional issues with other long-term owners in the area.

The Forest Service has processed two legitimate cases under the Small Tracts Act in the Pinto area. In one case, 4.78 acres were conveyed to a local family based on a color of title claim. In the second, an interchange occurred with a net gain of 1.38 acres for the forest. These families may feel that a land sale or exchange with Mr. Harrison is inequitable.

In 1996, Mr. Harrison submitted three Small Tracts Act applications totaling 25 acres to the Dixie National Forest. The basis of the application was occupancy of National Forest System lands in the form of fences and cultivation. In 1997, after a thorough review, it was determined that the application did not meet the criteria of the Small Tracts Act.

We do not oppose this bill, but we believe it is unnecessary because there are reasonable alternatives. We would support selling Mr. Harrison 20 acres involving the disputed area. This would include Mr. Harrison's entire Small Tracts Act application called Springfield and the Small Tracts Act application for Platt Field. The third Harrison Small Tracts Act application, Reservoir Field, is not included because the Harrison family did not own the adjacent property until after 1965.

The sale of 20 acres to Mr. Harrison would remove a spring and over a mile of Pinto Creek from public ownership. Land exchange is an important tool for solving a variety of critical resource and

social issues, and we would prefer a public interest equal-value land exchange between Mr. Harrison and the National Forest, either in the immediate Pinto area or within the State of Utah.

Mr. Chairman, we look forward to working with you and other members of the Subcommittees on these—on both these bills and would be happy to take questions.

Mr. MCINNIS. Thank you, Abigail. You bring up some very valid points.

[The prepared statement of Ms. Kimbell follows:]

Statement of Abigail Kimbell, Associate Deputy Chief, Forest Service, U.S. Department of Agriculture

Thank you for the opportunity to testify on these five bills before us today. I am Abigail Kimbell, Associate Deputy Chief, National Forest System. I would like to briefly discuss H.R. 2386—"Outfitter Policy Act of 2001," H.R. 5032—Conveyance of certain lands on the Mendocino National Forest, and H.R. 5180—Conveyance of certain lands on the Dixie National Forest. We defer to the Department of the Interior on H.R. 1811 and H.R. 5081.

H.R. 2386 Outfitter Policy Act of 2001

H.R. 2386, the "Outfitter Policy Act of 2001" establishes terms and conditions for use of Federal lands by outfitters. The Department of Agriculture supports the purpose of H.R. 2386, but would like to work with the Subcommittee to resolve several important issues that we feel would make this a better bill.

There are millions of people who lack outdoor skills yet want to experience the beauty and diversity of their public lands. Many of these Americans seek out the skills and experience of commercial outfitters and guides to help them enjoy a safe and pleasant journey through spectacular forests and deserts and over the rivers and lakes that are often found only on Federal lands. Without outfitters and guides, many of our citizens and international visitors would never experience the awesome grandeur of America's great outdoors.

For more than a half century the Forest Service has had a positive relationship with the outfitter/guide industry. We currently have approximately 6,000 permit holders that provide very necessary and sought-after services. These services range from traditional hunting and fishing trips to llama treks: from jeep tours and white water rafting, to prehistoric treks. The providers of these services range from the traditional small family operations to large commercial non-profit entities, from small local government programs to large educational institutions.

Commercial outfitters and guides serve as an extension of the agency by introducing the public to their lands and by providing positive environmental understanding and teaching skills to enjoy the outdoors. In fact, outfitters and guides have at times gone beyond the requirements of their permits. One example is the "Raft–Along" program in Region 4 (Utah/Idaho) where police officers raft with "At Risk" Youth. In addition, as the agency has become more involved with various tourism associations, we have learned that many international groups wish to provide eco-tourism trips to the United States to visit our public lands.

I believe this positive relationship continues, but increasingly complex challenges in managing the National Forests, antiquated business practices, and competing demands have placed an increased burden on the agency and its outfitters and guides, and is affecting this critical relationship.

This challenge can be illustrated by the explosion in the types of outfitter and guide activities competing for a limited resource, increased competition with the general public for space, increased activism by the public on how they wish to see their public lands managed, and antiquated business practices creating inefficiencies in the day to day program administration. There is also the need to update agency policy, including obtaining market value for the rights and privileges granted in the use authorization. Because of these challenges, I can understand why venerable, well-established businesses feel threatened and devalued.

Our challenge is to manage this program by having an efficient business management approach and a balanced administrative system that addresses public concerns and provides a pleasant, safe, and healthy visitor experience while protecting the environment. In addition, we must address local and national program management issues protecting the interests of the government while using appropriate business practices that allow business stability for our outfitter and guides. We have

been working with all interested parties and other agencies for the last couple of years to resolve these issues. We would like to expedite that process.

H.R. 5032—Land Conveyance on the Mendocino National Forest

H.R. 5032 authorizes the direct sale of two parcels comprising 120.9 acres of National Forest System lands on the Mendocino NF in California to the Faraway Ranch. Various improvements and facilities have been constructed on these lands and they have lost much of their National Forest character. This bill provides Faraway Ranch the opportunity to acquire these lands associated with their improvements and activities and allows the Forest Service to utilize the receipts to acquire replacement lands elsewhere in California.

At time of conveyance, Faraway Ranch will make full payment of the fair market value as determined by an appraisal that is acceptable to the Secretary and cover all direct costs associated with completing this transaction. We support this bill, however, we would like to work with the Subcommittee to develop a workable timeline that takes into account the time needed to properly complete the survey and appraisal.

H.R. 5180—Conveyance of Real Property in the Dixie National Forest

H.R. 5180 directs the Secretary of Agriculture to convey approximately 560 acres of National Forest System (NFS) land within the Dixie National Forest to Kirk R. Harrison. The conveyance is intended to be at fair market value, for all right, title and interest of the United States using appraisal standards acceptable to the Secretary. While we do not oppose the bill, we believe it may be unnecessary. We are working with the landowner and are optimistic that a solution can be found that satisfies his needs, but does not require legislation. If this is not the case, we are willing to work with the Subcommittee.

Mr. Harrison, who resides in Las Vegas, Nevada, owns property in the town of Pinto, located in Washington County, in southwest Utah. Pinto consists of approximately 767 acres of private property, including Mr. Harrison's property, and is surrounded by the Dixie National Forest. The Forest Service has thoroughly reviewed Mr. Harrison's title claims, and under existing laws and authorities, is unable to approve or give validity to any of his claims. In addition, there are a number of other factors that must be taken into consideration.

All the Federal land surrounding Pinto and subject to this bill lies within the East Pinto Grazing allotment currently used by two local families. Removing acres from the allotment would result in a prorated reduction in permitted numbers of cattle.

The property of another landowner in the Pinto area is partially bordered by Harrison property and otherwise adjacent to NFS lands. If the proposed 560 acres were transferred to Mr. Harrison the other landowners' property would be totally surrounded by Harrison property and without guaranteed access. In addition conveying 560 acres to Mr. Harrison would place all known sources of water in the Pinto Valley on private land. Water rights of others and their use of those rights could be lost if this land goes into private ownership.

The sale of up to 560 acres to Mr. Harrison would increase the amount of private land in Pinto by over 70 percent. The future subdivision of this land could change the rural character of the area and create additional issues with other long-term landowners in the area.

The Forest has processed two legitimate cases under the Small Tracts Act (STA) in the Pinto area. In one case, 4.78 acres were conveyed to a local family based on a color of title claim. In the second case, an interchange occurred with a net gain of 1.38 acres for the Forest. These families may feel that a land sale or land exchange with Mr. Harrison is inequitable.

In 1996, Mr. Harrison submitted three STA applications totaling 25 acres to the Dixie National Forest. The basis of the application was occupancy of NFS lands in the form of fences and cultivation. In 1997, after thorough review, it was determined that the application did not meet the criteria of the Small Tracts Act. All levels of the agency concurred with this decision.

We do not oppose this bill, and believe it is unnecessary because there are reasonable alternatives. We would support selling Mr. Harrison 20 acres involving the disputed area. This would include Mr. Harrison's entire STA application area called Spring Field and the STA application for Platt Field. The third Harrison STA application, Reservoir Field, is not included because the Harrison family did not own the adjacent property until after 1965.

The sale of 20 acres to Mr. Harrison would remove a spring and over a mile of Pinto Creek from public ownership. Land exchange is an important tool for solving a variety of critical resource and social issues and we would prefer a public interest

equal-value land exchange between Mr. Harrison and the National Forest, either in the immediate Pinto area or within the State of Utah.

Mr. Chairman, we look forward to working with you and the other members of the Subcommittees on these important issues. This concludes my testimony. I would be happy to answer any questions that you may have.

Mr. MCINNIS. Mr. Harrison, in your comments I would like it if you can also address—because I have some concern about the permit issue, the access issue, the subdivision issue, and the water issue. Those were four that were brought up in the previous testimony. So, if you would include that in your remarks, I would appreciate it. You may proceed.

STATEMENT OF KIRK R. HARRISON, PROPERTY OWNER, STATE OF UTAH

Mr. HARRISON. Thank you.

Mr. Chairman, members of this Committee, my name is Kirk Harrison; and I appreciate the opportunity to testify in support of this bill. I particularly want to thank Chairman Hansen for sponsoring the bill.

I would first like to mention the reference to Devon Kilpack's statements. Devon Kilpack is a district ranger there. I have talked to him numerous times. He has told me numerous times how bad he feels about the way I have been treated, how inequitable he thinks the circumstance is. He cannot believe that we have not been able to reach a resolution where I get my family property.

In addressing some of the comments that were just made, the conveyance of these disputed lands would not result in my land surrounding someone else's land without access. Their access is directly upon a county road that runs through the valley, and it would be the same as it has always been.

I have no intention of subdividing this land. My predecessors' interest in the Reservoir Field settled that land in 1860. My dad bought it from his brother—in 1860, and my dad bought it from his brother in 1960.

I do not believe the Forest Service has any interest whatsoever in the waters of the Pinto Creek. Landowners such as myself own shares of water in the Pinto Creek, in the Pinto Valley, and further to the south in Newcastle. I don't think the Forest Service has any interest whatsoever in those waters.

This land was settled by my great, great grandparents in 1860. They cleared the lands, the trees, the rocks. It was before the invention of barbed wire, and they used the trees that they used to clear the land with to build rip-gut fences that exist today.

The first survey in the area was not until 1881, 21 years after they were there; and the survey only did section corners, so there was no notice to them that there was any discrepancy between any survey and their boundaries.

The second survey was not until 1905, 24 years later. And, again, the same thing—only section corners. There was no notice to them there was any discrepancy between their boundaries and that survey, and that was when the Dixie National Forest was first established.

It was not until 1984, 124 years after my family was there and owned and cultivated and worked these lands, was there a survey

done by an outside firm for the Forest Service that put up the orange markers that we have all seen.

There are significant discrepancies in the surveys in that valley. For example, the southwest corner of this section in the 1881 survey is 37 feet from the 1905 survey. The Washington County surveyor recognizes rock monuments that the Forest Service survey crew in 1984 did not recognize. I have aerial photographs of the area dating back to 1949; and, as you can see, this is a sparse, arid environment. It is primarily sage brush, rabbit brush. There is a lesser amount of cedar trees and small pine trees.

Mr. MCINNIS. Mr. Harrison, if I may interrupt just for a moment. You keep talking about this area. In Abigail's testimony, she talked about the 20 acre allotment and the 500 acre allotment, and your initial under the Small Claims Act—or Small Partial Act, I think three different ones. So tell me how we get from 20 to three claims for approximately 75 acres, and now we are at 500. Maybe you can point them out on your map.

Mr. HARRISON. Absolutely.

Mr. MCINNIS. I guess my focus here is, did you figure—I am trying to determine whether you thought you would be successful to 75 and so went ahead and decided to ask for an additional 425.

Mr. HARRISON. No, what happened—

Mr. MCINNIS. Help me through that.

Mr. HARRISON. Absolutely. The land I own is in pink on this chart. The disputed areas that have been fenced in, except for the one area, since 1860, are in orange. What happened 4 years ago is the Forest Service made it very clear to me that one of the reasons that they rejected the Small Tracts Act is that my—when my great, great grandparents settled that area, they put these rip-gut fences as the terrain and the topography allowed. It made sense to enclose the water sources and the level ground that could be cultivated.

The Forest Service, starting 4 years ago—and it is in the materials I provided—made it very clear that that was contrary to their management objectives of straight lines, sectional lot, blocked-up ownership, right angles.

The 560—you get to 560 because that is the minimum amount necessary to satisfy the Forest Service objectives that they have outlined to me both orally and in writing for the last 4 years.

Mr. MCINNIS. It took me a second to see the orange. So, you have got the strawberry red or the strawberry color.

Mr. HARRISON. Correct.

Mr. MCINNIS. Is there any orange in that strawberry color from this distance? I can't see it. Or is just the orange that little block that sits off it?

Mr. HARRISON. Where it is something other than the straight line, it is orange.

Mr. MCINNIS. OK. And then the yellow, what does the yellow represent? Is that the 500-acre tract as a whole? Or what is the yellow?

Mr. HARRISON. The yellow is the orange plus the—the yellow plus the orange is the 560.

Mr. MCINNIS. OK. And the strawberry colored is what is owned in fee right now, presently.

Mr. HARRISON. Right.

Mr. MCINNIS. All right. Thank you.

Mr. HARRISON. If I might clarify, the reason that it expanded from three areas to five areas, when they did the survey in 1984, there was one section lot—section 6, I believe—that was in the ownership of the State of Utah. In 1999, by Federal act, that was transferred from the State of Utah to the Federal Government; and it is under the auspices of the Forest Service presently.

In addition, the southwest field, which still has the rip-gut fences that my family put up in 1860, that was added as well. So it is the three areas subject to the Small Tracts Act plus the additional two.

The Forest Service has confirmed that there are no significant public values on these lands, no identifiable resources to be protected. These lands that are beyond the area that—I have had them fenced all my years, my family has had fenced since 1860, have been for the service of grazing cattle. The grazing permittee would not be adversely affected. This would be subject to whatever existing rights they have. They have got a 10-year lease. They can raise cattle for another 10 years. So, it is not in any way taking away any present rights that they have.

The loss of these disputed areas would be devastating to my family lands. All access to the Pinto Creek would be lost and my two largest meadows. Third parties and their cattle would have unrestricted access to my best spring; third parties and their cattle would be but a few short feet from two of my other springs, one of which is a source of culinary water for my home there. The priority of my springs goes back to 1860 as well. Third parties and their cattle would be but two feet from my great, great grandparents' cabin.

I respectfully ask for your favorable consideration. I look forward to working with the Committee and the staff to resolve any issues. Thank you.

Mr. MCINNIS. Thank you very much for your testimony.

[The prepared statement of Mr. Harrison follows:]

Statement of Kirk R. Harrison, Property Owner, Pinto Valley, Utah

Mr. Chairman, thank you for conducting this hearing today and I thank all of the Members for their time and interest. My name is Kirk Harrison and I own property in Pinto Valley, Utah. I want to thank Chairman Hansen for sponsoring the legislation before the Subcommittee today. This legislation will solve a dispute involving my family's property that my family settled in 1860 more than 140 years ago. This legislation calls for the directed sale of approximately 560 acres of land to me for fair market value. The proceeds of this sale would then be utilized by the Forest Service to acquire truly valuable in holdings where public values are much greater. Mr. Chairman, this legislation is critical to restoring my family property and unfortunately is the only mechanism available to me to solve this age old dispute.

I. History and Use of the Property

A. Historical Use

My great great grandparents, Richard Harrison and Mary Ann Whitaker Harrison, settled in the Pinto Valley in 1860. The Pinto Valley is located in the high desert region of Southwestern Utah. They constructed and lived in the log cabin situated in the area of my property known as the Spring Field.

They cleared the fields that exist today by chopping down and removing the cedar trees so they could plant and grow their crops. From those cedar trees came the cedar posts that they utilized to construct the rip gut fences that defined the boundaries of their property. Anyone that has ever chopped a cedar fence post with an ax can appreciate the tremendous effort and amount of time it took to construct these fences. In light of the dramatic difference in the effort necessary to construct

a rip gut fence as opposed to a barbed wire fence, if barbed wire was available, it surely would have been utilized. However, the first patent on barbed wire was not filed until 1873 and barbed wire was not available in Southern Utah for many years thereafter.

In order to appreciate the priority of use and superior claim of ownership to this property by my family, it is helpful to place it into a chronological context. My family had settled, homesteaded, owned, worked, tilled the soil, planted and harvested crops, raised, fed and watered livestock, maintained the boundary fences, raised their children and lived upon their property for five (5) years before the outbreak of the Civil War.

Evidence of my family's early use of the property is indisputable. As of 1870 there were only 105 people living in the Pinto Valley. In 1873, the people of Pinto produced 1,614 bushels of wheat, 160 bushels of oats, 1,693 bushels of barley, 210 bushels of corn, 6 bushels of beans, 7,195 bushels of potatoes, 287 bushels of vegetables, and 120 tons of hay. Id at 200. Consistent with the foregoing, LDS Church Pinto Ward records between 1867 and 1876 prove that both my great great grandfather, Richard Harrison, and my great grandfather, John Heber Harrison, were growing crops and raising livestock on this property. These records show contributions from both men of wheat, barley, hay, potatoes, corn, vegetables, fruit, butter, cheese, eggs, pork, chickens, mutton, and wool. Copies of these records between 1867 and 1876 are attached hereto as Exhibit "2."

The State of Utah, which was made a state on January 4, 1896, did not exist for the first thirty-six (36) years that my family settled, homesteaded, owned, worked, tilled the soil, planted and harvested crops, raised, fed and watered livestock, maintained the boundary fences, raised their children and lived upon their property. Our family had done all of this for over forty-five (45) years before the Dixie National Forest was created in 1905.

There is further evidence of my family's use and ownership of the property since 1860. The priority date of the springs situated upon our property is 1860. Since that time those springs have been utilized to irrigate pastures, crops and orchards; water livestock; and for culinary purposes.

My great great grandfather, Richard Harrison, who was born on April 30, 1807, passed away while living in Pinto on March 4, 1882 and is buried at the Pinto Cemetery. My great great grandmother, Mary Ann Whitaker Harrison, who was born on August 10, 1811, passed away while living in Pinto on September 4, 1889 and is also buried at the Pinto Cemetery.

My great grandfather, John Heber Harrison, died while still living at Pinto on July 1, 1923 and is buried at the Pinto Cemetery. My great grandmother, Ellen Eliza Eldridge Harrison, who was born on July 28, 1850, died on October 10, 1937 and is also buried in the Pinto Cemetery.

My grandfather, Heber Eldridge Harrison, was born in Pinto on May 12, 1874.

My father, Joseph Ross Harrison, was born on May 18, 1915 and died in Pinto on October 30, 1990.

B. Federal Government Surveys In The Pinto Valley And Discrepancies Among Them

The first government survey of the area, which was conducted by the U.S. Surveyor General's Office, was not made until 1881. This effort consisted of crews, utilizing a rod and chain, merely establishing section corners and the like. Undoubtedly, these crews, given the miles upon miles they were surveying, of which the Pinto Valley was only a very small part, did not take the time to follow existing fence lines and boundaries that had existed for over twenty (20) years. Similarly, a second government survey of the area was not made until the creation of the Dixie National Forest in 1905. Like the survey crews before them, these crews, understandably, did not take the time to follow, with their rod and chain, the existing fence lines and boundaries that had existed for over forty-five (45) years. My family had no reason to believe there existed any discrepancy between these surveys and their fenced property lines.

My family had no reason to believe there was any discrepancy in the boundaries between their property and the Forest Service until 1984, when the Forest Service retained an outside firm to perform surveys in the area and orange boundary markers were set, which were inconsistent with the historic use and occupancy of the lands that had been cleared, cultivated, irrigated, grazed, and fenced for over one hundred twenty-four (124) years.

There are numerous discrepancies in the surveys in the Pinto Valley. A prime example is the location of the southwest corner of Section 2 of Township 38 south—Range 15 West. The 1881 rock monument is thirty-seven (37) feet away from the 1905 rock monument. For reasons unknown, neither of these rock monuments could be found, and therefore, utilized by the surveyors that performed the survey for the

Forest Service in 1984. The Forest Service surveyors did not accept an historic "rock mound" monument, in spite of the fact that other surveyors had accepted it, including the surveyors for Washington County. There should be only one survey monument at each corner location. However, because of the survey discrepancies in the area, there are several corners that have at least two different survey monuments.

There are five areas where there are disputed lands with the Forest Service. Those five areas are: (1) the Spring Field; (2) the Southwest Field; (3) the Platt Field; (4) the Corn Field, and; (5) the Reservoir Field.

The Spring Field

My great great grandparents' log cabin is situated but a few feet from the supposed "boundary line" resulting from the 1984 survey for the Forest Service. Beyond this "boundary line" to the west is a field and stream that has been fenced in by my family since 1860. Substantial portions of the original rip gut fence still exist on the northern boundary of this field. A barbed wire fence is located just a few feet north of and parallel to this rip gut fence. This barbed wire fence continues west and turns in a southerly direction enclosing this field and stream.

There has been grass in this field for as long as I can remember. I have aerial photographs dating back to August 26, 1949 that were taken by the Aerial Photography Field Office of the U.S. Department of Agriculture that clearly depict the grass condition of the field. I have also confirmed with my "Harrison" aunts and uncles, who are in their eighties, that there has been grass in these fields for as long as they can remember as well. I have been told that my grandfather grazed his cattle upon this property. I know of my own knowledge that my father, many times with my help, re-seeded this field, railed the field every spring, mowed the hay in some years, grazed horses and/or cattle every year in the field, watered the field utilizing sprinklers and a pump from the reservoir located just east of the field in some years, utilized a portion of the field to store farm equipment, and maintained the fences on an annual basis. My father did all this from the time he acquired the property in 1950 from his grandfather's estate, John Heber Harrison, until I acquired the property from my father in 1988.

Since my acquisition of the property, I have railed the field every spring, grazed horses and/or cattle every year within the fenced area, grubbed the sage brush and rabbit brush, utilized a portion of the field to store farm equipment, and maintained the fences on an annual basis.

Attached as Exhibit "3" are photographs depicting my great great grandparents log cabin in the Spring Field as well as the disputed part of the Spring Field and the rip gut fences around that disputed area.

The Southwest Field

The Southwest Field is located to the southwest of the Spring Field. To the best of my knowledge the only rip gut fences remaining in the Pinto Valley are those rip gut fences that marked the boundaries of my family's property. The rip gut fences built by my family when they cleared the Southwest Field are still in existence on the southern and northern sides of this field. The topography of the area is such that the only access by wagon to the Southwest Field was through the Spring Field.

Attached as Exhibit "4" are relevant portions of aerial photographs taken by the Aerial Photography Field Office of the U.S. Department of Agriculture. These photographs are dated August 26, 1949, June 12, 1960, and August 30, 1977. These photographs confirm that the Southwest Field was only accessible by wagon through the Spring Field. These photographs also show how the Southwest Field is far from other fields in the valley, except the Spring Field.

The name of the mountain above and to the southwest of the Southwest Field is named Harrison Peak after my great grandfather. The location of the Southwest Field relative to the other fields in the valley, other than the Spring Field, is such that it is unreasonable to conclude that anyone other than my great great grandfather and then my great grandfather owned the Southwest Field. It is my good faith belief that my great grandfather rented this pasture to Oscar Westover during the early 1800s.

The Platt Field

The origin of the private ownership of the Platt Field is the same as other property I own in the Pinto Valley in that it was first settled prior to the Civil War. The first owner of the Platt Field was Benjamin Platt. The Pinto Cemetery provides indisputable corroborative evidence of Benjamin Platt's presence in Pinto in the 1860s. Josephus Platt is buried in the Pinto Cemetery. He was born in Pinto on June 9, 1867 and died in Pinto on August 8, 1867. His father was Benjamin Platt.

Just as my great great grandfather had done when he first moved to the Pinto Valley, Benjamin Platt "lived up in the field in a little log house at first." Benjamin Platt was the seventh man to take water from the Pinto Creek. Id.

Although he settled the property and worked the property beginning sometime prior to 1867, Benjamin Platt did not obtain a patent to the property from the United States of America until 1890. Our family acquired title to the property when it was conveyed to our Great Aunt Geneva H. Gillies and her husband R. Moroni Gillies in 1916.

The "boundary line" posted by the survey crew for the Forest Service in 1984 cuts off approximately eleven and eight-tenths (11.8) acres of our ground, including all access to the creek. One must seriously question the implied assertion of the location of the "boundary line", namely that when this property was initially settled in about 1860 that the settlers were so inept as to settle upon and homestead property that just bordered, but did not include Pinto Creek, which runs through the property. Luckily, there is clear indisputable evidence that such is not the case. Just within and parallel to the existing barbed wire fence on the eastern boundary of my property, which encompasses all of Pinto Creek that runs through the property is a rip gut fence. I have confirmed with my "Harrison" aunts and uncles that this rip gut fence, and the barbed wire fence parallel to it, have been in existence for as long as they can remember. Likewise, cattle have grazed and watered in this area every year for as long as I can remember and for so long as the "Harrison" aunts and uncles can remember as well. This fence was maintained by my father and then by me every year thereafter.

Attached as Exhibit "6" are photographs of the disputed area of the Platt Field and the rip gut fences on the eastern side of the Pinto Creek which enclose the disputed area.

The Corn Field

In 1860 my great great grandparents cleared the land and constructed the rip gut fences that created the boundaries of the Corn Field that still exist today.

As with the "boundary line" on the eastern side of the Platt Field, the "boundary line" posted by the 1984 Forest Service survey crew on the eastern side of the Corn Field cuts off all access to the creek. Contrary to what this asserted "boundary line" implies, my ancestors had sufficient intelligence to fence the creek within the location where their livestock were located. In addition to the dated barbed wire fence on the eastern boundary of my property, which encompasses all of Pinto Creek that runs through the property, are also remnants of the rip gut fence. I have confirmed with my "Harrison" aunts and uncles, that this fence has been in existence for as long as they can remember. Likewise, cattle have grazed and watered in this area every year for as long as I can remember and for so long as the "Harrison" aunts and uncles can remember as well. This fence was maintained by my father and then by me every year thereafter.

It is my understanding that at the time of the Forest Service survey in 1984, the State of Utah was the legal title owner of Sectional Lot 6. For that reason the survey map prepared by the Forest Service surveyor did not show any discrepancy in the boundary on the east side of the Corn Field. However, since that time the Forest Service has obtained the legal title from the State of Utah and this area is now in dispute. It is my understanding that legal title was obtained by the Forest Service on January 8, 1999 pursuant to the Utah Schools and Lands Exchange Act of 1999, P.L. 105–335.

The Reservoir Field

The origin of the private ownership of the Reservoir Field is the same as other property we own in the Pinto Valley in that it was first settled prior to the Civil War. There is a rock memorial in Pinto of the first church constructed in Pinto. The memorial identifies the very first settlers of Pinto, who arrived in 1856. One of the nine names on this memorial is David W. Tullis. It is believed that David W. Tullis settled what is now known as the Reservoir Field in 1856. The Pinto Cemetery provides further indisputable corroborative evidence of David W. Tullis's presence in Pinto in the middle 1800s. David W. Tullis, who is buried in the Pinto Cemetery, was born in England on June 3, 1833 and died in Pinto on November 26, 1902. Euphemia Tullis, the daughter of David W. Tullis, was born in Pinto on February 11, 1866. Other children of David W. Tullis were born in Pinto in 1872, 1875, 1878 and 1885. The Tullis family worked and owned this property until my family acquired the property.

My father acquired this property, the Reservoir Field, in 1960. The "boundary line" posted by the survey crew for the Forest Service in 1984 cuts through the southwestern portion of our property. Appurtenant to this property is the best water

spring that I own. The priority date of this spring is 1860. If a new fence were constructed on the "boundary line" and my family's old fences torn down, it would be catastrophic. The headwaters of my best spring could then be interfered with and placed at considerable risk by access from third parties and their livestock.

The fence line that the Forest Service now claims encroaches upon the Forest Service has been in existence for as long as I can remember. Moreover, I have confirmed with my older siblings and my "Harrison" aunts and uncles that the fence line has been in that location for as long as they can remember as well.

Every year when my father owned the property and every year that I have owned the property, which is since 1975, I have maintained the fence, grazed and watered livestock on the property, shoveled and hoed the weeds, and sprayed the thistle. In addition, every year when my mother was alive my family would pick the berries from the elderberry and currant bushes on the property that my mother would then make into jam. My family used to have picnics in the grassy meadow area of this property as well. One year our father and we railed a portion of this ground and planted seed.

Attached as Exhibit "7" are photographs of the disputed area of the Reservoir Field and the old fences which enclose the disputed area.

II. Legal Title History

A. Conditions Between 1860 and 1890

During this time period the only mode of transportation was by horse, wagon or foot. Pinto was an extremely remote location. "The people of Pinto were isolated as to transportation and had few cultural contacts from the outside... ." The Pinto Valley is over 6000 feet in elevation. The winters were extremely harsh. It was noted that, "One year it snowed quite a lot and it covered all the fences with snow twelve to fifteen feet deep so they traveled over fences and all." Id. at 6. Many days were spent simply trying to survive.

As noted previously, my great great grandparents were part of a settlement party that was the first settlers south of Provo, Utah. It took those settlers from December 16, 1850 until January 13, 1951 to travel from Provo, Utah to Parowan, Utah a distance of about 200 miles. The settlement party averaged less than 7 miles a day.

Presumably because of the lack of any section corners, there were no deeds to any lands in the Pinto Valley until 1890. The first government survey of the area, which was conducted by the U.S. Surveyor General's Office, was not made until 1881. Shortly thereafter, my great grandfather and Benjamin Platt made the first patent applications in the Pinto Valley. Both men received the first land patents in the valley on July 3, 1890.

Both the law and reality of their circumstances dictated that the applications had to be by aliquot part. A metes and bounds survey simply was not an option. Presumably, both men had to travel 300 miles to Salt Lake City, Utah to find an attorney and/or a surveyor to prepare their respective applications for patent. The Pinto Valley is about 300 miles from Salt Lake City, Utah. Even if these two men could travel on horseback or wagon an average of 15 miles per day (more than twice as fast as the 1850 settlement party), it would have taken them 40 days to travel to Salt Lake City and back for this purpose. The point is that under these circumstances there was no way to compare the land to be patented against the existing rip gut fence lines whose location had been determined by the topography, terrain, and location of water.

The only plausible explanation as to why my great grandfather was unable to obtain a patent to the Southwest Field, is that the Federal Government had the same policy during the late 1800s as the Cedar City Office of the Forest Service has had during the 1990s through the present the local office arbitrarily does not want any private ownership in Section 3, Township 38 south Range 15 west, regardless of the equities involved. This is despite the same office of the Forest Service recently, in response to FOIA requests, conceding that there are no significant public values on the lands to be acquired and that there are no identifiable resources to be protected in this area. This also is despite there being private ownership both north and south of this Section

3. Abstracts of Title Depicting Legal Ownership from 1890 to the Present

Attached as exhibits hereto are abstracts of title for the Spring Field & Corn Field (Exhibit "8", Platt Field (Exhibit "9"), and the Reservoir Field (Exhibit "10"). Each abstract of title confirms that I am the legal owner of each of these properties.

III. Dealings With The Forest Service Since 1991

A. Forest Service Unlawfully Gives Permittee Permission To Trespass Upon The Platt Field With Small Tract Act Application Pending

During the evening of July 1, 1991, I learned that the grazing permittee with the allotment located on the east side of the Pinto Creek had started to build a fence in the Platt Field. I telephoned the permittee the following day. He said that he needed to move the fence because his access to water somewhere else had been cut off. I told him that I was aware of discrepancies in the surveys of the area and to cease immediately. He acknowledged that he too was aware there were discrepancies in surveys in the valley and that he would stop.

My sister met with the Forest Service soon thereafter and was advised to file a Small Tract Act application for the disputed area, which she did in 1991. She was told that once the Small Tract Act application was filed, the permittee would not be allowed on our property, including the disputed area, until the matter was resolved.

As of 1994, our Small Tract Act application was still pending as it had not been acted upon by the Cedar City Office of the Forest Service.

On Saturday afternoon, May 28, 1994, I went for a walk with one of my children to the Platt Field. I soon discovered that a fence had recently been constructed on the east side of the Platt Field and to the west of the Pinto Creek. This fence cut off all access to the Pinto Creek. I discovered that our fence located on the east side of Pinto Creek had been torn down in five different locations. The only access to the location of the new fence was through the west side of the Platt Field that was prominently posted with "NO TRESPASSING" signs. I learned later that weekend that one of the other landowners had witnessed the permittee's trespass upon our property through the west side.

I spoke with two other property owners in the Pinto Valley and learned that Forest Service grazing permittee that had the allotment on the east side of the Pinto Creek had very recently constructed the fence. This is the same permittee that had started to build the fence in early July of 1991. He had been bragging to land owners in the valley that the Forest Service had given him permission to trespass upon our property and build the fence. This was in spite of the pending Small Tract Act application for this very area!

One of the people I spoke with that day was the President of the Pinto Irrigation Company who told me that every member of the irrigation company was against this action. He said that they were appalled and outraged by the permittee's conduct. In addition, as the irrigation company controlled and managed the Pinto Creek through the Pinto Valley, they were concerned the permittee, who owns no land in the Pinto Valley, would interfere with that management and control.

I spent all day Sunday, May 29, 1994, and Memorial Day, May 30, 1994, rebuilding our fence where the permittee had torn it down and tearing down and removing the entire fence the permittee had unlawfully constructed on our property.

At 8:00 a.m. on Tuesday, May 31, 1994, I was at the Cedar City Office of the Dixie National Forest when it opened. I immediately met with the Forest Supervisor. I explained what had happened in 1991. More specifically, that my sister had met with the Forest Service in Cedar City was advised to file a Small Tract Act application, which we did, and was assured that the filing of the application would preserve the status quo and that we did not need to worry about the permittee attempting to construct a fence on our property. In addition to the Forest Supervisor, I met with the Lands Staff Officer and the Realty Specialist. I requested they meet me at the ranch later that day so I could show them what had occurred, as well as the locations in the Spring Field and the Reservoir Field where there was also a conflict between the fence lines and the 1984 Forest Service Survey.

Later that morning, at 10:15 a.m., I met with the Forest Service representatives at the ranch. There on behalf of the Forest Service was the Land Staff Officer and the Realty Specialist I had met earlier that morning, as well as the District Ranger and his assistant, who were based in St. George, Utah.

The next day, June 1, 1994, in response to my request, the District Ranger sent a letter assuring me that no fences would be removed or cut and no new fences would be constructed until the matter was resolved. A copy of this letter is attached as Exhibit "11."

I later learned that the Forest Service employee in the Cedar City Office in charge of grazing permits and allotments had given permission to the permittee to construct the fence. The Forest Service did this with our Small Tract Act application pending and knowing the permittee would have to trespass upon our property, where "NO TRESPASSING" signs were prominently posted, from the west side of the valley to do so!

B. Forest Service Representatives Indicated That Disputed Areas Qualified Under The Small Tracts Act And Advised The Applications Be Filed

As set forth above, on Tuesday, May 31, 1994, at 10:15 a.m. I met the Land Staff Officer and Realty Specialist from the Cedar City Office and the District Ranger and his Assistant from the St. George Office at the ranch in Pinto.

We first drove onto the Platt Field just west of the Pinto Creek. The Land Staff Officer had a copy of the November 12, 1984 map entitled, "Dixie National Forest South Pinto Boundary Survey" and placed it on the hood of his truck for all of us to review. A copy is attached hereto as Exhibit "12." This showed the area in dispute at that location to be 11.8 acres. We discussed the fact that the pending Small Tract Act application was for less acreage, but that the Small Tract Act limitation was 10 acres. We then walked the area of dispute in the Platt Field following the rip gut fences on the east side of the Pinto Creek. As we walked the Land Staff Officer and I talked. He noted the relatively good condition of the rip gut fence given its obvious age. I confirmed to him that cattle feed in the disputed area every year and had done so for as long as I could remember. There were forty pair of cattle in the Platt Field at the time. I confirmed that we maintained the fence all the time I was growing up. We spoke at length about the fact the rip gut fence had been there since about 1860 when the property was originally settled by Benjamin Platt. We spoke of how the property had been improved by the removal of all of the trees, the clearing of the ground, and the construction of the rip gut fence. We discussed the fact that the rip gut fence had been there since before the Civil War. We also discussed the fact that the surveys of 1881 and 1905 would not have put the property owners on notice of any discrepancies. The Land Staff Officer agreed that the location of the rip gut fence clearly showed the intent of the original settlers to include the Pinto Creek within their property.

The Land Staff Officer told me that for purposes of the Small Tract Act it was very important that we had always maintained the fence and had always used the disputed acreage every year to graze livestock. At that point in the discussion the Small Tract Act Specialist noted that two other small tract applications in the Pinto Valley had each taken three years to complete. I knew that the latter application was for an area of about five acres with modern fencing and a shed that had been there for less than 15 years and cost less than $500.00. It is my understanding that the basis for the granting of that application was the discrepancies in the surveys in the Pinto Valley.

The Forest Service representatives and I then went to the Spring Field. I first showed them my great great grandparent's log cabin and how the logs were connected using wooden pegs rather than nails. I showed them how the Forest Service 1984 survey was just a couple of feet from the northwest corner of the cabin. We then walked the rip gut fence line located on the northern boundary of the field next to the log cabin. I told them how there used to be small ponds on the south side of the field with good fishing, as my Dad had planted rainbow trout. However, I explained to them that we had a horrific flood during the early 1960s that had destroyed the reservoir next to the log cabin and had filled those ponds with silt.

The Land Staff Officer asked me who had planted the field with crested wheat. I told him that my Dad had planted crested wheat many years ago and that we would over seed the field periodically. I told him how each spring we would "rail" the field which would spread the manure and level the ground. The Land Staff Officer asked if we had cattle on the area each year. I replied that we either had cattle or horses on the area each year. I told him that I recalled my Dad mowing and bailing hay from this area as I would chase cotton tails in the tall grass during the mowing. Because the grass in this field came in at a different time of year than the other fields my Dad would rotate livestock into this area earlier in the year. The Land Staff Officer asked if we ever watered the field. I told him how before the ponds were filled with silt we would pump out of those ponds.

We then went to the disputed area in the Reservoir Field. The District Ranger and I both recalled that we had met each other previously when a fire on a neighbor's field had gotten away from them and had burned the southern portion of my property, including the fence line. As we walked the fence line I pointed out that I had left the old wire at the outside base of the fence and had placed the metal posts next to the stumps of the old fence. The Land Staff Officer and I discussed the uses of the acreage. I said that every year livestock, primarily cattle, but horses as well, grazed on this area. We also discussed the fact that we maintained the fence each year and that we would spray the Canadian Thistle each year.

Every question the Land Staff Officer asked me about the historical use of each of the three areas I was able to answer in the affirmative. After we finished walking all of the areas the Land Staff Officer said that he had to get to a 1:00 p.m. meeting. Before he left he most definitely led me to believe that in light of the historical use

of the properties that we had just discussed and reviewed, we qualified under the Small Tract Act and advised me to make an application. I naturally responded that I wished to make application under the Small Tract Act for these areas. Consistent with the foregoing, I received a letter, dated August 12, 1994, from the District Ranger, providing in part, "During our visit to your property in Pinto, you indicated that you would like to make application under the Small Tracts Act. Since the ownership is not the same on all parcels, please submit a separate application for each." A copy of this letter is attached as Exhibit "13." At no time during the discussions with the Land Staff Officer on May 31, 1994 did any of the other three Forest Service representatives state any disagreement with what I was being told or question the relevance of any of the questions being posed to me.

C. During The Small Tract Act Application Process I Was Lead To Believe That The Only Issue Remaining Was When The Applications Would Be Approved

After the meeting at the ranch on May 31, 1994 I had several telephone calls with the Cedar City Office Realty Specialist. I was told that the office was "backed-up" and it was going to take several years to process the Small Tract Act applications. I asked if there was anything I could do to expedite the process. I was told that abstracts of title had to be prepared, the historical use of the property had to be researched, and any surveying discrepancies confirmed. I asked if I spent the money and time to do those things up front would it shorten the time to process the applications. I was told that it would.

I spent countless hours researching title records, locating and reviewing personal histories, and locating and reviewing histories of Pinto. I retained a surveyor to note all of the surveying discrepancies in the valley. I spent days in the Archives Division of the Historical Department in the LDS Church Office Building in Salt Lake City, Utah. I spent many hours in university libraries attempting to locate histories of the area. I corresponded with the National Archives in the same effort. I photographed and cataloged the rip gut fences. I even researched the history of barbed wire to reconfirm that the rip gut fences had been there since the 1860s. I researched Pinto Cemetery records to confirm the time when my predecessors-in-interest were in the remote Pinto Valley. As seen from above, I found annals from 1870 proving all of the crops that were being grown and the livestock that was being grazed on the properties. I put all of this together and had the Realty Specialist review each of the applications before they were finalized. I was told these were the most thorough and complete Small Tract Act application she had seen. She told me this would significantly expedite the time for approval. All three applications were filed on July 1, 1996.

I telephoned the Realty Specialist during the spring of 1997 to inquire when approval could be expected. She responded that there was a possibility that it would be sometime in 1997, but that it was more likely that it would take until the spring of 1998.

D. Forest Service Reverses Position After Three Years And Denies All Small Tract Act Applications

During the first few weeks of August of 1997 I placed several telephone calls to the Realty Specialist that went unanswered. I was finally able to get her on the telephone on Wednesday, August 20, 1997. I asked her the status of the approvals. She responded that after looking at the applications (which she reviewed in detail before they were filed) and the file, at that point there was not sufficient proof to meet the Small Tract Act requirements. I then reviewed with her what had been said during the review of the areas at my ranch. She responded that although she understood what I was saying, no one made any guarantees and that we may not meet the technical requirements of the Small Tract Act.

On October 23, 1997 I had a meeting at the ranch with the new District Ranger, the Regional Land Surveyor–Title Claims Officer, the Forest Land Surveyor, the Realty Specialist, and my cousin. We discussed my view that clearing the land, building the rip gut fences, cultivating the soil, planting and harvesting crops, planting grass and grazing livestock and doing all of this for 137 years was a very real, legitimate, and significant improvement to the property. I contrasted that with one of the other Small Tract Act applications the Cedar City Office had approved in the Pinto Valley just a few years before. In that case the owner had constructed a barbed wire fence within the last 15 years that added about 5 acres to his property. He had constructed and had built a shed at a cost of less than $500.00. A shed that could have been moved with a backhoe at the time. This area is located but a few thousand feet from the disputed area in the Platt Field. The reason for the encroachment in that instance, which had been accepted by the Cedar City Office, was the same survey discrepancies that I had noted. I questioned them how the latter could be deter-

mined to be an "improvement" under the Act by the same office that was now opining that the improvements over 137 years on my property were not "improvements" under the Act. No one could answer the question.

During this meeting on October 23, 1997, I also had a discussion with the Forest Land Surveyor concerning my family's property in Section 3 of T38s - R15w which includes part of the Spring Field, as well as the Southwest Field. I stated that it made no sense as to why my great grandfather would apply for patent for property that included the mountainous terrain to the south of the cabin and the dry fields east of Pinto Creek in the southern part of the valley, if he had been allowed to apply for those lands west of and adjacent to the log cabin. There were no rip gut fences enclosing or even adjacent to the mountainous terrain and the dry fields east of Pinto Creek. In contrast, there were rip gut fences enclosing the west end of the Spring Field and there were rip gut fences enclosing the Southwest Field. Secondly, common sense cannot be ignored. The mode of transportation was still horseback, wagon or by foot. Unless you were told that the land was not open for patent, you would make application for that land that is outside your door land that you had cleared, cultivated, developed, worked, and used since 1860. You would apply for that land as opposed to dry land on the other side of the mountain, the other side of the valley, further south, and on the other side of the Pinto Creek.

On December 1, 1997, I received a letter, dated November 24, 1997, providing, "Since there were no improvements located on any of the three parcels for which you applied., we have determined that your applications for the Platt Field, Spring Field, and Reservoir Field do not meet the criteria of the Small Tracts Act and are hereby denied." After receipt of this letter I had several telephone calls with the District Ranger about possible alternatives to obtain title to my family's lands. He scheduled a meeting in Salt Lake City, Utah on July 14, 1998.

E. Forest Service Takes Adamant Position That Under No Circumstances Will It Sell Or Convey Only The Disputed Areas, But That I Must Agree To Buy Or Exchange Lands Whereby I Must Acquire Significantly More Acreage Than The Disputed Lands

In attendance at the July 14, 1998 meeting in Salt Lake City, Utah were the District Ranger, the Regional Land Surveyor–Title Claims Officer, the Realty Specialist, an attorney for the Forest Service, and myself. The purpose of the meeting was to explore viable alternatives for my acquisition of the legal title to the disputed lands.

After listening to the statements of the Regional Land Surveyor–Title Claims Officer ("Claims Officer") during this meeting, it was painfully obvious why the Forest Service had changed its position on my Small Tract Act applications. It was not because the Forest Service felt there were significant public values on the lands to be acquired or there were identifiable resources to be protected the Forest Service has conceded there are none. It was because my family's fence lines followed the natural terrain and jogged this way and that depending upon the topography. According to the Claims Officer, and he was emphatic in his position, the fence lines were contrary to and interfered with the Forest Service's "management" of the public lands because the fence lines were not straight and the property consisted of irregular shaped parcels of less than 40 acres.

In response, I stated that my great great grandparents and Benjamin Platt had constructed the fences in a way that made sense enclosing the creek and other water sources, and following the natural topography of the land. I said that I should not be penalized for these pioneers not building straight fence lines that created blocked up ownership with right angles. At that point the Claims Officer stated, "Your family may be a long term squatter, but as far as we are concerned that is all you are a squatter."

This meeting ended with me stating that I wanted to pursue a land exchange, as soon as possible, and perhaps simultaneously with other avenues, to expedite the transfer of title to the property.

Subsequent to this meeting I had several telephone calls with the District Ranger and the Claims Officer reaffirming my desire to pursue the option of acquiring legal title to my family's property through a land exchange.

During a telephone call on May 26, 1999, the District Ranger stated that the Realty Specialist recently requested that I put in writing my prior oral request for me to obtain title to my family's lands. The District Ranger, consistent with what the lecture I had received from the Claims Officer during the Salt Lake City meeting, asked me if I was willing to pay more money to acquire more acreage than what was within the existing fence lines so that the boundaries would have square corners and straight lines. I responded that I would. The District Ranger asked me to confirm that willingness in my letter request.

On May 27, 1999 I faxed my letter request to the District Ranger. In compliance with the District Ranger's request, I wrote the following in that letter:

> In the event that it is more amenable to the Forest Service that I **acquire more acreage so that the boundaries have square corners and straight lines** (rather than follow fence lines that have been in existence since the 1860s) I am willing to do so with the full understanding that I would pay additional money necessary to acquire more property for exchange. (Emphasis added).

In that letter I went on to describe my frustration in dealing with the Forest Service since 1994, detailing the basis for that frustration. A copy of this letter is attached here to as Exhibit "14."

The Forest Service sent me a letter, dated July 13, 1999, consistent with what the Claims Officer had emphatically told me during the Salt Lake City meeting and the telephone call I had with the District Ranger on May 26, 1999. Although the letter was signed by the District Ranger, it was prepared by the Realty Specialist. The letter provided in this regard, "Please keep in mind that the objective is to create manageable boundaries and blockup ownership for the National Forest." (Emphasis added). The attachment to the letter is a map of the area that highlights in red the area the Forest Service was willing to exchange. It is Sectional Lots 6, 11, and 14, which total 120 acres. Upon reviewing this map, which is in color, you can see how the transfer of what has been highlighted in red would create straight fence lines, square corners, and blockup ownership that would create more manageable boundaries for the Forest Service.

As noted previously, the total acreage in dispute in Sectional Lot 11 (part of the Platt Field) was 11.8 acres. The area in dispute of the Corn Field, which is in Sectional Lot 6, is less than 10 acres. Neither my family nor I have claimed any interest in Sectional Lot 14. The only reason for the proposed conveyance of Lot 14 is the creation of a big rectangle of private land so the Forest Service would have straight fence lines, square corners, and more manageable boundaries. A copy of this July 13, 1999 letter including the attachment (in color) is attached hereto as Exhibit "15."

This letter also provides, "I do not wish to exchange out of Federal ownership in Section 3, 38 S., R. 15 W." This position is arbitrary, as the Forest Service has subsequently confirmed that there are no significant public values on the lands to be acquired in Section 3 and that there are no identifiable resources to be protected in this area. Two fields with rip gut fences, one of which is two feet from my great great grandparent's log cabin, are in Section 3. In light of the equities involved, there is simply no justification for this arbitrary position.

In light of the objectives emphatically explained to me by the Claims Officer, my telephone conversation with the District Ranger wherein I was asked to request, in writing, the transfer of additional acreage so that the boundaries have square corners and straight lines, and the letter of July 13, 1999, I recently requested the Forest Service to set forth the basis for those objectives. The Forest Service has subsequently confirmed in writing the basis for its objectives: (1) to blockup ownership; (2) to have straight boundaries between Forest Service property and privately owned property; (3) to create more manageable boundaries for the Forest Service, based on the belief that straight boundaries are more manageable than boundaries that are not straight; (4) to exchange lands to private ownership by sectional lot or lots in order to create blockup ownership, straight boundaries between Forest Service property and privately owned property, and to create more manageable boundaries with the Forest Service. Attached hereto as Exhibit "16" is a letter from the Forest Service, dated July 1, 2002, referencing the regulations, the Act, the Manual, and the Resource Management Plan upon which they rely.

F. Proposed Acquisition of 560 Acres At Fair Market Value Does Not Require The Transfer of One Square Inch of Land More Than Necessary To Satisfy The Emphatically Stated Forest Service Requirements For the Last Four Years

Pursuant to the proposed acquisition at fair market value of 560 acres I will acquire legal title to the disputed areas in the Spring Field, the Southwest Field, the Platt Field, the Corn Field, and the Reservoir Field. Importantly, it will also satisfy each and every one of the Forest Service objectives: 1) to blockup ownership; (2) to have straight boundaries between Forest Service property and privately owned property; (3) to create more manageable boundaries for the Forest Service, based on the belief that straight boundaries are more manageable than boundaries that are not straight; (4) to convey lands to private ownership by sectional lot or lots in order to create blockup ownership, straight boundaries between Forest Service property and privately owned property, and to create more manageable boundaries with the Forest Service. In fact, the conveyance of the 560 acres does not include any land

whatsoever other than the absolute minimum necessary to satisfy the Forest Service stated requirements. A copy of the legal description for the 560 acres is attached hereto as Exhibit "17." It should be noted that it does not include Sectional Lot 14, which was proposed to be conveyed by the Forest Service.

The Forest Service has confirmed that none of the land to be conveyed has any significant public values and that there are no identifiable resources to be protected.

On the other hand, the loss of the disputed areas would be devastating to my family's property. Among other things, all access to the Pinto Creek would be lost in two major fields where I graze cattle. The permittee, his cattle, and other parties would have unfettered access to the headwaters of my best water spring which would compromise and place that spring in jeopardy. The permittee, his cattle, and other parties would have unfettered access to an area but a few feet from the source of another of my best springs. I would have the permittee's cattle and others within two feet of my great great grand parent's cabin.

Finally, the District Ranger has confirmed that the circumstances of the history and use of these lands are unique and there are no similarly situated lands in the Dixie National Forest.

G. In Response To The Possible Legislation In Recent Weeks The Forest Service Cedar City Office Has Changed Its Position Yet Again Metes and Bounds Are Acceptable Straight And Manageable Lines Not Important

On Friday, July 12, 2002, I telephoned the District Ranger and learned that the Cedar City Office of the Forest Service is now changing its position regarding its objectives for the conveyance of properties. I then telephoned the new acting Forest Supervisor in the Cedar City Office. He told me that metes and bounds conveyances of property are totally acceptable. I related to him the position articulated to me by the Claims Officer four years before a position the Forest Service has continued to maintain with me during the last four years. He responded that he had recently spoken with the Claims Officer and he had no problem with conveying land on a metes and bounds description (with fence lines that go this way and that) either.

This very recent change in position is totally inconsistent with the position of the Claims Officer and this Local Office for the past four years. Suffice it to say that it is extremely frustrating to be trying to solve a problem in an environment where the rules keep changing after you have expended tremendous amounts of time, money and effort.

Mr. Chairman, I believe the evidence and the equities are overwhelming. I am not asking the Congress to give me anything. I am asking the Congress to authorize the sale of my family property back to me for fair market value and to establish straight and manageable boundaries for the Forest Service. Mr. Chairman, I respectfully request the favorable consideration of this legislation and I am prepared to answer any questions you might have or provide any further information that the Subcommittee desires. Thank you Mr. Chairman for your time.

[NOTE: Attachments to Mr. Harrison's statement have been retained in the Committee's official files.]

Mr. MCINNIS. We will open it up for questions by the Committee.

And, Abigail, maybe you can—Ms. Kimbell. I'm sorry. Maybe you can help me. You said in your earlier comments that the Forest Service didn't have objections I think to the 20-acre tract. How come they didn't already complete those transactions? I mean, are they holding that as part of the negotiations, or—

Ms. KIMBELL. When Mr. Harrison applied for three different parcels under the Small Tracts Act, we have been working back and forth, but there have been pieces that have not been completed by the other party.

Mr. MCINNIS. Now, someone—I think it was in your testimony, that this has been going on since the 1990's. Or, how long have the two parties been engaged in trying to resolve this?

Ms. KIMBELL. Well, in fact, some of these lands were pursued for patent prior to the establishment of the National Forest and were turned down then in, I believe, the 1880's.

Mr. MCINNIS. When did the Small Tracts Act requests come in? Do you know those?

Ms. KIMBELL. The original Small Tracts Act application was made in 1996.

Mr. MCINNIS. All right.

Mr. HARRISON. May I answer that?

Mr. MCINNIS. Mr. Harrison.

Mr. HARRISON. The initial Small Tracts application was made in 1991.

Mr. MCINNIS. And which part was that on up there on that map?

Mr. HARRISON. That was on what I reference the Platt Field, and that would be on the eastern side of the Pinto Creek.

Mr. MCINNIS. And the north—as that map sits, the north is up on the top? So I know where east is.

Mr. HARRISON. The north is up on the top. Correct.

Mr. MCINNIS. All right.

Now, Ms. Kimbell, you mentioned that the Forest Service thought there were ways to resolve this. Are the parties currently engaged in some kind of negotiation to resolve this, short of legislation? Or are they—tell me what the trend of this is, where our trend is going here.

Ms. KIMBELL. We currently have no authority to sell National Forest System lands. We have offered to work with Mr. Harrison on those Small Tracts Act applications, two of the three of them.

Mr. MCINNIS. OK. Now, help me now. The one that you object to—tell me the two that you agree to and the one—maybe if you—and I am not sure you are familiar with this area, but maybe you could help me on the map, too. That is my only—that is the best reference I have got, is looking at the graph. Are you familiar enough to tell me which of the two you agree with and the one that you don't?

Ms. KIMBELL. I am not familiar with which one is the third piece that we do not agree with.

Mr. MCINNIS. Are you aware of which one that is, Mr. Harrison, the third piece that they said they don't agree with?

Mr. HARRISON. It is on the southernmost tip. It is the Reservoir Field. That is about four acres and includes my best spring. That is—and I own the spring.

Now I don't—you know, there is no water that is the subject of these conveyance that would go from them to me. I already own the water.

Mr. MCINNIS. The water is a separate property right. Isn't that correct?

Mr. HARRISON. Yes.

Mr. MCINNIS. All right. I am sorry, Abigail—Ms. Kimbell—go ahead.

Ms. KIMBELL. Mr. Chairman, it is those pieces in orange—and I agree. I am struggling to see the orange from the pink. But—that are on the west side and the east side, and the piece on the south side is the side that is adjacent to lands that were acquired in 1965 and don't qualify under the Small Tracts Act.

Mr. MCINNIS. So—but what we need is legislation. I mean, legislation is going to be required, correct?

Ms. KIMBELL. If lands are to be conveyed to Mr. Harrison, that—we currently have no authority to convey lands, those lands that are marked in orange on the south side of the parcel.

Mr. MCINNIS. Now, is the Forest Service protesting or laying claim to any of the water rights that Mr. Harrison has, or they are not making any claims on the water rights?

Ms. KIMBELL. No, water rights aren't an issue here, other than the access for other owners of water rights to access their water rights for maintenance.

Mr. MCINNIS. All right.

Mr. Harrison, I will let you wrap it up there real quick on the water rights.

Mr. HARRISON. Let me address that.

The Pinto Irrigation Company, of which I am a member—and we have shares in the creek, through the Pinto Valley controls and manages that creek. I can represent that I have spoken to the president of the Pinto Irrigation Company, and they are unanimously in support of my retaining possession and obtaining legal title to that area of land where the Pinto Creek goes through.

Mr. MCINNIS. I think it would probably assist your case to go ahead and get a statement or something from the irrigation company to supplement the documents that you submitted, and we will accept that into the record.

I will now go to Ms. Christensen. Do you have any questions?

Mrs. CHRISTENSEN. Yes, I do. Thank you.

Mr. MCINNIS. You may proceed.

Mrs. CHRISTENSEN. I would like to take this opportunity to welcome everyone at the panel this morning. I am going to ask my questions. I am going to focus mainly on H.R. 2386.

I agree that there is benefit in having outfitters and guides for both the visitor and the property, but I do have some concerns about the bill. Because—and primarily I am having difficulty seeing how continuing marginally performing outfitters or guides would do that, enhance the visitors' experience or the property.

My first questions would go to Ms. Barnett, the Deputy Assistant Director. Could you clarify for me, does the Administration support the provisions in the bill providing for non-competitive bids and automatic renewal of outfitter and guide permits?

Ms. BARNETT. Those are areas that we would like to work with the Committee. We share some of your concerns.

Mr. MCINNIS. I think you need to turn on the mike there.

Ms. BARNETT. We share the Committee's concerns in that regard. We appreciate your bring those up, and we would like to continue to work with you in those areas that are specifically the issues that you brought up that we are concerned about.

Mrs. CHRISTENSEN. Along the same lines, you also share the concern that the same fee is being charged to all outfitters and guides in a given area, regardless of the size of the outfitter?

Ms. BARNETT. My official testimony submitted reflects the position of the Department. We will work with you on that issue as well.

Mrs. CHRISTENSEN. So—well, so the Administration doesn't have—as I understand it in the bill, it is the same fee to be

charged to all of the outfitters and guides, regardless of size. And it wasn't clear to me that you had stated a position on that.

Ms. BARNETT. I think the position we are looking for is consistency in the application of any fee structure.

Mrs. CHRISTENSEN. Under the legislation, an outfitter and guide could have one unsatisfactory and multiple marginal rating and still be entitled to an automatic renewal of the permit. Does the Administration support that?

I know that one of the persons who testified said that that was not the case, but the bill on page 29 said: The Secretary shall renew all outfitter authorization under paragraph 1 if the Secretary determines that the authorized outfitter has not received more than one unsatisfactory annual performance. And that is all it says. So, they could be marginally performing as long as they only have one unsatisfactory. Do you support—

Ms. BARNETT. We do not support the provision for automatic approval of transfers, but we do support the principle of making sure that they are processed in a timely fashion, and we want that opportunity, to work with them to correct any deficiencies before any kind of transfers are made.

Mrs. CHRISTENSEN. Thank you.

Ms. Kimbell, you stated in your testimony on the same bill that Forest Service wants to work with the Committee to resolve several important issues that you see would make a better bill. But I didn't see in your testimony any specific issues that you might have been referring to. Can you tell us where the issues are in the bill so that we can work with both you and the Forest Service and our colleagues to see that they are corrected?

Ms. KIMBELL. Certainly. The Department has two critical issues that we would like to work with the Committee on different language. One has to do with liability. We have been working with the industry over a number of years, and we think we are pretty close to being able to identify common language that would work for both of us. But specifically— one specifically on liability.

The other is on this very same question with the automatic renewal of permits. We have some suggestions for some language changes, and we would like to work with our good friends at the Department of the Interior and with the Subcommittee.

Mrs. CHRISTENSEN. So you share the concerns about the ability for the marginally performing outfitter to automatically be renewed and the fees? The same questions that I asked of Ms. Barnett.

Ms. KIMBELL. Yes, and other things from Ms. Barnett's testimony regarding changes in land condition, changes in demands. There are some other things that we would like to address as well.

Mr. MCINNIS. Mr. Udall.

Mr. MARK UDALL. A little dispute between the Udalls here. Thank you, Mr. Chairman. It is an ongoing problem around here. There are too many Udalls; and if you have seen one, you have seen them all, somebody once said.

But, panel, it is great to have you here today, and I wanted to thank you for taking your time to join us. I wanted to focus my remarks on the PILT legislation, but before I do that, I wanted to acknowledge the great work of Outward Bound and also America Outdoors. It is terrific to see you here.

I want to thank the Chairman for his strong comments in support of the good work that the outfitter guide community does to not only expose people of all ages and backgrounds to our wonderful public lands but, in the process, to build character and teach people how to work in teams and how to draw on the best in themselves; and I think we need that more than ever in this world that we now face post 9/11.

So—and my son is on his way to Outward Bound as soon as I can get him in a car and send him your way. He needs that kind of experience, maybe as pay-back for what I did to my parents.

But it is great to see you all here, and I look forward to working with you on the outfitter guide legislation. I, of course, have first-hand experience in working with the agencies and finding that proper balance between the needs and responsibilities and rights of the outfitters versus the managers of our public lands.

Let me just move to PILT. I am particularly glad that we are taking up these important pieces of legislation. In Colorado and other Western States, it is really a crucial program, particularly where there are large tracts of Federal lands; and that makes me a strong supporter of PILT for many reasons.

Mr. MCINNIS. Mr. Udall, I am sorry to interrupt you, but we haven't yet gotten to the PILT bill. I would ask you to reserve your comments on PILT until we have the testimony that will be subsequent to this and that we focus on these two particular bills. I understand the two witnesses that you have from the Forest Service and Bureau of Land Management will be present during the PILT presentation. So I ask you to reserve that.

Mr. MARK UDALL. Mr. Chairman, I understand. I have no further questions of the other bills. If I could include my statement in the record, I would appreciate it. I am going to be called to another meeting I think before the next testimony will occur, but I understand. Thank you.

Mr. MCINNIS. Mr. Udall, if you would like to, since you have got to go to the other meeting, since we do have a witness—I wasn't aware of that—you can go ahead and express your concerns. Then, maybe during their testimony, you can cover that and then you can look for the record for an appropriate response.

Mr. MARK UDALL. That would be something I would like to do.

Let me just finish my remarks, just take another minute or so, Mr. Chairman.

The feeling I have is that the funding out of PILT should be stable and reliable. It shouldn't be rising and falling based on such things as timber receipts or fees, and it ought to be a program that the local governments can count on without becoming a hostage to debates over the management of Federal lands. Local counties have a stake in those management debates, and the land managing agencies should listen carefully to what they have to say. But a stable, dependable PILT program will free the local governments from a dependence that can make it harder for them to weigh the issues involved. That is one of the reasons I am a co-sponsor of Mr. McInnis' bill, H.R. 1811.

I look forward to hearing the testimony if I can stay; and, if not, I will read the testimony and extend any questions to witnesses.

But I really want to impress, as I think my Chairman will, Mr. McInnis, that we want to strengthen the PILT program. I think his legislation is very well put together, and I am a little disappointed the Administration seems to have problems with it, but we are going to work together to make this right in the long run.

So, thank you, Mr. Chairman.

Mr. MCINNIS. Thank you, Mr. Udall.

Mr. Otter.

Mr. OTTER. I have nothing.

Mr. MCINNIS. Mr. Horn, before we wrap up this panel, just let me ask you. The outfitters—just to clarify from some earlier testimony, because maybe I am confused. But my understanding is that outfitters don't automatically get their permit renewed. They have to have lived up to the conditions of the contract to the agreement that they have made prior to the renewal. Is that correct or not?

Mr. HORN. Yes, Mr. Chairman. They have to earn satisfactory performance for 9 years out of the 10. Any reading of the bill that you can continue with a marginal rating is a misreading. The marginal rating is essentially a temporary evaluation which points out deficiencies in your performance; and if you do not cure those deficiencies, your marginal rating drops automatically to unsatisfactory. If you cure the deficiencies, it enables you to earn a satisfactory rating.

So the only way that you can earn the renewal that is specified in the bill is, as I said, by batting 900. You have to get a formal satisfactory evaluation for 9 years out of the 10.

Mr. MCINNIS. Thank you, Mr. Horn.

Mr. Inslee, do you have any questions of the panel?

Mr. INSLEE. I have a couple, Mr. Chairman.

Mr. MCINNIS. Sure.

Mr. INSLEE. Thank you.

My apologies for not being able to join you; and if my questions are duplicative, I regret that.

Mr. Harrison, I wanted to ask you about this proposed acquisition in this beautiful country. We are all envious of the beautiful country you live in. Could you explain to me—I have been told that your original application was something around 25 acres, and now the proposal is about 500-plus. Could you explain how that occurred, that change, if you will?

Mr. MCINNIS. Let me interrupt, Mr. Harrison. We had already—I asked him an almost identical question early on. So why don't you refer to the record, Mr. Inslee, and move on to your next question. That has been asked. He went through a whole process up here, and I think you could track it in the record, if you don't mind. I know you weren't here.

Mr. HARRISON. Could I expand on it just briefly?

Mr. MCINNIS. Sure.

Mr. HARRISON. Four years ago the Forest Service took the position on the east side where I had applied for 11.8 acres that I had to acquire 120 acres rather than the 11.8. The genesis of the 560 is parameters that have been dictated to me by the Forest Service for the last 4 years that are in the materials that I provided.

Mr. INSLEE. Again, my apologies. But is that having to do with just having straight boundaries, or is there some other thing going on here?

Mr. HARRISON. The Forest Service described it to me as in furtherance of their management objective of straight boundaries, sectional lot divisions, right angles, blocked-up ownership.

Mr. INSLEE. And how would you describe the inability to get this done administratively? How would you describe the—where does the Service's or the agency's perception differ from you on the history of this tract? What is the kernel of contention, really?

Mr. HARRISON. Well, the two reasons stated to me were, one, these were small meandering fence lines that they thought would be contrary to their management objectives; and, second of all, they pointed to an Interior Board of Land Appeals where someone had a piece of ground that was not improved and they brought in outside materials, barbed wire and fence, and just simply built a fence around it and said, well, that is not improvement.

I submit that my position is radically different than that, in that the rip-gut fences that surround my boundaries are evidence of an improvement by clearing the land, cultivating the land, growing crops. I have submitted records from the 1860's and the 1870's of the crops and the livestock that my family was raising on this ground, and I think those are significant improvements.

My position is radically different than the Interior Board of Land Appeals' decision where somebody just simply brought in some barbed wire and built a fence.

Mr. INSLEE. Thank you.

Mr. Mackey, I am going to ask kind of a softball question. It is late, but it is still a softball question. What do you think the most important thing for us to know is as far as increasing your ability to fulfill your mission, which my kids have enjoyed being part of? I mean, if you can tell us one thing, what do you think is the most important thing for us to be thinking about in regard to your mission?

Mr. MACKEY. The thing that I focused on this morning, Congressman, was performance-based renewal. We get in—we are a nonprofit educator. We are 501(c)(3). We are a large user of the public lands. There is no question about that.

Outward Bound evolved early in the system, if you will. It started in this country in 1961. And the way the system has evolved, there is a national office and underneath that there are seven separately chartered 501(c)(3)s, each of which was started up in a local community when people saw how wonderful Outward Bound was.

You know, if you will, we have sort of become a General Motors of the outdoor industry. We are a big player on public lands. There is absolutely no question about that.

But even though we are a significant player out there, we are still very threatened by the concept of fee bidding, of competitive bidding for permits. We would like to see a system whereby your performance on the ground, your performance in terms of providing quality services that the public is seeking out there on the public lands, resource protection, education—

Paying a fair return to the Federal Government is certainly part of the process. There are many places where Outward Bound has

actually voluntarily taken outfitter status so that we can have that allocation of use for which, in return, we fill out paperwork, we pay fees, you name it.

But the best example, Congressman, is—at this point in time is really western rivers. Set aside the Grand Canyon, because that is really a separate example. But if you take rivers throughout the West, you know, the Green River in Colorado, and Utah and Desolation Canyon, the Rogue, the Current in California, any number of rivers—the situation there is very competitive in this day and age, and the agencies are beginning to look at competitive bidding for those permits.

We can certainly compete very well based on what we do out of the ground, but Outward Bound cannot compete with a Delaware North or a Marriott Corporation for those premier experiences, and we would like to be able to offer those premier experiences to the people we serve, primarily young people. Those $2 million in scholarships we raise every year and pass out on a sliding scale, much like college financial aid—you know, we think we provide a very important service in terms of introducing a broad array of people in this country to their public lands and teaching them how to take care of their public lands and take care of themselves while we are at it.

So what I focused on this morning is really performance-based permit renewal, and the biggest single issue that is wrapped into that is subordination of fees in either the award of a permit or the renewal of a permit.

Mr. INSLEE. Thank you.

Mr. MACKEY. Thank you.

Mr. MCINNIS. No further questions.

I want to thank all the panel on the different areas.

Mr. TOM UDALL. Mr. McInnis—Mr. Chairman, could I ask some questions? I was just passing to my cousin Mark since he was here earlier. But I didn't want to—

Mr. MCINNIS. Mr. Udall, I took it as a yield of time. But out of my generosity of the day, I will let you have your time.

Mr. TOM UDALL. Well, you are very generous, Mr. Chairman; and I certainly appreciate it.

I have been reading this press article up here. This is—

First of all, welcome to the panel, and sorry I am a little late here. I almost missed out here, I guess, but the Chairman has been very generous.

Let me—and in this press article it talks about, there is a July 18th memo from the Forest Service that cited several concerns about the proposed sale of the 560 acres, and these were the concerns: That there were two grazing permittees that would be adversely affected. A second concern: Another landowner's property would be completely surrounded by Harrison's property. The third concern: A spring and more than a half mile of Pinto Creek would be removed from public ownership. No. 4: The sale would nearly double the amount of private property in Pinto, leading to a change in the rural character of the area. And, No. 5: The sale may be viewed as inequitable to other families who have acquired only small parcels of land from the Forest Service.

I am just wondering, are those five concerns still concerns of the Forest Service today? What is the Forest Service's position on those concerns from your July 18th memo and where are you today?

Ms. KIMBELL. I am not aware of the July 18th memo, but those still remain concerns of the U.S. Forest Service, yes.

Mr. TOM UDALL. And none of those have been worked out, as far as you are concerned?

Ms. KIMBELL. Not to date. No.

Mr. TOM UDALL. Mr. Harrison, how do you react to those concerns in the July 18th memo?

Mr. HARRISON. I have also not seen the memo, but I will address the concerns as I understand them.

As I stated earlier, the person that has access to the county road will still have access to the county road. That won't be changed. The permittee's rights will not be affected. This would be subject to existing rights of the permittee. It will not change the rural character. I have no intention of developing this land or anything. This is my family land. This is my heritage. This is what my family is about.

Mr. HARRISON. The site—that article is so unfair, because for the Forest Service, the Forest Service has dictated the 560 acres by the parameters they have given me in the last 4 years, and to now turn around and say that somehow Congressman Hansen is out of line or to say that anything—I mean, it is absolutely incredible their position has changed just as of this morning again. The 560 is dictated by the parameters set to me by the Forest Service, and it is in the materials that I provided.

Mr. MCINNIS. If you will let me interrupt you for a minute, I will just point out that the previous testimony that—as I understand it, that the family has resided on the property since the 1860's, generation after generation after generation. A lot of history to the property.

Mr. TOM UDALL. Mr. Harrison, you understand it is pretty extraordinary for the Forest Service to be selling this kind of acreage to a private citizen, don't you?

Mr. HARRISON. As I just said earlier, the area where I applied for 11.8 acres, and the letter is in here. They insisted that I take 120.

Mr. TOM UDALL. Is it your position these issues that are raised by the Forest Service are all resolved? It seems like you went through them rather quickly here. I mean, the two grazing permittees, they are not adversely affected?

Mr. HARRISON. This bill—the conveyance I would take would be subject to their existing rights. It wouldn't terminate their rights.

Mr. TOM UDALL. So they are not impacted in any way?

Mr. HARRISON. If they have got a 10-year lease and they have got 9 years left, I take subject to that 9-year lease.

Mr. TOM UDALL. The Forest Service woman there is shaking her head. Can you respond there to that, Abigail? Sorry to—

Ms. KIMBELL. On National Forest System lands, we have grazing permits, not grazing leases, and they don't—they aren't on a 10-year time period. As we read the bill, those leases would—or those permits would terminate, and the remaining available forage would

allow for about a 98 percent reduction in the size of those two permits.

Mr. TOM UDALL. So they are adversely affected? There is no doubt about that?

Ms. KIMBELL. Yes, they would be.

Mr. TOM UDALL. Mr. Harrison.

Mr. HARRISON. My understanding, whether it is a permit or a lease, they are in 10-year increments, and whatever time is left, I would take subject to that. I would like to address the water issue as—

Mr. TOM UDALL. Well, the problem with that is that most people that graze on Federal land anticipate doing it for longer than 10 years. I mean, many of these are families that have been in the business for hundreds of years, and they don't view it as a little 10-year period. They view it that if they are good stewards and they treat the land properly, that they can get a renewal of the permit. You are trying to extinguish their rights and just say, oh, you know, it is no big deal to them it sounds like.

Mr. HARRISON. I am not trying to extinguish their rights. I am merely trying to get legal title to my family's lands.

Mr. TOM UDALL. But you want full control and authority over the land at the end of 10 years it sounds like, which would be adverse to their rights.

Mr. HARRISON. I have no problem working something out with the permittee. I mean, one of them is a good friend of mine. I mean, I—

Mr. TOM UDALL. Thank you very much, Mr. Chairman.

Mr. MCINNIS. I am going to go ahead and let Mr. Inslee ask a couple questions. Then we need to expedite it because we are expecting votes around 11:30.

Mr. Inslee.

Mr. INSLEE. Thank you, Mr. Chairman. I appreciate it. I am sure you understand our curiosity about this is when the applicant comes in for about 25 acres and ends up with a bill of about 500, and the answer is that the Forest—or the agency wanted to have sort of straight lines or sectional definitions as best I could figure it out. Is there any way to do a straight line meets and bounds definition, if they want straight lines, where you end up getting somewhere 25 acres or 50 acres that may not be exactly historical usage but gives you a straight line boundary if that is what the agency wants and we can tell the public that this is a little more consistent with kind of fairness as far as historical usage? Is there a way to do that? Have you talked to the agency about potentially doing that at all?

Mr. HARRISON. I would be more than happy to sit down with them and work something out to make sense for both of us.

Mr. INSLEE. Thank you.

Mr. MCINNIS. You know, I do want to point out that the bill does have the language. It subjects any transfer to Mr. Harrison to existing rights, and so on.

Well, I want to thank the panel. I also thank the Committee. I think we have had a good examination of this particular issue. I thank all of you.

We will keep the record open on this for a period of 10 days.

Mr. McINNIS. I will now introduce our witnesses for our third bill, H.R. 1811, on Panel II: Chris Kearney, with the Department of Interior; the Honorable Don Davis, Commissioner of Rio Blanco County, Colorado; and Linda Cable, City Administrator, Swain County, North Carolina.

STATEMENT OF THE HON. SCOTT McINNIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. McINNIS. Again, we are subject to the 5 minutes. I am going to go ahead while our witnesses are being seated and start my opening statement due to the fact we have votes momentarily.

I want to thank my colleague Mr. Radanovich whose Subcommittee retains primary jurisdiction over the PILT issue for joining me—excuse me, for joining with Mr. Gilchrest and me in convening today's session hearing on this legislation that is so important to communities across our country.

When Congress enacted payment in lieu of taxes, commonly called PILT, and the Refuge Revenue Sharing Act, it made both an admission and a promise. The admission that Congress made was that it would be fundamentally unfair for the Federal Government to own vast tracts of land within a country or municipality, land that would otherwise provide local revenue in the form of property tax to fund roads, schools and other important social issues and not reimburse the county for those revenue losses.

Remember, the Federal Government holdings are generally immune from State and local tax and so Congress affirmatively recognized that these localities would quite literally wither on the vine without some form of compensation from the Federal Government.

With that admission in mind, Congress made a promise to provide just and reasonable compensation of local governments whose tax base is eroded by large Federal land ownership presence. This promise was embodied and codified in PILT and the Refuge Revenue Sharing Act, which set out a reimbursement formula under which the localities would be compensated. I would note for the benefit of the Committee and the guests we have today, that in my particular district, I have approximately 120 communities, 119 of which are completely surrounded by public lands.

Now, since it is the—and I think Mr. Davis, your county has, what, 98 percent? What is your percentage of government owned? 75 percent.

Now, since this is the Subcommittee on Forest and Forest Health and not the Committee on Rocket Science, I am not going to even begin to try and explain the mind-numbing nuances of PILT and the refuge revenue funding formulas. I will leave that for another day, but I will say these formulas set out a reasonable framework for compensating our friends in local government.

Unfortunately, Congress has rarely been willing to fully fund PILT and the Refuge Revenue Fund at the levels authorized under those formulas. You couldn't say that Congress totally broke its promise, but there is no question we have been fudging big time.

In Fiscal Year 2002, Congress shortchanged PILT by almost $40 million and the Refuge Revenue Sharing Fund by over $16 million. In the scheme of the United States Treasury, this may not seem

like a big deal. Representatives of counties and other local governments, including my good friend Mr. Davis, who is here to testify today, will tell you otherwise.

Now, there are some who say we can't afford permanent full funding of PILT. I say we can't afford not to. We have committed ourselves. We are obligated to legally, and in addition to that, as good neighbors we are obligated to. PILT and the Refuge Revenue Sharing Act fund the nuts and bolts programs that keep the community strong. Those dollars go directly to classrooms, to expanding, in some cases paving the local county road, to keeping cops on the street, to funding critical social service programs. I might also add that our emergency services perform a number of duties on Federal lands, ambulance, rescue, firefighting, et cetera. So they are due appropriate compensation that every other citizen in the county has to pay for.

This is mom and apple pie stuff. Colleagues, it is being shortchanged because Congress has a historic propensity to fudge on its word.

H.R. 1811, the PILT and Refuge Revenue Sharing Permanent Funding Act of 2002 would rectify this inequity by doing just what the title suggests, fully funding both programs with further appropriation.

The bill solidifies Congress' promise to our friends in local government in ironclad terms by guaranteeing that the appropriated funds will always equal the levels authorized by these complicated formulas. No more partial funding, no more fudging on our word. H.R. 1811 settles the score once and for all for all communities and local governments.

We have another PILT bill, H.R. 5081, and I understand we have a witness, Mr. Wallace. Is Mr. Wallace here? Mr. Wallace, why don't you come on up to the table? Because we have a vote coming up very quickly, I would like to have you there. We will move to you as soon as we finish with these other three. Now, you all are entitled to 5 minutes, but if you can keep it less than 5 minutes, I would appreciate it because of the fact we are expecting a vote, and my guess would be that once we get the vote, we will not be able to reconvene the Committee until sometime after lunch, if that.

So we will go ahead and proceed. Mr. Kearney, with Department of Interior, thank you for coming. Why don't you begin with your statement?

[The prepared statement of Mr. McInnis follows:]

Statement of The Honorable Scott McInnis, Chairman, Subcommittee on Forests and Forest Health

I want to thank my colleague, Mr. Radanovich, whose Subcommittee retains primary jurisdiction over the PILT issue, for joining with Mr. Gilchrest and me in convening today's hearing on this legislation that's so important to communities all across this country.

When Congress enacted Payment In Lieu of Taxes (PILT) and the Refuge Revenue Sharing Act, it made both an admission and a promise. The admission that Congress made was that it would be fundamentally unfair for the Federal Government to own vast tracks of land within a county or municipality—land that would otherwise provide local revenue in the form of property tax to fund roads, schools and other important social services—and not reimburse the county for those revenue losses. Remember, the Federal Government's holdings are generally immune from state and local taxation. And so Congress affirmatively recognized that many local-

ities would quite literally whither on the vine without some form of compensation from the Federal Government.

With that admission in mind, Congress made a promise to provide just and reasonable compensation to the local governments whose tax base is eroded by a large Federal land ownership presence. That promise was embodied and codified in PILT and the Refuge Revenue Sharing Act, which set out a reimbursement formula under which localities would be compensated.

Now since this is the Subcommittee on Forests and Forest Health, and not the Committee on Rocket Science, I'm not even going to begin to try to explain the mind-numbing nuances of the PILT and Refuge Revenue funding formulas. I'll leave that for someone else. But what I will say is that these formulas set out a reasoned and responsible framework for compensating our friends in local government.

Unfortunately, Congress has rarely been willing to fund PILT and the Refuge Revenue Fund at the levels authorized under these formulas. You couldn't say that Congress totally broke its promise, but there's no question we've been fudging big time. In Fiscal Year 2002, for example, Congress shortchanged PILT by about $140 million, and the Refuge Revenue Sharing fund by over $16 million. In the scheme of the United States Treasury, this may not seem like a big deal. Representatives of counties and other local governments including my good friend Don Davis who's here to testify today will tell you otherwise.

Now there are some who say we can't afford permanent full funding of PILT. I say we can't afford not to. PILT and the Refuge Revenue Sharing Act fund the nuts-and-bolts programs that keep communities strong. These dollars go directly to classrooms, to expanding—and in some cases paving—the local county road, to keeping cops on the street, and to funding critical social service programs. This is mom-and-apple pie stuff, Colleagues, that's being shortchanged because of Congress' historic propensity to fudge on its word.

H.R. 1811, the PILT and Refuge Revenue Sharing Permanent Funding Act of 2002 would rectify this inequity by doing just what the title suggests—fully funding both programs without further appropriation. The bill solidifies Congress' promise to our friends in local government in ironclad terms by guaranteeing that appropriated moneys will always equal the levels authorized by those complicated formulas.

No more partial funding, no more fudging on our word. H.R. 1811 settles the score once and for all for communities and local governments.

STATEMENT OF CHRIS KEARNEY, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. KEARNEY. Thank you, Mr. Chairman. I will be brief and also touch briefly on H.R. 5081 in my statement. Mr. Chairman and members of the Committee, I am pleased to have the opportunity to testify today on H.R. 1811 and H.R. 5081, bills that would make the Bureau of Land Management's Payment in Lieu of Taxes program and the Fish and Wildlife Service's Refuge Revenue Sharing program mandatory.

A hearing on S. 454, comparable to H.R. 1811, took place on May 9th, 2002, before the Senate Energy and Natural Resources Committee's Subcommittee on Public Lands and Forest, and our position remains unchanged on both that bill and on 1811. The Administration strongly supports PILT and the RRS programs and views them as high priorities, but the Administration is strongly opposed to both because it would—S. 454 and H.R. 1811—because it would force the Federal Government to either raise taxes or cut into other programs that are integral to the President's budget.

The President's 2003 budget request demonstrates our commitment to PILT, we believe. The Administration requested $150 million for the Fiscal Year 2002 for PILT, and this year the Administration is requesting $165 million, an increase of $15 million. Despite the budget pressures resulting from the events of September

11th and in light of the fact that the Department's overall budget for Fiscal Year 2003 was nearly unchanged from the prior year, the Department sought a 10 percent increase over last year's budget for this important program because of our commitment to making progress, and we fully realize this obligation.

In addition, while we recognize the importance of the PILT program, it should not be viewed in isolation from other departmental and Federal programs that will bring benefits to counties in the future. Examples include funding provided for rural fire assistance and our efforts to work with gateway communities on tourism opportunities.

I would like to note that many of the concerns we have expressed regarding the PILT funding has also—was true for the RRS funding as well.

Mr. KEARNEY. Turning briefly to H.R. 5081, the Administration supports the purposes of H.R. 5081 but we must oppose this legislation for the same reasons we oppose H.R. 1811. The legislation seeks to protect local governments against the loss of property tax revenue when private lands are required by a Federal agency by making the PILT program mandatory spending for the next 5 years. The Administration is strongly opposed to creating a new mandatory spending category to fund the PILT program because again it would force the Federal Government to either raise taxes or to cut into other programs that are integral to the President's budget.

With regard to a number of sections of H.R. 5081, the Administration supports the concept that the Federal Government should pay for the actual cost of land acquisitions including some provision for reimbursing counties for lost revenue. While the Administration wants to work with the sponsors and the Committee on ways to incorporate this theory into the land acquisition process in the budget, the Administration has a number of concerns with these sections, which in the interest of time I will not address in detail.

We would like to work with the sponsors in the Committee to clarify, however, one specific thing, the relationship of PILT and the entitlement lands to the one-time payments in order to ensure that the units of local government would receive only one form of payment or the other for Federally acquired lands.

This concludes my condensed statement. I would be happy to answer any questions that you have.

[The prepared statement of Mr. Kearney follows:]

Statement of Chris Kearney, Assistant Secretary for Policy and International Affairs, U.S. Department of the Interior

Mr. Chairman and members of the Committee, I am pleased to have the opportunity to testify today on H.R. 1811 and H.R. 5081, bills that would make the Bureau of Land Management's (BLM) Payments-in–Lieu of Taxes (PILT) Program and the Fish and Wildlife Service's Refuge Revenue Sharing (RRS) Program mandatory. A hearing on S. 454, took place on May 9, 2002, before the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests. Our position on these bills remains unchanged. The Administration strongly supports the PILT and RRS programs and views them as high priorities, but the Administration is strongly opposed to both S. 454 and H.R. 1811 because it would force the Federal Government to either raise taxes or cut into other programs that are integral to the President's budget.

Background

The PILT Act (P.L. 94–565) was passed by Congress in 1976 to provide payments to local governments in counties where certain Federal lands are located within their boundaries. PILT is based on the concept that these local governments incur costs associated with maintaining infrastructure on Federal lands within their boundaries but are unable to collect taxes on these lands; thus, they need to be compensated for these losses in tax revenues. The payments are made to local governments in lieu of tax revenues and to supplement other Federal land receipts shared with local governments. The amounts available for payments to local governments require annual appropriation by Congress. The BLM allocates payments according to the formula in the PILT Act. The formula takes into account the population within an affected unit of local government, the number of acres of eligible Federal land, and the amount of certain Federal land payments received by the county in the preceding year. These payments are other Federal revenues (such as receipts from mineral leasing, livestock grazing, and timber harvesting) that the Federal Government transfers to the counties.

The President's Fiscal Year 2003 budget request demonstrates our commitment to PILT. The Administration requested $150 million for Fiscal Year 2002 for PILT, and this year the Administration is requesting $165 million, an increase of $15 million. Despite the budget pressures resulting from the events of September 11th, and in light of the fact that the Department's overall budget for Fiscal Year 2003 was nearly unchanged from the prior year, the Department sought a ten percent increase over last year's budget for this important program because of our commitment to making progress and we fully realize this obligation. In addition, while we recognize the importance of the PILT program, it should not be viewed in isolation from other departmental and Federal programs that bring or will bring benefits to counties in the future. Examples include funding provided for rural fire assistance and our efforts to work with Gateway Communities to increase tourism opportunities.

The Refuge Revenue Sharing Act (16 U.S.C. 715s) as amended, was enacted in 1935. It authorizes payments to be made to offset tax losses to counties in which U.S. Fish and Wildlife Service (FWS) fee and withdrawn public domain lands are located. The original Act provided for 25 percent of the net receipts from revenues from the sale or other disposition of products on refuge lands to be paid to counties. The Act was amended in 1964 to make it more like the payment-in-lieu of tax program. The new provisions distinguished between acquired lands that are purchased by the Service and lands that are withdrawn from the public domain for administration by the Service. For fee lands, the counties received 3/4 of 1 percent of the adjusted value of the land or 25 percent of the net receipts, whichever was greater, with the value of the land to be reappraised every 5 years. They continued to receive 25 percent of the net receipts collected on the withdrawn public domain lands in their county.

The Act was amended again in 1978 in order to provide more equitable payments to counties with lands administered by the Service within their boundaries. The method used to determine the adjusted cost of the land acquired during the depression years of the 1930's (using agricultural land indices) resulted in continuing low land values compared to the land prices that existed in 1978. Also, other lands that were purchased during periods of inflated land values were found to be overvalued. The Congress decided that the payments did not adequately reflect current tax values of the property. It also recognized that national wildlife refuges are established first and foremost for the protection and enhancement of wildlife and that many produce little or no income that could be shared with the local county.

In the 1978 amendments, Congress chose to distinguish between lands acquired in fee and lands withdrawn from the public domain, by recognizing that the financial impact on counties tends to be greater when lands are directly withdrawn from the tax rolls, rather than when the refuge unit is created out of the public domain and has never been subject to a property tax. The formula adopted then, and still in effect, allows the Service to pay counties containing lands acquired in fee the greater of: 75 cents per acre, 3/4 of 1 percent of the fair market value of that land, or 25 percent of the net receipts collected from the area. If receipts are insufficient to satisfy these payments, appropriations are authorized to make up the difference.

Counties can use funds for any government purpose, and pass through the funds to lesser units of local government within the county that experience a reduction of real property taxes as a result of the existence of Service fee lands within their boundaries. Counties with Service lands that are withdrawn from the public domain continue to receive 25 percent of the receipts collected from the area and are paid under the provisions of the PILT Act.

I would like to note that many of the same concerns we have expressed regarding PILT funding hold true for RRS funding as well. Moreover, we believe that it would be prudent to take another look at the PILT and RRS formulas, authorization levels and other issues, including those raised in the Department's report to Congress dated January 11, 1999, before considering such a significant action as converting these payments to permanent mandatory payments.

H.R. 5081

The Administration supports the purposes of H.R. 5081, but we must oppose this legislation for the same reasons that we oppose H.R. 1811. This legislation seeks to protect local governments against the loss of property tax revenue when private lands are acquired by a Federal agency by making the PILT program mandatory spending for the next five fiscal years. The Administration is strongly opposed to creating a new mandatory spending category to fund the PILT program because it would force the Federal Government to either raise taxes or cut into other programs that are integral to the President's budget.

With regard to the other sections of H.R. 5081, the Administration supports the concept that the Federal Government should pay for the actual cost of land acquisitions, including some provision for reimbursing counties for lost tax revenue. While the Administration wants to work with the sponsors and with the Committee on ways to incorporate this theory into the land acquisition process and budget, the Administration also has some concerns with these sections.

We believe the provision that allows retroactive selections could expose the United States Treasury to a potentially enormous liability. If every unit of local government where Federal land acquisitions have occurred since September 30, 1998, were to select a one-time lump sum payment in lieu of PILT payments, the immediate liability for Federal taxpayers could run into the hundreds of millions of dollars.

The Administration also wants to work with the sponsors and the Committee to clarify the relationship of PILT and entitlement lands to the one-time payments, in order to ensure that units of local government would receive only one form of payment or the other for Federally acquired lands.

We believe it is important to note for Members of Congress that this legislation could dramatically increase the initial costs of acquiring land for the Federal Government. This will negatively impact the ability of Congress and the Administration to acquire high-priority lands. While the Administration has not estimated the amount of additional money that would be needed to fund the principal for new trust funds associated with land acquisitions, it is safe to say that a dramatic increase in funding would be required in order to accomplish the same level of acquisition activity provided by the Interior Appropriations Act for Fiscal Year 2002. If acquisition funding were to remain level, this legislation would curtail the ability of the Federal Government to acquire fee land.

The Administration appreciates having the opportunity to review and comment on this legislation. Unfortunately, the bill raises significant budget and policy issues that remain unaddressed and the Administration must oppose the bill as drafted. We would like to work with the sponsors and the Committee to find an approach that accomplishes the goals of the bill without increasing the demands on the budget.

Conclusion

The Administration recognizes that these payments are important to local governments, often comprising a significant portion of their operating budgets. Recently, the Secretary signed an MOU with the President of the National Association of Counties under which they plan to work closely together on a number of issues including matters related to PILT. The PILT and RRS monies have been used for critical functions such as local search and rescue operations, road maintenance, law enforcement, schools and emergency services. These activities are often undertaken in support of people from around the country who visit or recreate on Federal lands. The BLM and the FWS look forward to continuing to work cooperatively with the communities on these important issues.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or the other members may have.

Mr. MCINNIS. Thank you, Mr. Kearney. Mr. Davis. Mr. Davis, I know that this has been a—because I have known you for 30 years, I know it is an issue you feel very deeply about. I appreciate you

making the trip out here and appreciate your testimony today. You may proceed.

STATEMENT OF THE HON. DON DAVIS, COMMISSIONER, RIO BLANCO COUNTY, COLORADO, THE NATIONAL ASSOCIATION OF COUNTIES AND COLORADO COUNTIES, INC.

Mr. DAVIS. Thank you, Mr. Chairman. It is indeed an honor for me to appear before your Committee. I am a County Commissioner in Colorado. I serve as Chairman of the Public Land Steering Committee for Colorado Counties, Incorporated, and as First Vice President of the Western Interstate Region of the National Association of Counties.

H.R. 1811, the PILT and Refuge Sharing Permanent Funding Act, represents a bipartisan effort to provide an ongoing secure source of funding. This legislation introduced in the House by yourself, Chairman McInnis, and cosponsored by Chairman Radanovich and 24 other Members from both parties would permanently fund these two programs so critical to public lands counties. It is landmark legislation and should be enacted without delay.

Counties are a general purpose local government that must provide public services, both for the Federal employees and their families and for the users of Federal lands. These local services include law enforcement, search and rescue, firefighting, health care, solid waste disposal, road and bridge maintenance, et cetera.

In 1994 Congress amended the PILT formula at the request of the National Association of Counties to recognize inflationary costs. Unfortunately, in the intervening 8 years no Presidential budget has requested nor has any Congress yet appropriated the amount authorized under the revised formula.

NACo and CCI wish to go on record to applaud the Members of the House of Representatives for requesting a historic $230 million for PILT in Fiscal Year 2003. The Interior appropriation bill passed just a few days ago. We thank you for your strong support.

However much we are grateful for any increased appropriation, we view incremental increases as a stopgap measure. PILT should not be seen as just another spending program in the Bureau of Land Management, and it should not have to compete with worthwhile conservation programs within the Interior and Related Agencies appropriation bills.

In Colorado 56 of the 63 counties contain Federal lands. There are a total of 23.6 million entitlement acres of Federal lands in Colorado. With annual PILT payments in 2002 of approximately $14.5 million, this works out to about 61 cents per acre. However, in Rio Blanco County, we have 1.5 million acres of Federal land and the PILT payment is $241,554, or about 16 cents per acre.

In Hinsdale County, in the southwestern part of the State, the situation is even worse. With 676,515 acres of Federal land, their PILT payment was only $62,630, less than 9 cents per acre. The 676,000 acres of public land in Hinsdale County represents 95 percent of that county. There are only about 37,000 acres of private land. 305 of 326 miles of county roads are located on Federal lands.

In summer months, the population of Hinsdale County swells as much as twentyfold. The influx of recreation-seeking visitors creates extreme law enforcement challenges which carry commensu-

rate costs. Local property taxes for the 37,000 acres of private land average $8.30 per acre compared to the 9 cents per acre average for the PILT payment.

The National Association of Counties also supports the permanent funding of the Refuge Revenue Sharing program through H.R. 1811. Federal Wildlife Refuge acreage is not automatically PILT entitled acreage. In fact, if it was acquired by the Fish and Wildlife Service from private property owners, it is not covered by PILT. The Refuge Revenue Sharing program is how local governments are compensated for this special category of Federally owned land, which is tax exempt. This program is particularly important in eastern States.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Davis follows:]

Statement of The Honorable Don Davis, Commissioner, Rio Blanco County, Colorado, on behalf of The National Association of Counties and Colorado Counties, Inc.

Mr. Chairman, and distinguished Subcommittee members, it is an honor to appear before you to present this testimony in support of H.R. 1811. My name is Don Davis, and I am a County Commissioner from Rio Blanco County, Colorado. I serve as Chairman of the Public Lands Steering Committee of Colorado Counties, Inc., and as first Vice President of the Western Interstate Region of the National Association of Counties (NACo).

H.R. 1811, the PILT and Refuge Revenue Sharing Permanent Funding Act, represents a bipartisan effort to provide an ongoing secure source of funding for the Payment in Lieu of Taxes program. This legislation, introduced by my Congressman, Chairman McInnis and co-sponsored by Chairman Radanovich and 24 other members of Congress from both parties, would permanently fund this program so critical to the communities which are surrounded by Federally managed land.

The Payments in Lieu of Taxes program has a two-fold purpose: (1) to help compensate counties "in lieu" of property taxes for the tax exempt nature of Federally-owned lands; and (2) to help reimburse counties for a portion of the costs of local services impacted by the activities on and visitors to the public lands.

Counties are the general purpose local government that must provide the local public services both for the Federal employees and their families and for the users of Federal lands. These local services include law enforcement, search and rescue, fire fighting, health care, solid waste disposal, local recreation programs, road and bridge maintenance, etc. There are more than 1900 counties nationwide that are eligible to receive PILT.

In 1976, Congress enacted, and President Ford signed, the Payments in Lieu of Taxes Act. It was sponsored by Rep. Frank Evans of Colorado. This legislation was based upon a key finding of the Congressional Public Land Law Review Commission co-chaired by Rep. Wayne Aspinal of Colorado and Rep. Mo Udall of Arizona. Under the 1976 PILT formula, total payments nationwide averaged about $100 million annually, depending upon the level established each year in the appropriation process. There was no allowance for inflation.

In 1994 Congress amended the PILT formula, at the request of the National Association of Counties, to recognize inflationary costs. Unfortunately, in the intervening eight years, no President has asked for, nor has any Congress appropriated, the full amount authorized under the revised formula. This lack of secure funding has been particularly distressing for rural public land counties like Rio Blanco County and Hinsdale County in Colorado. In the PILT formula there is a pro rata payment provision to disperse payment when less than full payment is provided. This provision adversely affects counties with large holdings of public lands that also have low populations. For example, one year the payment for Rio Blanco County actually dropped by $12,000 (about 8%) even though overall payment nationwide increased. NACo supports an amendment to the statutory formula which would, in conjunction with permanent full funding, allow the low-population high-entitlement-acreage counties to realize more of the benefit from PILT. However, even absent such an adjustment to the formula, this is an inequity that can largely be corrected by the enactment of H.R. 1811.

In Colorado, 56 out of 63 counties contain Federal lands. There are a total of 23.6 million "entitlement" acres of Federal lands in Colorado, with annual PILT payment

in 2002 of approximately $14.5 million. This works out to about sixty-one cents per acre.

However, in Rio Blanco County with 1.5 million acres of Federal land, the PILT payment was $241,554, or about sixteen cents per acre. In Hinsdale County the situation is even worse. With 676,515 acres of Federal land their PILT payment was only $62,630, less than nine cents per acre.

The 676,515 acres of public lands in Hinsdale County represents 95% of the county. There are only about 37,000 acres of private land. This means that 305 miles of the 326 miles of county roads are located on Federal lands. In summer months, the population of Hinsdale County swells as much as a twenty-fold. The influx of recreation seeking visitors creates extreme law enforcement challenges which carry commensurate costs. In fact, a former Hinsdale County Sheriff was killed on public lands by a poacher. Local property taxes for the 37,000 acres of private lands averaged $8.30 per acre, compared to the nine cents per acre averaged for the PILT payment.

In Rio Blanco County we have a similar situation. Approximately 500 miles of the 900 miles of county roads are located on Federal lands. The county is impacted by extensive natural resource activities on these Federal lands. We have oil and natural gas production, coal production, nacholite (or sodium bicarbonate) production, plus considerable hunting, fishing and recreation activities. Quite frankly, Rio Blanco County cannot adequately keep up with the demand for local services. We need your help. Rio Blanco County is also facing the future development of the world's richest deposit of oil shale. Shell Oil Company is currently operating a research facility in our county that looks promising. Development of these critical national resources requires extensive infrastructure investment at the local level; particularly if the development is going to be done in a manner which is sustains important ecological values.

This year, the state and local governments in Colorado, across the west and in fact across the country, face increased fire fighting costs due to the high risk of catastrophic forest fires this summer. I am concerned that Colorado faces a real threat of more future fires from eco-terrorists. We have suffered previous eco-terrorist attacks in Eagle County, where a ski lodge was burned, and in Boulder County, where a new home was burned. When well-meaning mainstream environmental organizations express concern over efforts to reduce fire risk through fuel treatment programs outside the wildland urban interface, I fear that the more radical fringe groups may initiate eco-terrorist activities to stop programs they oppose. In any event, whenever any of these fires spread to private lands, suppression becomes a state or local responsibility, and a costly one, at that.

The National Association of Counties also supports fully funding the Refuge Revenue Sharing program through H.R. 1811. The acreage in wildlife refuges managed by the U.S. Fish and Wildlife Service is not automatically PILT entitlement acreage. In fact, if it was acquired by the Fish and Wildlife Service from private owners, it is not covered by PILT. The Refuge Revenue Sharing program is how local governments are compensated for this special category of Federally owned tax-exempt land. This program is particularly important in states outside the west where most of the wildlife refuges were not carved out of the public domain but have been acquired by the Federal Government from private landowners. For example, in Fiscal Year 2002, counties in the State of Maryland received over $312,000 in Refuge Revenue Sharing, but only about $81,000 in PILT. Similarly, Delaware counties received over $126,000 in Refuge Revenue Sharing, but only about $2,000 in PILT.

Some have suggested that PILT does not need to be funded at its full authorization because many counties receive payments under programs like the Secure Rural Schools and Community Self–Determination Act (P.L. 106–393), thus implying that counties are overpaid under Federal programs. Please remember the facts:

1. The National Forests have produced billions of dollars of revenues to the Federal treasury in recent years. Furthermore, Title II projects under P.L. 106–393 will add millions more in badly needed revenues for Federal forest restoration projects selected collaboratively by Resource Advisory Committees.
2. National forest moneys to counties under P.L. 106–393 are dedicated to roads and schools. PILT payments are flexible, discretionary general funds, needed to pay for the services counties must provide to visitors of these Federal lands and to the lands themselves (e.g., public health and safety, search and rescue, solid waste treatment and disposal). These two programs serve different, but critical functions, yet both relate directly to tax-exempt Federal lands.
3. P.L. 106–393 Title I and III payments reduce the amount of PILT payments received by a county. By operation of the PILT formula, when the Federal Government increases its support for roads and schools, it reduces its support of

the other Federal land-related local services counties must provide. For example, our Crook County, Oregon, will see its PILT payment drop from $754,022 to $143,659! Baker County from $642,721 to $324,249. Umatilla County, Oregon from $349,428 to $105,854. In rural areas and where vast stretches of Federal lands are located, this is real money that cannot be replaced.

The uniqueness of both the Payment in Lieu of Taxes (PILT) program and of natural resource revenue sharing programs must be explicitly recognized and strictly maintained. PILT must not be confused with the various revenue sharing programs which are linked to natural resource development and usually have strings attached as to their use.

NACo believes that Congress was correct to enact PILT and Refuge Revenue Sharing legislation to compensate counties for the tax-exempt status of Federal lands and to help defray some of the local costs associated with activities on these lands. As a county official actively involved in NACo's efforts to secure equitable funding for these programs, I urge you to approve H.R. 1811. This bipartisan legislation would provide a much needed and secure level of funding of annual PILT payment to public land counties throughout the country.

Thank you for this opportunity to testify,

Mr. MCINNIS. Thank you, Mr. Davis. I appreciate it.

Ms. Cable, welcome to the Committee. You come from a beautiful State. I appreciate the time you have taken to come down, and you may proceed.

STATEMENT OF LINDA CABLE, CITY ADMINISTRATOR, SWAIN COUNTY, NORTH CAROLINA, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES AND THE COUNTY COMMISSIONERS ASSOCIATION OF NORTH CAROLINA

Ms. CABLE. Thank you. I appreciate that also. Mr. Chairman and distinguished Subcommittee members, it is indeed a pleasure and an honor to present this testimony in support of H.R. 1811, the PILT and Refuge Revenue Sharing Permanent Funding Act.

My name is Linda Cable, and for the last 19 years I have served as County Administrator for Swain County, North Carolina. Swain County is a relatively small rural county in the southern Appalachian Mountains of far western Carolina. Most of you know this area as the Great Smokeys. At 81 percent our county may well represent the highest Federal locale of any jurisdiction in the eastern United States. Of the 339,000 acres in Swain County, the U.S. Park Service and U.S. Forest Service together own 239,747 of these acres; the Eastern Cherokee Indian Reservation, another 29,466; and Tennessee Valley Authority, 737,000 acres. Taking away another 4 percent of our land is the State of North Carolina Department of Transportation rights-of-way and exempt organizations such as churches, schools and cemeteries. We are left with a mere 50,000 acres, or 14 percent of our acreage as our tax base.

Passage of H.R. 1811 would assure our small county of the necessary resources to provide services, not only for the citizens of Swain County but to the millions of visitors that annually flock to our county to see the Great Smokeys, the most visited national park in the United States. Swain County is fortunate to have such a beautiful backdrop to our community, but is concurrently plagued with the lack of tax base that exists due to this huge Federal land control.

Swain is only one of two counties in North Carolina designated as distressed by the Appalachian Regional Commission. Further, we are designated a tier one county by the State of North Carolina.

These designations relate to the severely depressed economic condition of our county. 33 percent of our citizens live below the poverty rate, and characteristic of our extremely steep mountainous terrain, there is very little private land that is considered suitable for development. Swain County is therefore considered unattractive to most industrial job producing prospects.

Swain is not so different from other small rural counties across the Nation, in that we struggle each year to meet the needs of our citizens that we serve. The one main difference is the exceedingly high percentage of Federal control and the resulting sliver of taxable private property. For example, a 1-cent tax increase brings in only one-third the cost of a new ambulance that Swain County needs. In fact, if we could rationally and politically tax at the full $1.50 allowed by North Carolina law, we would raise less than $5 million, much short of the total needed to operate Swain County.

Most expenditures in our county budget are mandated by either the Federal Government or the State government, examples being schools, Medicaid, jails and solid waste disposal. The Federal and State checks attached to these mandates are woefully insufficient. Local governments are left with the responsibility of securing the resources to finance these mandated services.

Raising the property tax is not a good solution in a county with such a high poverty rate. At some point the local elected officials have to be realistic as to what people can pay and still feed and shelter their families.

PILT payments are critically important for the operation of local government programs within eligible counties. Permanent full funding of PILT payments to counties with Federal land holdings is the fair and right thing to do. The Federal Government should be as responsible as private property owners are expected to be. Private property owners cannot look at their annual budgets and decide how much they will appropriate to property taxes each year. If that were the case, there would be no local governments left standing to implement Federal and State mandates.

There should be no question as to how much these counties should be expected to receive each year in PILT payments. These payments should be funded at the full formula amounts adopted by Congress. It is unfortunate that our local governments cannot impose penalty and interest on delinquent PILT payments as the Federal Government would do if the situation were reversed.

The fully funded formula allots $445,060 to Swain County. Last year we received only $189,128 in PILT payments, just 42 percent of the amount we were due. The $247,932 we didn't receive represents a 7.5 percent local property tax burden. PILT payments assist in providing such services as emergency response, solid waste disposal and law enforcement for visitors to the Federal lands in our county.

While the Federal Government controls 81 percent of Swain County, it contributes a mere 3 percent of our annual revenues. Conversely, our tiny 14 percent private property base provides 35 percent of our annual revenue stream.

I should clarify and give credit to the Tennessee Valley Authority as one of the mentioned Federal landowners. They do contribute fully and fairly to the revenue stream. TVA holds just 2 percent of

the land but contributes 5 percent of Swain County's annual revenue.

In closing, and on behalf of all counties that receive PILT payments, I want to express appreciation to those Members of Congress who stepped forward last year to restore funding after the President's proposed cuts. Without your support, our counties would have suffered a devastating loss. I sincerely hope you will support H.R. 1811 to solidify this funding stream for our counties.

Thank you for your attention and for the opportunity to be here today, Mr. Chairman.

[The prepared statement of Ms. Cable follows:]

Statement of Linda Cable, County Administrator, Swain County, North Carolina, on behalf of The National Association of Counties and The County Commissioners Association of North Carolina

Mr. Chairman, and distinguished Subcommittee Members, it is indeed a pleasure and honor to present this testimony in support of H.R. 1811, "The PILT and Refuge Revenue Sharing Permanent Funding Act". My Name is Linda Cable. For the past 19 years I have served as County Administrator for Swain County, North Carolina. Swain County is a relatively small, rural county in the Southern Appalachian Mountains of far Western North Carolina. Most of you know this area as the Great Smokies. At 81%, our county may well represent the highest Federal control of any jurisdiction in the eastern United States. Of the 339,000 acres in Swain County, the U.S. Park Service and U.S. Forest Service together own 239,747 acres, the Eastern Cherokee Indian Reservation another 29, 466, and Tennessee Valley Authority 7,337 acres. Taking away another 4% of our land base held by the State of North Carolina Department of Transportation, and by exempt organizations such as churches, we are left with a mere 50,000 acres, or 14% of total acres, as our tax base.

Passage of H.R. 1811 would assure our small county of the necessary resources to provide services not only for the citizens of Swain County, but to the millions of visitors that annually flock to our county to see the Great Smokies, the most visited National Park in the United States. Swain County is fortunate to have such a beautiful backdrop to our community, but is concurrently plagued with the lack of tax base that exists due to this huge Federal land control.

Swain County is one of only 2 counties in North Carolina designated as "distressed" by the Appalachian Regional Commission. Further we are designated a "tier one" county by the State of North Carolina. These designations relate to the severely depressed economic condition of our county. Thirty-three percent of our citizens live below the poverty rate. Characteristic of our extremely steep mountainous terrain, there is very little private land that is considered suitable for development. Swain County is, therefore, considered unattractive to most industrial, job-producing prospects.

Swain County is not so different than other small, rural counties across the nation, in that we struggle each year to meet the needs of the citizens that we serve. The one main difference in Swain County is the exceedingly high percentage of Federal control, and the resulting sliver of taxable private property. For instance, a one cent tax increase brings in only 1/3 the cost of the new ambulance that we need. In fact, if we could rationally and politically tax at the full $1.50 allowed by NC law, we would raise less than $5 million, much short of the total needed to operate Swain County. Most expenditures in our county budget are mandated by either the Federal Government or the state government, examples being schools, Medicaid, jail and solid waste disposal. The Federal and state checks attached to these mandates are woefully insufficient. Local governments are left with the responsibility of securing the resources to finance these mandated services.

Raising the property tax rate is not a good solution in a county with such a high poverty rate. At some point the local elected officials have to be realistic as to what people can pay, and still feed and shelter their families.

PILT payments are critically important for the operation of local government programs within eligible counties. Permanent, full funding of PILT payments to counties with Federal land holdings is the "fair" and "right" thing to do. The Federal Government should be as responsible as private property owners are expected to be. Private property owners cannot look at their annual budgets and decide how much they will "appropriate" to property taxes each year. If that were the case, there would be no local governments left standing to implement Federal and state man-

dates. There should be no question as to how much these counties should expect to receive each year in PILT payments. These payments should be funded at the full formula amounts adopted by Congress. It is unfortunate that our local governments can't impose penalties and interests on delinquent PILT payments, as the Federal Government would do if the situation were reversed.

The fully funded formula allots $445,060 to Swain County. Last year we received only $189,128 in PILT payments, just 42% of the amount we were due. The $247,932 we didn't receive represents a 7.5% local property tax burden. PILT payments assist in providing services such as emergency response, solid waste disposal and law enforcement for visitors to the Federal lands in our county.

While the Federal Government controls 81% of Swain County, it contributes a mere 3% of our annual revenues. Conversely, our tiny 14% private property base provides 35% of our annual revenue stream. I should clarify and give due credit that the Tennessee Valley Authority, as one of the mentioned Federal land owners, does contribute fully and fairly to our revenue stream. TVA holds just 2% of the land but contributes 5% of Swain County's annual revenue.

In closing, and on behalf of all counties that receive PILT payments, I want to express appreciation to those Members of Congress who stepped forward last year to restore funding after the President's proposed cuts. Without your support our counties would have suffered a devastating loss. I sincerely hope you will support H.R. 1811 to solidify this funding stream for our counties.

Thank you for your attention

Mr. MCINNIS. Thank you, Ms. Cable.

Mr. MCINNIS. Mr. Radanovich, why don't you give your opening remark very quickly before we go to Mr. Wallace, and then we will go to Wallace and I will recognize Mr. Udall on this, go back to this.

STATEMENT OF THE HON. GEORGE P. RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. Thank you, Mr. McInnis. I appreciate your setting up this joint hearing. I think it is valuable in the discussions we are having on these bills. Thank you for considering this legislation of the Property Tax Endowment Act, which is H.R. 5081, today. I appreciate the opportunity to speak on behalf of my bill and to hear witnesses' testimony on this important piece of legislation.

Mr. Chairman, over 1400 local governments in our Nation face losses in the revenue stream when Federal land management agencies acquire private land. These local governments lose their tax base while the demand for infrastructure such as roads, emergency services and waste management often increases. Unfortunately, the payment to counties under payment in lieu of taxes, or PILT, does not increase.

In my proposed legislation, the Property Tax Endowment Act will assure that a constant revenue stream to local government would occur. When the Federal land management agencies that oversee PILT, the Forest Service, the National Park Service, Fish and Wildlife, and Bureau of Land Management, acquire private land and property, they would be required to deposit funding with the local government to ensure that the annual proceeds would offset permanent loss of the tax base.

My proposal does not adversely affect PILT, but the legislation guarantees that current PILT payments are not impacted negatively. PILT would be fully funded through the year 2007 under my legislation.

Additionally, though, the bill would exempt acquired lands from ever becoming entitlement acres under PILT to prevent double payments. It would also provide payments to local governments for the values of mines, ranches, farms and other businesses that may be acquired. The value of these lands, except for their acreage, is not reflected in the current PILT formula.

Precedent for H.R. 5081 exists. Congress has provided payment to local governments for high-profile acquisition cases such as Redwoods National Park, Tahoe Basin and the New World Mine. My legislation would assure that payments to offset a lost tax base would occur in all Federal acquisitions, not just those with high profile status. Thus, the bill brings equity to local governments throughout the Nation.

Federal land acquisitions occur frequently. About $530 million is proposed for acquisitions in the Fiscal Year 2003 budget. We should move quickly to provide farmers with and—excuse me. We should move quickly to provide fairness and equity to local governments when the Federal Government acquires property in their jurisdictions. Local governments deserve revenue assurance, and it is sound public policy to provide appropriate offsets at the time of this purchase.

In closing, Mr. Chairman, I want to thank you again for holding this hearing today and look forward to testimony from my constituent Brent Wallace.

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George Radanovich, a Representative in Congress from the State of California

Mr. Chairman, thank you for considering my legislation, the Property Tax Endowment Act, H.R. 5081, today. I appreciate the opportunity to speak on behalf of my bill and to hear witness testimony on this important piece of legislation.

Mr. Chairman, over 1,400 local governments in our nation face losses in their revenue stream when Federal land management agencies acquire private land. These local governments lose their tax base, while the demand for infrastructure such as roads, emergency services and waste management often increases. Unfortunately, the payment to counties under the Payment in Lieu of Taxes, or PILT, does NOT increase.

My proposed legislation, the Property Tax Endowment Act, will assure that a constant revenue stream to local government would occur. When the Federal land management agencies that oversee PILT—the Forest Service, National Park Service, Fish and Wildlife Service, and Bureau of Land Management—acquire private land and property, they would be required to deposit funding with the local government to ensure the annual proceeds would offset the permanent loss of tax base.

My proposal does not adversely affect PILT. The legislation guarantees that current PILT payments are not impacted negatively. PILT would be fully funded through the year 2007 under my legislation. Additionally, the bill would exempt acquired lands from ever becoming entitlement acres under PILT—to prevent double payments. It would also provide payment to local governments for the value of mines, ranches, farms, and other businesses that may be acquired. The value of these lands, except for their acreage, is not reflected in the current PILT formula.

Precedent for H.R. 5081 exists. Congress has provided payments to local governments for high profile acquisition cases such as the Redwoods National Park, Tahoe Basin and the New World Mine. My legislation would assure that payments to offset lost tax base would occur in all Federal acquisitions, not just those with high profile status. Thus, the bill brings equity to local governments throughout the nation.

Federal land acquisitions occur frequently, and about $530 million is proposed for acquisitions in the Fiscal Year 2003 budget. We should move quickly to provide fairness and equity to our local governments when the Federal Government acquires property in their jurisdictions. Local governments deserve revenue assurance, and it is sound public policy to provide appropriate offsets at the time of purchase.

In closing, Mr. Chairman, I thank you again for holding this hearing today, and I look forward to working with you on H.R. 5081.

Mr. MCINNIS. Thank you, Mr. Chairman.

Mr. Wallace.

STATEMENT OF BRENT WALLACE, COUNTY ADMINISTRATOR, TUOLUMNE COUNTY, SONORA, CALIFORNIA

Mr. WALLACE. Thank you, Mr. Chairman, and Honorable Chairman and members of the Committee. Actually, I will defer much of what I had to say with regard to H.R. 1811, because many of the examples that have been given by—from Colorado and North Carolina are exactly the same kinds of issues that apply to Tuolumne County and much of the rural county portion of California.

Tuolumne County offers some of the very best to the Nation. It is 58 percent of the Yosemite National Park and 900 square miles of the National Forest. We serve millions of visitors from across the Nation and international visitors each year.

PILT funding in and of itself is a very important part of our county budget. There are two aspects of PILT that I would pause to say create a problem, and that is the continued discussion—the deliberations each year and the unknowns that are out there of how much money will come forward.

With regard to those specifically and in brief to H.R. 5081—and I would stop here first and say our county board of supervisors has placed a priority on 1811, but we are in support of both bills. With regard to H.R. 5081, that is—we do not consider it a substitute for H.R. 1811. Section 2 provides temporary relief to local government, while passage of H.R. 1811 will allow section 2 of H.R. 5081 to be removed from the bill.

Mr. WALLACE. Under H.R. 5081, local governments would have the option of receiving compensation for all properties acquired by the Forest Service, the Bureau of Land Management, National Park Service and the Fish and Wildlife Service equivalent to the property taxes assessed at the time of the acquisition. County governments currently lose valuable revenues when the Federal Government acquires land. The option to establish an endowment will reduce the opposition of local governments toward land acquisitions.

H.R. 5081 will limit future PILT payments. If enacted, 5081 will allow the Federal Government to meet its local government obligations from an endowment fund rather than PILT appropriations, and H.R. 5081 provides counties with the flexibility to receive funding through the traditional PILT or through an endowment method, but not both, as I understand the legislation.

And H.R. 5081 believes that those counties such as my own that are capped under PILT formula, once full funding has been achieved under PILT, future Federal land acquisitions would not benefit Tuolumne County and more than 1,400 other counties across the Nation. So there would be no incentive for a PILT-capped county to support additional Federal land purchases.

Though PILT funding has increased in recent years, and we thank the members of the Committee for their past support, the

current resources do not meet the need of providing services to Federal lands. PILT and 1811 and 5081 would go a long way in easing the financial responsibilities borne by counties for providing public safety, housing, environmental and transportation services to Federal employees and their families as well as to users of the public lands. So on behalf of the County Board of Supervisors for the County of Tuolumne, I would encourage your support both of both H.R. 1811 and 5081. Thank you, Mr. Chairman.

[The prepared statement of Mr. Wallace follows:]

Statement of C. Brent Wallace, County Administrator, Tuolumne County, Sonora, California, on H.R. 1811 and H.R. 5081

Honorable Chairmen and Committee Members, thank you for the invitation to appear before you and provide testimony regarding H.R. 1811 and H.R. 5081.

As a rural County Administrator for the past sixteen years, I have been employed in three California Counties where the majority of the land within each county is publicly owned. I have a thorough understanding of the relationship between the Federal Government land management and funding practices and how those practices affect local government. In the past few years there has been an attempt by the Department of the Interior to work in consultation and cooperation with local government. This effort has been accepted and welcomed by all counties. A further demonstration of the commitment to counties by the Federal Government would be the adoption and signature of both H.R. 1811 and H.R. 5081 legislation.

Tuolumne County, with more than 76% of its twenty-two hundred square miles of land under Federal ownership, offers some of the very best to the nation. More than 50 percent of Yosemite National Park and more than 900 square miles of the Stanislaus National Forest are contained within its boundaries. The County serves millions of national and international visitors each year. The full and continuous funding of Payments In Lieu of Taxes (PILT) provide certain levels of local funding assurance that enables the County to provide basic services to our visitors. Our local government meets its basic mandated funding obligations before it may engage in discretionary spending. We believe the Federal Government should follow the same practice and fully fund PILT as a mandatory program, before prioritizing funding for discretionary programs.

There is no question that PILT funding is an essential portion of the Tuolumne County budget. There are two aspects of PILT that create difficult budget problems at the local level. First, is the uncertainty of the amount of funds to be allocated for PILT each year. The intent of PILT was, as I understand the historical legislation, to provide a stable payment to local government for services provided by local government to Federal lands that are not subject to local taxes. The total amount of the Federally owned land has not decreased over time. It has increased. The local government costs associated with that land increase each year. Yet, the amount of the payment has varied year to year based upon Federal budget deliberations. The lack of a consistent appropriation creates guesswork in local budget preparation. Second, PILT does not cover the actual cost of providing local services to Federally owned land.

As forest fires throughout the west continue to burn, the costs to all levels of government increase each day that a fire remains uncontrolled and new fires begin. The Tuolumne County Fire Department is often one of the first responders to a fire in the National Forest. Last year two moderate sized fires, in the National Forest, of less than 26,000 acres combined in our County cost more than $150,000 in actual staff and equipment time. The total of the indirect costs (Fire and Sheriff Dispatchers, Emergency Management staff, medical staff on standby, cleanup efforts, etc.) will exceed $200,000. I cannot imagine the costs associated with the fires for this summer to the counties in Colorado, Arizona and Oregon. We have submitted reimbursements for some of our costs for last summer and will consider ourselves fortunate if we receive $40,000. Additionally, a fire engine was totally destroyed in a burn over. A fire engine costs $250,000. That loss is not reimbursable. It is now virtually impossible to afford insurance for safety vehicles after the events of September 11.

Tuolumne County is also the first responder for Search and Rescue Operations. Last year a hiker was rescued in the Emigrant Basin National Wilderness area. These kinds of search and rescue operations are routine and exceedingly expensive. The use of a helicopter can cost $1,500 per hour. Our Search and Rescue Unit found the hiker and brought him to the local county hospital for treatment. Hard dollar

County cost for this rescue from Federal land was $15,000. None of this is reimbursable.

Hikers and campers on Federal land are frequently injured and require special medical attention. A common injury is a rattlesnake bite. If the Federally owned rattlesnake is wise enough to bite a fully insured person there is no cost to the County. If however, that Federally owned snake bites someone without insurance, the cost is absorbed by the County General Hospital. Injections for rattlesnake bites now cost $1,720 per box, with as many as eight boxes needed to treat the average patient. While there may be a research grant out there somewhere for the education of snakes for the selection of the correct, or insured, rattlesnake bite victims—it is probably more efficient and less costly for the Federal Government to continue to treat people through the full funding of PILT.

The major uses of PILT in Tuolumne County are as follows:

- The maintenance and repair of County streets, roads and highways. The County maintains many miles of roadways that transport millions of visitors to campgrounds, parks, ski areas and numerous recreational facilities and areas offered on Federal lands.
- The provision of emergency medical care through the County Ambulance Response Program and for health care at the General Hospital.
- The County's response to the multitude of environmental documents produced by Federal agencies with regard to projects and programs on Federal land.
- The mutual aid responses of the County law enforcement departments and housing of those placed into custody in the County jail.

The County of Tuolumne is in support of both H.R. 5081 and H.R. 1811. However, the priority of the two bills is H.R. 1811.

- H.R. 5081 should not be a substitute for H.R. 1811. Section 2 provides temporary relief to local government, while passage of H.R. 1811 will allow Section 2 of H.R. 5081 to be removed from the bill.
- Under H.R. 5081, local governments would have the option of receiving compensation for all properties acquired by the Forest Service, Bureau of Land Management, National Park Service and the Fish and Wildlife Service equivalent to the property taxes assessed at the time of the acquisition. H.R. 1811 benefits only those lands entitled to PILT. Some land acquisitions are not subject to PILT. County governments currently lose valuable revenues when the Federal Government acquires land. The option to establish an endowment will reduce the opposition of local governments toward land acquisitions.
- H.R. 5081 will limit future PILT obligations. Many land acquisitions currently increase the PILT obligations. If enacted, H.R. 5081 will allow the government to meet its local government obligations from an endowment fund rather than PILT appropriations.
- H.R. 5081 provides counties with the flexibility to receive funding through the traditional PILT or through an endowment, but not both. Lands classified as entitlement acres will receive the traditional PILT. Lands subject to an endowment will be paid through the endowment.
- H.R. 5081 benefits those counties, such as my own, that are capped under the PILT formula. Once full funding has been achieved under PILT, future Federal land acquisitions will not benefit Tuolumne County and more than 1,400 other counties. Under H.R. 5081 Tuolumne County would have the ability to use the endowment method to maintain the tax benefit of that property. Otherwise, the County would actually lose assessed value with no gain in PILT. There is no incentive for a PILT- capped county to support additional Federal land purchases.

The California State Association of Counties and the Regional Council of Rural Counties, representing the interests of all California counties, has long advocated full funding for PILT. Though PILT funding has grown in recent years, and we thank the members of the Committee for their past support, current resources do not meet the cost of providing services to Federal lands. PILT funding at the full authorized level would go a long way in easing the financial responsibilities borne by counties for providing public safety, housing, environmental and transportation services to Federal employees and their families as well as to users of public lands.

On behalf of the Tuolumne County Board of Supervisors I would encourage you to support both H.R. 1811 and H.R. 5081.

Mr. McINNIS. Thank you, Mr. Wallace.

Mr. Udall, before I yield to you, I note that you are an original cosponsor. You signed our colleague letter, and I appreciate very much your support.

Mr. Udall, you may proceed.

STATEMENT OF THE HON. TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. TOM UDALL. Thank you, Mr. Chairman. I want to applaud you and Chairman Radanovich for this piece of legislation. I think this is a good solid piece of legislation. It is something that is long overdue in the West. Let me say that for the counties in my Congressional district and I think many counties around the western United States, these PILT monies are absolutely crucial to operate county government, to be able to give county services and to really run a viable county government, and we need to do everything we can as soon as possible to get them up to full funding.

So I am just here to lend my support in a bipartisan way, and once again congratulate Chairman Radanovich and Chairman McInnis for their leadership on this, and thank you, members of the panel, for being here today. Thank you.

I yield back any remaining time.

Mr. RADANOVICH. [presiding] Would each of you tell us the impact this legislation would have on the counties?

Ms. CABLE. Certainly. I will be glad to speak on that. The impact to Swain County would be the increase in revenue that I shared with you earlier, and it would mean like a 13.7 percent tax increase that our citizens would not have to bear if we were fully funded on an annual basis.

Mr. DAVIS. Well, in Rio Blanco County, it would mean an extra approximately $150,000, which will probably be put into our road and bridge area because of the extreme increase of the energy industry in our county, and we are having a lot of road and bridge problems and need to address those. It would have—it would be a beautiful help.

Mr. WALLACE. It would mean more than a $400,000 a year increase for Tuolumne County, which would go directly to fire protection for areas surrounding and inside of the actual National Forest areas and adjacent to Yosemite National Park, and it would also go for roadway improvements.

Mr. RADANOVICH. Mr. Kearney, would you tell us why there is opposition to this?

Mr. KEARNEY. I think, Mr. Chairman, there is support, there is strong support by the Administration to work with the counties to maximize the ways in which the PILT program can benefit them. Before I answer that direct question, let me give you a couple of examples of things that we are trying to do within the current budgetary constraints we find ourselves.

We have entered into recently an MOU, the Secretary has, with the National Association of Counties. We are committed to work on a range of issues, among them PILT. I think we have a very good beginning dialog there. We have recently taken administrative steps to accelerate the payments so that this year's payments went out in June in order to be in sync with the county's budget year. We are going to try to next year do that in a way that is even ear-

lier in June so it is even more in sync. We have electronic transfer of the payments so that we get them to the counties as quickly as we can, and we have a Web site that allows us to have an information communication flow.

In addition to that, we have within a budget that was completely flat in 2003 compared to 2002 within the confines of the President's other priorities of the budget. We managed to generate a 10 percent increase in our request for the PILT payments this year as opposed to last year, which is one of the more significant increases in any program within DOI. So we think that our commitment to the PILT program, to NACo and to continuing to further that is clear. It is in this particular specific environment in which we have a set of budget priorities in which we all make choices. The Congress makes choices every year, the President has made an array of choices, and therefore we have set our priorities as represented.

So it is in the confines of the priorities that we have made. We simply have an array of budget priorities and choices that we must make, and within those we have tried to make the best that we can with respect to the PILT program.

Mr. RADANOVICH. Let me give you my perspective. I am also an appropriator and I am on the Interior appropriations. I will just tell you what happens every year. Every year we fight for a PILT funding increase. Every year there is huge pressure to buy more land, and buy more land wins every time. That is what has been happening over the years.

The money that should be—here is how I look at it. I come from Pennsylvania. I helped facilitate legislation my last couple years there that doubled the in lieu of tax payment for Pennsylvania for the Game Commission and for the Forest Service and State. We pay $1.20 an acre flat fee. It is part of their budget. The Game Commission has to cough it up and pay it to the communities.

In my view, you know, this legislation is a step in the right direction, but it ought to be a flat fee. If the Federal Government is going to continue to purchase land in a huge third of this country, then we have to do our share of making sure there are roads and bridges and other amenities in those areas where people live. And in my view, it is a road we need to go down. And we need—you know, I guess I was appalled when I got here in this complicated formula of PILT. I had CRS people over. They don't understand it. It is such a complicated formula that we ought to—in my view, we ought to scrap it, and we ought to pay a buck an acre, start with a buck an acre and just pay a buck an acre, and that in my view would be a fair—everybody would know what they were getting. It should be a part of the budgets.

I hate to say that with the two of my members having legislation that is helpful, but it is a step in the right direction, but what happens every year is in the battle for the dollars, buying land beats you. That is where it goes, and as we continue to buy, in my view, the Federal Government has been irresponsible in not paying its taxes. If we want to own the land, that is fine, but we have to pay our taxes, and I think that is a national debate we need to have.

This legislation would be very helpful to give you more—both of these bills would help with consistency and improved payment, but

that is historically what has happened. We lose in the battle of purchasing land. The pressure to purchase land is immense.

Mr. KEARNEY. I understand that.

Mr. RADANOVICH. OK. I guess that will complete this part of the hearing, and we are going to take a break for voting, or do we—

OK. We are going to—I thank the witnesses on the third panel for their insights and members for their questions, and members have some additional questions for the witnesses and we ask that you respond to those in writing. The hearing record will be held open for 10 days for those responses.

This panel will be dismissed.

Mr. RADANOVICH. The last on the agenda is H.R. 5032. Due to a scheduling conflict, Mike Thompson, the sponsor of the bill will not be able to attend today's hearing, but has asked that we submit his opening statement in the record. Hearing no objections, so ordered.

Mr. RADANOVICH. Ms. Kimbell, if you would join us, and please proceed with your testimony quickly so I can go vote.

STATEMENT OF ABIGAIL KIMBELL, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM

Ms. KIMBELL. Thank you. I would like to provide some comments on the land conveyance on the Mendocino National Forest, H.R. 5032. H.R. 5032 authorizes the direct sale of two parcels comprising 120.9 acres of National Forest System lands on the Mendocino National Forest in California to the Faraway Ranch. Various improvements in facilities have been constructed on these lands, and they have lost much of their National Forest character.

This bill provides Faraway Ranch the opportunity to acquire these lands associated with their improvements and activities and allows the Forest Service to utilize the receipts to acquire replacement lands elsewhere in California.

At time of conveyance, Faraway Ranch will make full payment of the fair market value as determined by an appraisal that is acceptable to the Secretary and will cover all direct costs associated with completing this transaction. We support this bill. However, we would like to work with the Subcommittee to develop a more workable time line that takes into account the time needed to properly complete the survey and appraisal.

That concludes my comments. I would be happy to answer questions.

Mr. RADANOVICH. Being we have a lack of members here to ask questions, we will dispense with questions. We want to thank you. I want to thank all the witnesses from today's hearings and members for their questions. The members of the Subcommittee may have some additional questions for the witnesses, and we ask you to respond to those in writing. The hearing record will be open for 10 days for those responses.

If there is no further business before this Subcommittee, I again thank the members of the Subcommittee and our witnesses. The Subcommittee stands adjourned.

[Whereupon, at 11:52 a.m., the Subcommittee was adjourned.]

[Additional information submitted for the record follows:]

[The prepared statement of Mr. Hansen on H.R. 5180 follows:]

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

Thank you, Mr. Chairman. This is a very simple piece of legislation. It would direct the Secretary of the Interior to convey approximately 560 acres of land in the Dixie National Forest in Southern Utah, to Kirk Harrison, at fair market value.

This legislation is the result of more than a century of events. In 1860, before the creation of the Dixie National Forest, the Forest Service, and even the State of Utah, the Harrison family settled in the Pinto Valley located in present day Washington County, Utah. The Harrisons cleared, cultivated, irrigated, and worked lands in that valley. They planted and harvested crops; raised, fed and watered livestock; worked and maintained the lands.

In 1885, John J. Harrison and Benjamin Platt applied for and were granted patents to those lands. Since 1860, members of the Harrison family have exercised open and undisturbed use, relying on the boundaries that were established in 1860.

The problem that this legislation remedies came about because the patents were not based on as-built surveys of the land. Rip gut fences were placed around the perceived boundary of the patented land by Mr. Harrison. Surveys were conducted in 1881 and 1905 establishing section corners and the boundary for the Dixie National Forest, respectively. Neither of these surveys discovered any discrepancy between the boundary asserted by the Harrisons and Platts, and the actual boundary of the adjacent Forest lands.

However, in 1984, the Forest Service retained an outside firm to perform surveys in the area, including lands adjacent to the Harrison property. When boundary markers were set and the survey was complete, surveyors found that the land occupied by the Harrisons was in violation of the boundary described in the 1885 patent.

The discrepancies are due to several factors. The 1984 surveyors did not accept an "historic mound" monument used in previous surveys, and failed to locate the southwest corner of section 2 where the 1881 survey rock monument is located. This 1881 monument is located thirty-seven feet from the 1905 rock monument, creating even more confusion. Additionally, the 1984 Forest Service markers are inconsistent with Washington County corner markers.

The loss of the disputed lands would have a devastating impact on the Harrison family, their livestock, and the land. The Pinto Creek runs through the eastern side of the two largest fields and provides water to livestock grazing on those lands. The loss of the disputed land would result in the complete segregation of the Pinto Creek from the non-disputed property and all access to the creek by the livestock grazing in those fields. Another negative impact of the Harrisons losing the land is the fact that the headwaters of the two primary springs owned by the family since 1860 would be interfered with, compromised, and placed at considerable risk by access from third parties and their livestock.

This legislation would provide a fair, common sense solution to this problem. It would also allow the Forest Service to "block up" ownership, allowing them to more easily maintain their land, and eliminating this inholding. The conveyance is subject to valid existing rights, so no use currently taking place on those lands would be affected.

I am sure that Mr. Harrison will explain this issue more in-depth, so I look forward to hearing his testimony.

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