

**PUBLIC LANDS AND FORESTS BILLS**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

**S. 1241**

**S. 3185**

**S. 1571**

**H.R. 86**

**S. 2762**

**H.R. 1043**

**S. 3075**

---

APRIL 28, 2010



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

---

U.S. GOVERNMENT PRINTING OFFICE

62-627 PDF

WASHINGTON : 2010

---

For sale by the Superintendent of Documents, U.S. Government Printing Office,  
<http://bookstore.gpo.gov>. For more information, contact the GPO Customer Contact Center,  
U.S. Government Printing Office. Phone 202-512-1800, or 866-512-1800 (toll-free). E-mail, [gpo@custhelp.com](mailto:gpo@custhelp.com).

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JEFF BINGAMAN, New Mexico, *Chairman*

BYRON L. DORGAN, North Dakota	LISA MURKOWSKI, Alaska
RON WYDEN, Oregon	RICHARD BURR, North Carolina
TIM JOHNSON, South Dakota	JOHN BARRASSO, Wyoming
MARY L. LANDRIEU, Louisiana	SAM BROWNBACK, Kansas
MARIA CANTWELL, Washington	JAMES E. RISCH, Idaho
ROBERT MENENDEZ, New Jersey	JOHN MCCAIN, Arizona
BLANCHE L. LINCOLN, Arkansas	ROBERT F. BENNETT, Utah
BERNARD SANDERS, Vermont	JIM BUNNING, Kentucky
EVAN BAYH, Indiana	JEFF SESSIONS, Alabama
DEBBIE STABENOW, Michigan	BOB CORKER, Tennessee
MARK UDALL, Colorado	
JEANNE SHAHEEN, New Hampshire	

ROBERT M. SIMON, *Staff Director*

SAM E. FOWLER, *Chief Counsel*

MCKIE CAMPBELL, *Republican Staff Director*

KAREN K. BILLUPS, *Republican Chief Counsel*

---

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

RON WYDEN, Oregon, *Chairman*

TIM JOHNSON, South Dakota	JOHN BARRASSO, Wyoming
MARY L. LANDRIEU, Louisiana	JAMES E. RISCH, Idaho
MARIA CANTWELL, Washington	JOHN MCCAIN, Arizona
ROBERT MENENDEZ, New Jersey	ROBERT F. BENNETT, Utah
BLANCHE L. LINCOLN, Arkansas	JEFF SESSIONS, Alabama
MARK UDALL, Colorado	BOB CORKER, Tennessee
JEANNE SHAHEEN, New Hampshire	

JEFF BINGAMAN and LISA MURKOWSKI are Ex Officio Members of the Subcommittee

# CONTENTS

## STATEMENTS

	Page
Baucus, Hon. Max, U.S. Senator From Montana .....	2
Burke, Marcilynn A., Deputy Director, Bureau of Land Management, Department of the Interior .....	12
Inhofe, Hon. James M., U.S. Senator From Oklahoma .....	8
Krueger, Faye, Acting Associate Deputy Chief, Forest Service, Department of Agriculture .....	18
Tester, Hon. Jon, U.S. Senator From Montana .....	5
Wyden, Hon. Ron, U.S. Senator From Oregon .....	1

## APPENDIXES

### APPENDIX I

Responses to additional questions .....	31
---	----

### APPENDIX II

Additional material submitted for the record .....	47
--	----



## PUBLIC LANDS AND FORESTS BILLS

WEDNESDAY, APRIL 28, 2010

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

The subcommittee met, pursuant to notice, at 2:35 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

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

Senator WYDEN. Subcommittee will come to order.

The purpose of today's hearing is to receive testimony on several bills pending before the subcommittee. These include S. 1241, a bill to amend Public Law 106-206 to direct the Secretaries of the Interior and Agriculture to require annual permits and assess annual fees for commercial filming on Federal land for film crews of 5 persons or fewer; S. 1571 and H.R. 1043; S. 2762, the San Juan Mountains Wilderness Act; S. 3075, the North Fork Watershed Protection Act; and S. 3185; and H.R. 86, a bill to eliminate an unused lighthouse reservation, incorporate the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument, and for other purposes.

None of my colleagues are present at this time. We have 3 very active members of the Senate on these natural resources issues. Always glad to have Chairman Baucus here—Senator Tester, Senator Inhofe. Why don't we begin with you, Chairman Baucus.

[The prepared statement of Senator Feinstein follows:]

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM  
CALIFORNIA, ON S. 1571

#### INTRODUCTION

Thank you, Chairman Wyden, for holding a hearing on the "Deafy Glade Land Exchange Act." This legislation would authorize a land exchange between the United States Forest Service and Solano County that would add wilderness-quality land to the Mendocino National Forest, and help ensure the continued operation of the Fouts Springs Youth Correctional Facility.

Since 1987, Solano County has been working with the Forest Service to obtain ownership of the land beneath the correctional facility. It acquired wilderness-quality forest land to convey to the Forest Service in exchange for the land occupied by the Fouts Springs Youth Correctional Facility. In 1992, the Deafy Glade area was deemed by the Forest Service a "priority area for acquisition." The County therefore acquired land located within Deafy Glade to exchange with the Forest Service for Fouts Springs. The County's Deafy Glade land is comprised of 4 parcels totaling 162-acres, and it borders the Snow Mountain Wilderness Area. This legislation would facilitate the land exchange between the County and the Forest Service so

that the County could own the land beneath the youth facility it operates, and in exchange, the Forest Service would acquire a wilderness-quality inholding.

#### BACKGROUND

Solano County operates a youth correctional facility under a Special Use Permit issued by the Forest Service on the Fouts Springs Ranch, which covers approximately 82 acres within the boundaries of the Mendocino National Forest. The County owns the infrastructure but leases the land from the Forest Service.

Solano County has operated the Fouts Springs Youth Facility pursuant to a joint powers agreement with Yolo and Colusa counties since 1959. Fouts Springs takes juveniles out of environments that lack positivity and structure and places them into a regimented and supportive environment. Its programs include counseling and education, with the goal of giving juveniles the skills to successfully reenter their communities.

More than 20 California counties have placed juvenile offenders at Fouts Springs for six month, nine month, and twelve month periods. The program is viewed as a last resort for youth before being referred to a state prison.

#### WHAT THE LEGISLATION DOES

Specifically, the “Deafy Glade Land Exchange Act” would authorize:

- The transfer of Fouts Springs Ranch—approximately 82 acres—from the Forest Service to Solano County; and
- The transfer of 162 acres of the Deafy Glade area in Mendocino National Forest from Solano County to the Forest Service.

The Fouts Spring youth correctional facility is in need of substantial upgrades, including the replacement of the main water line, electrical system improvements, and renovation of one of the dormitories. However, the County has postponed investing in facility upgrades until the land exchange is finalized and ownership of the Fouts Springs Ranch is transferred to the County.

#### CONCLUSION

This legislation would not only help ensure the continued operation of the Fouts Spring youth correctional facility, but it would also add nearly 162 acres of wilderness quality land to the Mendocino National Forest. Given the substantial investment already made by Solano County, the importance of the youth rehabilitation services provided by Fouts Springs, the benefit to the public of acquiring the Deafy Glade in-holding, I thank you again for including the “Deafy Glade Land Exchange Act” in this hearing and look forward to working with you to enact it into law.

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

Senator BAUCUS. Thank you very much, Senator Wyden. I deeply appreciate your holding this hearing.

We want to—Senator Tester and I talked about something that’s very near and dear to us, something that we love most about Montana; that’s the North Fork, the Flathead River. You can see the photographs, here on either side of us, depicting the North Fork. Anyone who experiences the Flathead Valley in northwestern Montana is awed by its pristine waters, awed by the North Fork, its larger-than-life landscapes, its raw wilderness.

With its headwaters in British Columbia, the North Fork, or the Flathead River, forms the western boundary of the Glacier National Park. You might get a little sense of that with the photograph on your right. It is one of the last untouched places in our continent. North Fork, or the Flathead.

But, for decades, the North Fork has been threatened by oil and gas and mining proposals at British Columbia. For the last 3 to 5 years, I have battled these proposals, one by one, each time victorious, knock on wood. Now, after 35 years, we are beginning a new chapter of international cooperation in the North Fork.

In February of this year, British Columbia announced its intent to prevent mining and oil and gas and coalbed methane development in the Watershed. Let me just explain, if I can, Mr. Chairman. You can't quite tell from this, but all the development of coalbed methane, or oil and gas, or even the coal mines themselves, are just across the Montana border, just north of the border, up into British Columbia. The economic benefit would primarily inure—in fact, entirely inure to British Columbia, to private enterprises, to the Province, et cetera. There are also some natural resource groups that really do use the North Fork Watershed up in British Columbia.

Unfortunately, the water—because it flows south into Montana—and the air south of Montana, means that Montana would be the location that gets most of the environmental damage. So, if there's mining up in British Columbia, and oil and gas leases in British Columbia, the pollution will then flow south into the Watershed into the Montana portion of North Fork, whereas, basically, economic benefits stays—stay north. That's a—just a rough simplification of the issue.

Senator Tester and I have pledged to do our part, however, to establish extra protections south of the border, where 90 percent of the North Fork Watershed is already federally owned.

The boundaries of our bill track the boundaries of the North Fork Watershed. Half of the area is within the boundary of Glacier National Park, where resource extraction is already precluded. You can't mine and extract resources at Glacier Park.

There are some very old inactive leases, though, in the western half of the Watershed. On March 4, we introduced the North Fork Watershed Protection Act, S. 3075, which bans future mining, bans of all gas and coalbed methane development on Federal lands in the Watershed. The bill enjoys broad support from business and conservation interests alike, showing the importance of the North Fork for Montana's economy, as well as our State's outdoor heritage.

Jon and I have been active—been in active discussions with current owners to retire these old leases, and I am pleased to announce a major success. Today, ConocoPhillips, the primary leaseholder to the North Fork Watershed, has elected to voluntarily relinquish its interest in 108 Federal oil and gas leases covering approximately 169,000 acres. That represents 71 percent of the leased area in the North Fork Watershed. ConocoPhillips should be commended, commended for their decision and their stewardship of this very unique special place.

I want to take my hat off, Mr. Chairman, to ConocoPhillips. I also do, by the way, to the British—British Columbia. British Columbia has also taken their action to prevent future oil and gas mining developing in this part of the Province, as well. They're doing their part; we in—our—as—our country are doing our part together, cooperating to do all we can to protect this Watershed. It is so, so important.

Their action—the action by ConocoPhillips—is further evidence of the consensus that withdrawal of these Federal lands is the only path forward.

During 1975, during my first term in the House of Representatives, I introduced a bill to designate the Flathead River as a Wild and Scenic River. I might say, Mr. Chairman, I cut my teeth on them in jumping into the fray environmental issues with that legislation. My gosh, half—well, a lot of people in Montana want to protect their few—you know, very unique souls live up in North Fork, who were vehemently opposed to it. But, in the end, we got that legislation passed to—the boundary to protect the North Fork Flathead, as well the—and Scenic River designation.

That, for me, began a lifelong effort to protect the North Fork. I can—well, it would literally take all afternoon, chapter and verse, all the efforts that we've undertaken to protect the North Fork, beginning with the appropriations, multiyear environmental baseline appropriations, when I was in the House, and lots of other things. But, this means so much to these people of Montana, and so much to me personally, that I probably devote as much time on this issue as any other in our State.

Back then, 1975, we dug—found a quote—I said, back then, “A hundred years from now, and perhaps much sooner, those who follow us will survey what we have left behind. Let us leave the Flathead as we found it. Let us prove that we care about those who will come after us.”

Mr. Chairman, we've proved it today. Together we can ensure that every Montanan, every American, and every Canadian who follows us—and I also want to compliment, again, our Canadian friends; it's the partnership—will survey the North Fork and share our feeling of awestruck wonder that such a place still exists.

Thank you very much.

[The prepared statement of Senator Baucus follows:]

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA,  
ON S. 3075

Mr. Chairman, members of the Committee, thank you for having us here today to talk about one of the things that I love most about Montana—the North Fork of the Flathead River. Everyone who experiences the Flathead Valley in northwestern Montana is awed by its pristine waters, larger than life landscapes, and raw wilderness. With its headwaters in British Columbia, the North Fork of the Flathead River forms the western boundary of Glacier National Park—it is one of the last untouched places on our continent.

For decades, the North Fork has been threatened by oil and gas and mining proposals in British Columbia. For the last 35 years, I have battled these proposals, one by one. After 35 years of work, we are beginning a new chapter of international cooperation in our efforts to protect the North Fork.

In February of this year, British Columbia and Montana announced their intent to prevent mining, oil and gas, and coalbed methane development in the North Fork on the lands they control. This was a huge step forward, for which Governor Schweitzer and Premier Campbell should be commended. Jon and I pledged to do our part to establish extra protections south of the border, where 90% of the North Fork watershed is already Federally-owned.

So, on March 4, we introduced the North Fork Watershed Protection Act, S. 3075, which bans future mining, oil and gas, and coalbed methane development on Federal lands in the watershed. The bill enjoys support from business and conservation interests alike from all over the state, including the Kalispell Chamber, Whitefish Mountain Resort, the Billings Rod and Gun Club, and a long list of others. This shows the importance of the North Fork for Montana's economy as well as our state's outdoor heritage. The boundaries of our bill track the boundaries of the North Fork watershed. Half of the area is within the boundary of Glacier National Park, where resource extraction is already precluded. There are some current leases in the western half of the watershed, outside of the park. However, those have been

dormant since the late 1980s, when a court decision found that they were improperly issued.

Jon and I have been in active discussions with the current owners to retire these old leases. And, today, I am very pleased to announce success.

Today, ConocoPhillips, the primary leaseholder in the North Fork watershed, has elected to voluntarily relinquish its interest in 108 federal oil and gas leases covering approximately 169,000 acres, representing 71% of the leased area in the North Fork watershed.

Conoco Phillips should be commended for this decision and their stewardship of this very unique, special place. Their action is further evidence of the consensus that exists between the U.S. and Canada and among businesses and conservationists, that the withdrawal of these Federal lands from leasing is the only path forward.

In 1975, during my first term in the House of Representatives, I introduced a bill to designate the Flathead River as a Wild and Scenic River. It was designated in 1976. For me, that began a lifelong effort to protect the North Fork. At that time I said: "A hundred years from now, and perhaps much sooner, those who follow us will survey what we have left behind."

Today, we are one step closer to ensuring that that every Montanan, every American, and every Canadian who follows us will have the opportunity to share our feeling of awestruck wonder that such a place still exists, almost untouched by the modern world.

Thank you.

Senator WYDEN. Thank you, Chairman Baucus. As usual, you've tackled a natural resources issue in a very disciplined way. You've obviously got broad support, and it seems to me, after more than 3 decades of prosecuting the cause for the North Fork, you deserve to get a real victory on this. I'm going to do everything I can to win support for your bill. I commend you for your effort. These are treasured kinds of areas, and we're going to do everything we can to pass your bill quickly, and—

Senator BAUCUS. Thank you, Mr. Chairman. I don't know if Senator Tester would like to say something, but this year—I think it's this year—marks the—or maybe it's next year, I forgotten which—the 100th anniversary of Glacier National Park at Waterton Park. It's a great year to celebrate that centennial. We're going to have quite a party, 100-year party there. Secretary Salazar will be there. I think—who else? Secretary—I don't know if Secretary Clinton will be there. But, we're doing—we're—there's going to be quite a show as we celebrate our 100th anniversary of Glacier National Park at North Fork. It's just—it's part of that same ecosystem. It's right on the western border of Glacier Park, and it's—so, the protection of North Fork is really a part of all this.

Senator WYDEN. We westerners certainly treasure our celebrations over our protecting our lands. So, congratulations on getting it to this point, and we're going to do everything to pass your bill—

Senator BAUCUS. I thank you.

Senator WYDEN [continuing]. Quickly.

Senator BAUCUS. Thank you very much.

Senator WYDEN. To Senator Tester, my neighbor here in Washington, good work, and appreciate all your leadership on this. You make whatever remarks you choose, Senator.

**STATEMENT OF HON. JON TESTER, U.S. SENATOR  
FROM MONTANA**

Senator TESTER. I want thank you, Chairman Wyden. I appreciate this opportunity for holding this hearing today.

I'm very excited to support 2 bills, which I want to address today, if I might: the North Fork Protection Act, that Senator Baucus has talked about, and the Filming on Public Lands Act, both of which I'm a cosponsor of. Both of these bills enhance America's ability to enjoy and conserve our public lands.

First, I want to talk about S. 3075, the North Fork Protection Act. First of all, I would be remiss if I didn't thank Senator Baucus for his leadership over the last 35 years on this issue; and actually longer than that. I very, very much appreciate his vision and his commonsense approach to the area.

There's just some places, Mr. Chairman, in this country that we shouldn't develop, and one of those is on the west edge of Glacier National Park, the North Fork. It is a place that is very, very special and should be protected from future oil, gas, and mineral leasing. The North Fork of the Flathead is one of the farthable—farthest—"farthable," that's a good one—farthest navigable reaches of the Columbia River Watershed, which provides clean water for Flathead Lake and downstream to Montana and the whole Pacific Northwest. The clear, blue water that starts in Canada today will end up supplying the cities and towns of Portland and Vancouver tomorrow.

This area is an economic engine for the entire State of Montana. Over 2 million people visited Glacier last year alone, and spent an estimated 150 million in the Flathead Valley. Every year, close to a billion dollars is spent in Montana for people to hunt, fish, raft, hike, ride, ski, and visit our national parks. This bill is a part of a larger effort to work toward long-term international protection for the North Fork of the Flathead, one of North America's last and best places.

In February, the State of Montana and British Columbia signed an MOU signaling an end to a 30-year adversarial relationship on this issue. Now, British Columbia, acting as a good neighbor, is, as we speak, changing their land-use plan to prevent future resource development. I commend them on that.

In March, Governor Schweitzer and the State of Montana Land Board committed to protect the 17,000 acres they own in North Fork, as well. Now it is our turn to solidify our commitment to these lands. The first step is the passing of this bill. Senator Baucus, as I mentioned before, has worked decades to protect this Watershed by stopping each new proposed mine, from coalbed methane to gold. Senator Baucus and I are now working on a proactive plan to protect this area, not just responding to a crisis.

Part of this plan is working with current leaseholders to return their leases. As Senator Baucus said, British Columbia, too, is working as good stewards in this effort. The fact that there are just some places we shouldn't develop is confirmed by Senator Baucus's announcement earlier that ConocoPhillips is voluntarily returning 169,000 acres of their suspended oil and gas leases to the Department of Interior. These leases make up 71 percent of the holdings in the North Fork. This is no small commitment. They recognize the area isn't the place for drilling. I'm glad to say that ConocoPhillips is an energy partner that we want in the State of Montana, one who develops responsibly and recognizes the needs

of an area. I look forward to working positively with them to build our energy future.

Along with leaseholders, we're working with the Department of Interior, the USDA, and State Department to assure that this protection will last a lifetime. Last summer, Secretary Salazar stood on the shores of the Flathead River with Max and I, and committed to help to protect this area. Secretary Salazar, Senator Baucus, and I are not the only people who feel it is critically important landscape. From the Whitefish City Council to the National Wildlife Federation, all want to protect the land that provides clean water and clean air for our constituents. In fact, almost 50 groups support this bill to protect this Watershed for generations to come.

Montanans are people who are inextricably tied to the land. It defines who we are and what we do, where we work, play, and teach our children the values we hold dear are all in the great outdoors. When I was a kid, Glacier Park was a magical place in the mountains, where the water was cool, clear, and plentiful, and you could hike for miles alone. Sharla and I used to take the kids hiking into Iceberg Lake in August and to see the shores of Lake MacDonald in September, and those are memories I treasure and hope I can experience with my grandkids.

Ladies and gentlemen of the committee, Chairman Wyden in particular, protecting the North Fork of the Flathead is about preserving large landscapes, providing clean water, and ensuring trout can spawn, but those are secondary to the experience that we preserve for future generations. It's all about assuring our kids and grandkids to be able to get to catch a bull trout on the confluence of the North and Middle Fork, or when they hike the Highline Trail, they can look as far as the eye can see and experience the same pristine view that we have enjoyed in Glacier. This bill will ensure that that happens. The North Fork of the Flathead, Glacier Park, and a Crown of the Continent landscape is an iconic place that advance—defines peoples images of Montana and the West, and we should assure that that never changes.

One last time before I turn it over to Senator Inhofe, who will speak on S. 1241, and then I'll come back and follow up on his remarks, I want to thank Senator Max Baucus. Max has done a great job looking out for this region over many, many, many decades, and I certainly appreciate his leadership once again to step up the plate and do what's right.

Senator WYDEN. Thank you, Senator Tester. Right before we go to Senator Inhofe, let me also say I especially appreciate your bringing up—and I know Chairman Baucus has strong views on this—that we, in the West, feel that these bills are also a true economic engine for our region. They pump millions and millions of dollars into Western communities as visitors come and you have guides and people are selling the equipment and jackets and the like. With this economy, I especially appreciate your making that last point then.

Senator BAUCUS. Mr. Chairman, if I might, that is so true. It is so true. In fact, this legislation and all our joint efforts, Jon's and mine, to help protect the character of the North Fork and also Glacier Park, is strongly, strongly endorsed by the Chamber of Commerce, by all business groups. It's a economic lifeblood. I've forgot-

ten the exact number. I think it's close to \$2 billion in the Flathead—basin has spent. It's Glacier and Flathead Basin which includes North Fork of the Flathead. It's—people want to come and experience it, and we enjoy the dollars that they spend.

Senator WYDEN. My thanks to both of you. An excellent case, and as I told Chairman Baucus, we're going to try to move this bill as quickly as we can.

Senator Tester, would you like to have Senator Inhofe testify, and then you want to come back to make some additional comments?

Senator TESTER. I would. Yes, I think that would be entirely appropriate. Thank you, Mr. Chairman.

Senator WYDEN. Chairman Baucus, did you want to be excused at this time?

Senator BAUCUS. If I may.

Senator WYDEN. OK. Thank you.

Senator BAUCUS. Thank you—

Senator WYDEN. All right.

Senator BAUCUS [continuing]. Mr. Chairman.

Senator WYDEN. We're very glad to have Senator Inhofe with us. Just as an aside, I was just talking about Senator Inhofe a few minutes ago as we try once again to eliminate, finally, secret holds and bring some more transparency to government. Senator Inhofe and I have partnered on that, and many other things in the past. We always welcome Senator Inhofe before this subcommittee.

Senator, just proceed as you'd like.

**STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR  
FROM OKLAHOMA**

Senator INHOFE. Thank you, Chairman Wyden.

I appreciate, also, the comments that were made by both of the previous witnesses on ConocoPhillips. They've made such great contributions, and I know they're in the Tallgrass Prairie area in Oklahoma. They're both from my area of Oklahoma, so I'm very proud for the contributions that they've made. I wasn't aware of this up there, so it's been helpful to me.

Chairman Wyden, I do appreciate the opportunity to just present what we're—a problem that can be corrected by S. 1241, which I have introduced with Senator Tester and with Senator Crapo.

The House companion bill is H.R. 2031. It was introduced by my colleague in Oklahoma, Congressman Dan Boren, and he has some seven other bipartisan cosponsors. So, there's nothing partisan about this. This is something that is just the right thing to do. The Congressional Sportsmen Caucus has designated S. 1241 as a priority for this Congress, and the legislation is supported by 33 sportsman and conservation organizations, including the National Rifle Association.

Very simply, this bill lessens the burdens on small commercial filming on public lands by authorizing a special permit to small film crews, defined in the bill as 5 persons or fewer, to simply pay a reasonable annual fee and be able to film on public lands.

I think what's been said already this—today, the—our public lands are just an incredible natural resource, and our professional outdoor media industry is a valuable way to bring the awareness

to our Nation's resources through documentaries, sporting programs, and other productions. Small filming crews can be negatively affected by the current permitting in fee schedule, because wildlife filming is a very—very much affected by unpredictable factors requiring much patience and time.

For example, Steve Scott—he's from Norman, Oklahoma, he has a—one of these small operations. He's an independent television producer, and he's the former chairman of the Professional Outdoor Media Association. He probably best describes the work of the small outdoor filming operation, when he testified before Congress last—a short while ago. I was there, and I'm going to quote what he said, because he says in it a way that more nearly reflects those who are in this business. He said, quote, "By its very nature, wildlife photography is extremely time consuming. While large film and television production crews need relatively little time on public lands to complete their project, our Nation's professional outdoor media may spend weeks or months in the field in order to capture a few magic seconds of unstaged nature in its pristine state. When outdoor media members spend time in the field under the current fee structure, we also spend money and we spend a lot of it." That's all a quote.

The small professional outdoor filming industry has had enough of the natural barriers. The Federal Government shouldn't impose itself as another barrier, through daily fees, adding to the expense.

I've received letters from at least 15 small filming producers from across the country, all highlighting the need for—to standardize the permitting to film at reduced costs for these small producers. I would ask that their letters—I have them with me—be made a part of the record, along with the statement by the gentleman that I just quoted.

Senator WYDEN. Without objection, it's ordered.

Senator INHOFE. Yes, I think that this is something that, once people realize that, if you are precluding these individuals from going out and showing the whole world what we have to offer, that you're really doing a disservice to those natural resources and cutting off a lot of people who otherwise would take advantage of them.

Senator WYDEN. I think it's well put, Senator, and we will work closely with you on it. I think it's my sense—what we'll do is get the majority and the minority staff to reach out to your folks and Senator Tester's staff and see what we can do to—

Senator INHOFE. Yes, that's what we would request.

Senator WYDEN. We will get that done quickly.

Senator Tester.

Senator TESTER. Just a few remarks, Chairman Wyden, and I appreciate the opportunity.

First of all, I want to thank Senator Inhofe for his leadership on this commonsense piece of legislation. It simply makes sense to do this.

As Senator Inhofe explained, this bill allows small film crews—less than 5 people—to apply for an annual filming permit on all Federal lands at the rate of 200 bucks a year.

Arguably, one of the greatest resources the United States possesses is its public lands, where we work and play. As we watch

public lands become more and more difficult to access, this bill is important for 2 reasons: First, the filming industry provides a gateway for Americans to experience the treasures of our public lands, even when they cannot drive across a place like Going-to-the-Sun Road or watch Old Faithful erupt or go to fish in the headwaters at the Missouri, themselves. Second, our public lands are just that, they're public.

It is important to make sure that there is a level playing field for all filmmakers and producers to access to these lands where they can practice their profession. By standardizing the regulation across all agencies, with one permit for small crews, it designates a clear path for our professional outdoor media members to have fair and even access to our national lands.

In 2000, when Congress passed the law to assess fees on film crews, the aim was to keep Hollywood-style production crews from negatively impacting our public lands. Unfortunately, that legislation was interrupted so broad that now small film crews, who have a minimal impact, are—and are serving the public interests, filming hunter-safety videos or documenting outdoor events, are put to the same level as multimillion-dollar productions.

As vice chairman of the Sportsman Caucus, I'm proud to say that the Senate Sportsmen's Caucus leadership supports this bill and its effort to promote exposure and access to the great outdoors. Additionally, over 30 outdoor and journalism groups have signed on in support of this legislation.

I look forward to working with the committee. I—looking forward to working with you, Mr. Chairman, and the administration, to assure that all journalists and videographers are not unduly burdened from sharing the beauty and wealth of our public lands.

Once again, thank you, to Senator Inhofe, and thank you, Mr. Chairman.

Senator WYDEN. Thank you both, and we'll follow up quickly and get these staff discussions moving, and see what we can do to get this worked out. Thank you both.

Senator TESTER. Thank you.

Senator WYDEN. Let us bring forward, now, Marcilynn Burke, deputy director of Bureau of Land Management, and Faye Krueger, acting associate deputy chief, National Forest System of the Forest Service.

Voice: While you're waiting, can you put Senator Reid and Senator Ensign's statement on their Nevada bill in the record?

Senator WYDEN. All right.

While our witnesses are coming forward, I'd like to put in—into the record, by unanimous consent, the statement of the Senate Majority Leader, Harry Reid, and the statement of Senator John Ensign, his colleague from Nevada. Both of them are offering statements on S. 3185. Let us have them entered into the record at this point.

[The information follows:]

PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA,  
ON S. 3185

I want to thank Chairman Wyden, Senator Barrasso, and the other members of the committee for holding this hearing on the Elko Motocross and Tribal Conveyance Act, S.3185.

My bill would direct the Bureau of Land Management to transfer two parcels of land. Title I would convey to Elko County approximately 300 acres just west of the City of Elko to provide space for the construction of a BMX, motocross, off-highway vehicle, and stock car racing area. Title II would direct the Secretary of the Interior to take 373 acres of public land into trust to expand the Elko Indian Colony.

I salute Elko County for being proactive on this issue. Through the development of the Motocross Park, they are making sure that the people of northeastern Nevada have a high-quality facility for safe motorized recreation. People from across northern Nevada will be able to use and enjoy this new facility.

Whether their sport is stock cars, BMX, off-highway vehicles, or dirt bikes, motorized recreation is a big part of life in the Silver State. An added bonus of this new site is that it will provide an economic boost for the community through construction jobs in the short-term and thousands of visitors over the long-term. The facility will provide a place for people to learn responsible use and enjoyment of recreational vehicles and can serve as a model for other communities that are interested in providing diverse motorized recreation opportunities.

Mr. Chairman, Elko has also been home for generations of Western Shoshone Indians. The Elko Band have been an important part of the Elko Community since it was established in the late 1800s. In spite of a steadily growing population, the colony has not expanded for 75 years and most members of the Elko Band have to make their homes outside of the colony.

As you know, land is lifeblood for Native Americans. It is a place to make a home and earn a living, a place tied to ancestors, and key in the preservation of culture and language. My legislation provides space for appropriate residential and commercial development, as well as for traditional uses, such as ceremonial gatherings and plant collecting.

Small adjustments like these two land transfers are vital to the healthy development of Nevada's rural communities. I would like to commend the City of Elko, Elko County, the Elko Band, and the rest of the community members whose collaboration on both of these efforts made this legislation possible.

I greatly appreciate the distinguished Chairman and Ranking Member making time for this hearing and I look forward to working with the Committee to advance this bill.

---

PREPARED STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA,  
ON S. 3185

Good afternoon Mr. Chairman, Ranking Member Barasso, and members of the Subcommittee. I appreciate the opportunity to appear today and testify in support of S. 3185, a bill relating to lands issues in Elko County, Nevada, which is supported by both Senator Reid and me. We appreciate you holding this hearing today.

This bill will do two things for Elko County. First: it will convey approximately 300 acres of lands managed by the BLM to Elko County to be used as a dedicated motocross facility. Second: it will take about 380 acres of BLM-managed land into trust to be used by the Te-Moak Tribe of Western Shoshone.

Elko County has grown significantly over the past ten years. It is an area where outdoor enthusiasts are always looking for new places to recreate. This conveyance will provide a place for OHVs, dirt bikes, motor cycles, etc. to ride and play in a safe, designated area. This is good for the County, the public and the environment.

The Te-Moak Tribe has grown significantly over the past several years as well, but their tribal lands have not been increased. The Tribe needs to expand their residential areas, as well as have the ability to look at economic development opportunities. There is a road in the acreage to be added to the reservation that is used by the citizens of Elko. This bill provides for a right-of-way conveyance of that road to the City of Elko.

As you know, over 87% of the land in Nevada is managed by the federal government. This is the largest amount in the lower 48 states. Without this type of legislation, counties, cities and local governments cannot grow, expand economic enterprises, and address the needs of their citizens.

Thank you again for holding this hearing and for giving me the opportunity to be here and testify on the importance of this legislation for both Elko County and my state. I urge the Subcommittee to act favorably on S. 3185.

Senator WYDEN. OK. We have 2 stalwarts, I believe, before this subcommittee, who've been here and—before us, before.

So, Ms. Burke, why don't you begin. We'll make your prepared statements a part of the record in their entirety. If you could sum-

marize, in 5 minutes or so, your views. Then we'll go right to you, Ms. Krueger.

**STATEMENT OF MARCILYNN A. BURKE, DEPUTY DIRECTOR,  
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE IN-  
TERIOR**

Ms. BURKE. Thank you, Mr. Chairman, and thank you for inviting the Department of the Interior to testify here today.

We'll be testifying on 5 bills today, beginning with S. 1241, the film permitting on Federal lands. S. 1241 amends public law 106-206 and directs the Secretary of the Interior and the Secretary of Agriculture to discuss—to issue annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

While we are sympathetic with the goals of this legislation, the Department cannot support S. 1241. Although the annual permit envisioned in S. 1241 may simplify the permitting process for commercial filming by small crews, it would limit the ability of Federal land management agencies to manage commercial activities to protect natural and cultural resources and to minimize disruption to the public's enjoyment of these sites.

The National Park Service is the lead agency for the Department on this issue, and Phillip Selleck, who is the chief of regulations and special park uses from the National Park Service, is here with me today, and he is here to answer any questions you may have concerning S. 1241.

S. 2762, the San Juan Mountains Wilderness Act, the Department of the Interior supports designation of the McKenna Peak Wilderness on 8600 acres managed by the BLM, as proposed in S. 2762, the San Juan Mountains Wilderness Act. We defer to the Department of Agriculture regarding designations on lands managed by the Forest Service.

S. 2762 is the result of collaborative efforts in the local community, which included discussions with county commissioners, adjacent landowners, ranchers, conservationists, recreationists, and other interested parties. The results are wilderness designations on both BLM and Forest Service-managed lands in San Miguel, Ouray, and San Juan Counties.

S. 3075. The Department of the Interior supports S. 3075, subject to valid existing rights, which would withdrawal Federal lands within the North Fork Watershed of Montana's Flathead River from all forms of location, entry, and patent under the mining laws, and from disposition under all laws related to mineral or geothermal leasing.

The Federal land affected by this legislation is in the Flathead National Forest. The U.S. Forest Service is responsible for the surface management of National Forest System land; however, the Secretary of the Interior, through the BLM, is responsible for administering the Federal subsurface mineral estate. The Department of the Interior is committed to maintaining the integrity of the resources in Glacier National Park as one of the most noteworthy natural and cultural resources within our Nation.

As one-half of the Waterton-Glacier International Peace Park, this land is one of the largest, most pristine and intact pieces of

natural terrain in North America. Enactment of this legislation would mark an important milestone in preserving the remarkable resources of not only the International Peace Park, but the entire Crown of the Continent ecosystem.

S. 3185 would convey approximately 300 acres of BLM-managed lands to the county of Elko, Nevada, for a public motocross park. The bill also directs that approximately 373 additional acres of BLM-managed lands be taken into trust for the Te-Moak Tribe of Western Shoshone Indians of Nevada.

The BLM supports these conveyances and would like to work with the sponsor and the committee on minor technical amendments to the bill.

The BLM supports H.R. 86, which would eliminate old withdrawals on public lands off the coast of Orange County, California, and allow inclusion of these rocks, islands, and exposed reefs within the California Coastal National Monument. We look forward to passage of this legislation, which would ensure the long-term protection and preservation of these important coastal features and pave the way for an important local community stewardship initiative.

Again, thank you for inviting the Department of the Interior to testify today, and we would be happy to answer any questions.

[The prepared statements of Ms. Burke follow:]

PREPARED STATEMENTS OF MARCILYNN A. BURKE, DEPUTY DIRECTOR, BUREAU OF  
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

H.R. 86

Thank you for inviting the Department of the Interior to testify on H.R. 86, which would add certain rocks and small islands along the coast of Orange County, California, to the California Coastal National Monument managed by the Bureau of Land Management (BLM). The BLM supports H.R. 86.

*Background*

The California Coastal National Monument, part of the BLM's National Landscape Conservation System, was established by a Presidential Proclamation by President Clinton on January 11, 2000, to protect:

all unappropriated or unreserved lands and interest in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles . . . within 12 nautical miles of the shoreline of the State of California." Covering more than 20,000 rocks and small islands spread along 1,100 miles of the California coastline, the Presidential Proclamation protects the Monument's overwhelming scenic quality and natural beauty. The Proclamation specifically calls for the protection of the geologic formations and the habitat that these rocks and small islands provide for seabirds, marine mammals, and other plant and animal life, both terrestrial and marine.

Some particularly significant public rocks and islands off the coast of Orange County in the Laguna Beach area provide important habitat for a wide variety of upper rocky intertidal species, as well as various shorebird species. Additionally, four rock locations—Bird Rock and Two Rocks off the City of Laguna Beach, San Juan Rocks off the City of Dana Point, and San Marcos Rocks off the southern portion of the City of San Clemente—provide important roosting habitat for seabirds (including cormorants and the Federally-listed brown pelican) and haul-out areas for seals and sea lions.

In the process of working with local communities on planning for the California Coastal National Monument, the BLM discovered that the rock features off the coastline of Orange County were under Congressional withdrawals dating from the 1930s and, therefore, were not included within the Monument. These withdrawals include more than 40 offshore rocks, small islands, exposed reefs, and pinnacles located within one mile of the coast of Orange County, California, totaling approxi-

mately two acres above mean high tide. More than 70 years old, the withdrawals were originally intended to temporarily reserve the Orange County offshore rocks and small islands for “park, scenic, or other public purposes” (1931 Act), and reserve three specific offshore rock clusters for the possibility of future lighthouses (1935 Act), which were never built. These withdrawals were ultimately never utilized and are no longer needed.

The Laguna Ocean Foundation has led a community-wide effort to include these significant areas within the California Coastal National Monument. The Foundation has worked with the City of Laguna Beach and other local groups, including the Audubon Society and the Surfrider Foundation, on a variety of city and area-wide coastal protection and monitoring projects, which resulted in H.R. 86.

#### *H.R. 86*

H.R. 86 would eliminate the existing withdrawals on these public lands off the coast of Orange County and place these features within the existing California Coastal National Monument. The BLM supports the revocation of the old withdrawals and the inclusion of these rocks, islands, and exposed reefs within the Monument.

The BLM has been working with partners along the 1,100 mile California coast to create a series of California Coastal National Monument Gateway community initiatives. These Gateway initiatives are a means to support organized local stewardship of various California coastal areas through the development of a consortium of the area’s resource managers and advocates. The Laguna Beach community has expressed strong interest in developing a California Coastal National Monument Gateway initiative for the Orange County coastal area. Inclusion of these rocks and islands within the Monument will allow the BLM to work with the community to provide responsible, long-term stewardship of these valuable areas.

#### *Conclusion*

Thank you for the opportunity to testify in support of H.R. 86. We look forward to passage of this legislation which would place these significant features off the coast of Orange County within the California Coastal National Monument, thus ensuring their long-term protection and preservation, and paving the way for an important local community stewardship initiative.

S. 1241

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior’s views on S. 1241, a bill to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities in areas designated for public use on federal lands and waterways for film crews of five persons or fewer.

While we are sympathetic with the goals of this legislation, the Department cannot support S. 1241. Although the annual permit envisioned in S. 1241 may simplify the permitting process for commercial filming by small crews, it would limit the ability of federal land management agencies to manage commercial filming activities to protect natural and cultural resources and minimize disruption to the public’s enjoyment these sites.

S. 1241 would amend Public Law 106-206 by requiring the Secretaries of the Interior and Agriculture to create a permit program for commercial film crews of five persons or less for filming during public hours on federal lands and waterways. The bill proposes an annual permit with a fee of \$200 to allow up to a five-person film crew to conduct commercial filming activities on public lands. A permittee could not be assessed any additional fees for commercial filming on public lands or waterways. The Secretaries would not be allowed to restrict the use of cameras or related equipment or other mechanized apparatus.

Public Law 106-206 requires the Secretaries of the Interior and Agriculture to establish a fee system and a permit process for commercial filming activities on federal lands. The Secretaries also are directed to recover all costs associated with processing permit requests, to monitor the permitted activities, and to charge a fee that provides a fair return to the United States for the use of public lands.

Commercial film makers and videographers visit our national parks, refuges, forests, public lands and monuments to produce programs that educate, enlighten, and entertain. They create films, documentaries, television programs, and other products that introduce the public to natural and cultural resources and recreational opportunities of our parks, monuments, forests, public lands, and refuges. It is important that these commercial filming activities be managed to avoid disruption to visitor

activities while protecting our nation's natural and cultural resources and landscapes.

Currently, film permits for individual projects allow each of the federal land management agencies to be aware of where filming is occurring. The Department is concerned that an annual permit, as proposed in S. 1241, could result in the agencies losing their ability to regulate where filming could take place, the duration of filming, and other conditions under which filming could take place. In addition, it appears that such a permit, as proposed, could be issued by a manager from one agency within the Department and be valid for one year on lands administered by other Departmental agencies.

This is particularly important for areas such as National Wildlife Refuges that have sensitive or closed wildlife areas and no, or limited, staff present on site to monitor the activity authorized by the permit. Issuing commercial filming permits on a case-by-case basis allows federal land management agencies to include location-specific conditions to protect natural and cultural resources, to minimize disruption to visitors, and to ensure public health and safety. Individual permits also allow commercial filming activities to be scheduled so that an area is not over used and provides commercial film crews use of an area without competition from other permitted activities where appropriate.

There are also locations in some federal units where commercial filming during public hours may be inappropriate, even for a small crew, such as inside historic buildings, or areas where wildlife nesting or breeding activities may require that access to an area be restricted. Further, the Wilderness Act restricts commercial activities in wilderness areas, so while the area is open to the public, commercial filming in wilderness, even by small commercial crews, may be inappropriate.

Even small commercial filming activities may require cameras and tripods, reflectors, generators, lights, cables, actors, props, sets, and other equipment. It is important that federal agencies have the ability to monitor filming activities and the type and amount of equipment associated with commercial filming activities, which could vary from one filming opportunity to another, if this equipment could cause resource damage, impact wildlife management and wildlife-dependant recreational activities such as hunting and wildlife viewing, or create safety hazards for visitors.

The Department is also concerned that S. 1241 could allow large-scale commercial filming organizations to avoid paying for use of public lands. For example, the producers of television commercials frequently use Bureau of Land Management lands with props and models. Under S. 1241, an advertisement for beer, cars, or clothing could be filmed with only a small crew actually entering public lands and taking unintended advantage of the authority. Crews could also be divided into small groups of five and likewise circumvent the intent of this legislation.

Finally, one of the purposes of P.L. 106-206 is to require that a fair fee be paid for the use of public lands used for commercial filming activities. The Department is concerned that the payment of an annual \$200 permit fee may not adequately reimburse the federal government for the administrative and staff costs associated with use of federal lands for a full year. For example, if filming in the geyser basin at Yellowstone, the permittee must have a NPS monitor for visitor safety reasons. The annual fee may not cover the cost of issuing the permit as well as staff time to monitor the activity.

The Department of the Interior looks forward to working with the Committee to address the concerns we have raised in our testimony. We are sympathetic to the small nature videographers, but at the same time we want to insure our ability to protect important natural, historic, and cultural resources.

Thank you, Mr. Chairman, for providing the Department with the opportunity to present this statement.

S. 2762

Thank you for the invitation to testify on S. 2762, the San Juan Mountains Wilderness Act. The Department of the Interior supports the designation of the McKenna Peak Wilderness on lands managed by the Bureau of Land Management (BLM). We defer to the Department of Agriculture regarding designations on lands managed by the U.S. Forest Service (FS).

#### *Background*

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

This area is rich in wildlife, including mule deer, elk, mountain lions, black bear, and a variety of raptors. McKenna Peak is also home to the Spring Creek wild horse

herd. Geologically, the area is quite diverse. It includes 100 million year-old remnants of inland seas (now black Mancos shale rich in invertebrate marine fossils), as well as the 8,000-foot McKenna Peak with ponderosa pine, Douglas fir, and mountain mahogany. This area offers a wide variety of recreational opportunities, including hunting, hiking, horseback riding, snowshoeing, and cross-country skiing, all of which are compatible with this wilderness designation.

*S. 2762*

We understand that S. 2762 is the result of a collaborative process, which included discussions between the Colorado Congressional delegation, county commissioners, adjacent landowners, ranchers, conservationists, recreationists, and other interested parties. The results are the proposed extensive wilderness designations on both BLM- and FS-managed lands in San Miguel, Ouray, and San Juan Counties. As I noted, the Department of the Interior defers to the Department of Agriculture regarding designations on lands managed by the FS.

Section 3(a)(4) of the bill designates 8,614 acres of the existing BLM-managed McKenna Peak WSA as wilderness. The BLM supports this designation. The legislation covers only those areas of the WSA in San Miguel County. The remaining almost 11,000 acres of the WSA are south of the proposed wilderness in Dolores County and are not addressed in the legislation. These acres will remain in WSA status, pending Congressional action. The BLM and the Department would support future designation of this area in order to improve the manageability of the area.

We would request the opportunity to work with the Sponsor and the Committee on some technical provisions, including corrections to the map reference. The BLM is currently completing a careful review of the boundaries of the proposed wilderness area to ensure manageability and would welcome the opportunity to work with the sponsor on possible minor modifications.

CONCLUSION

Thank you for the opportunity to testify in support of S. 2762. We look forward to its inclusion in the National Wilderness Preservation System.

S. 3075

Thank you for the invitation to testify on S. 3075, the North Fork Watershed Protection Act of 2010. The Department of the Interior supports S. 3075, which would withdraw Federal lands within the North Fork watershed of Montana's Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. Enactment of S. 3075 would mark an important milestone in the work occurring across multiple jurisdictions to help preserve the remarkable resources in the Crown of the Continent ecosystem.

*Background*

The Flathead River Basin, a key portion of an area known as the Crown of the Continent ecosystem, spans the boundaries of the United States and Canada. It includes part of the United States' Glacier National Park and borders Canada's Waterton Lakes National Park. These two parks comprise the world's first International Peace Park as well as a World Heritage Site. The U.S. Forest Service's Flathead National Forest is also located within the Flathead River watershed. The Bureau of Land Management manages the Federal mineral estate underlying the Flathead National Forest.

Running along the west side of the Continental Divide, the North Fork of the Flathead River enters the United States at the Canadian border and forms the western border of Glacier National Park until its confluence with the Middle Fork of the Flathead River near the southern end of Glacier National Park. The North Fork watershed, a sub-basin of the Flathead River watershed, includes areas currently managed by the National Park Service, the State of Montana, the U.S. Forest Service, and some private landowners.

The Flathead River Basin is recognized for its natural resource values, including wildlife corridors for large and medium-sized carnivores, aquatic habitat, and plant species diversity. The area is rich in cultural heritage resources, with archeological evidence of human habitation starting 10,000 years ago. Several Indian tribes, including the Blackfeet, the Salish, and the Kootenai, have a well-established presence in the area. The area also has celebrated recreational opportunities, including hunting, fishing, and backcountry hiking and camping.

There has been interest in protecting the Crown of the Continent resources for some time. On February 18, 2010, the State of Montana and the Province of British Columbia executed a Memorandum of Understanding which addresses a myriad of

issues related to the Flathead River Basin on both sides of the U.S.—Canada border. The intention of Part I.A. of that memorandum is to “[r]emove mining, oil and gas, and coal development as permissible land uses in the Flathead River Basin.”

The Flathead River Basin contains Federally-owned subsurface mineral estate under National Forest System lands that the Federal government has leased for oil and gas development, including 115 oil and gas leases in the North Fork watershed that the BLM issued between 1982 and 1985. The leases, which cover over 225,000 acres, are inactive and under suspension as part of the 1985 court case *Conner v. Burford*. The BLM has not offered any other leases in the Flathead National Forest since the *Conner v. Burford* litigation suspended the existing leases in 1985.

The U.S. Forest Service is responsible for the surface management of National Forest System land; however, as noted earlier, the Secretary of the Interior and the BLM are responsible for administering the Federal subsurface mineral estate under the Mining Law of 1872, the Mineral Leasing Act of 1920, and various mineral leasing acts. With respect to locatable minerals and oil and gas resources, the Forest Service has authority to regulate the effects of mineral operations upon National Forest System resources. The BLM only issues mineral leases for locatable minerals and oil and gas resources upon concurrence of the surface management agency and always works cooperatively with the agency to ensure that management goals and objectives for mineral exploration and development activities are achieved, that operations are conducted to minimize effects on natural resources, and that the land affected by operations is reclaimed.

#### *S. 3075*

S. 3075 withdraws all Federal lands or interest in lands, comprised of approximately 291,000 acres of the Flathead National Forest, within the North Fork watershed of the Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. We note that National Park acreage within the watershed is already unavailable for mineral entry. S. 3075 does not affect valid, existing rights, including the 115 leases in the North Fork watershed that are suspended under the *Conner v. Burford* litigation. The Department fully supports S. 3075 as it furthers the goal of preserving the important resources of this region.

The Waterton-Glacier International Peace Park, which extends from Canada into the United States, is one of the great protected ecosystems on the North American continent. A 2010 World Heritage Center/International Union for the Conservation of Nature Report noted that the International Peace Park is “one of the largest, most pristine, intact, and best protected expanses of natural terrain in North America. It provides the wide range of non-fragmented habitats and key ecological connections that are vital for the survival and security of wildlife and plants in the Waterton-Glacier property and the Flathead watershed.” Retaining this expanse of natural landscape in the Crown of the Continent ecosystem is of vital importance for providing ecosystem connectivity, which is essential for the growth and survival of plants and animals in the region. S. 3075 will help accomplish this goal.

The Department of the Interior is also committed to maintaining the ecological integrity of Glacier National Park, one of the most noteworthy natural and cultural treasures of our Nation. Preserving the region’s and the park’s water resources is also critical. The rich aquatic ecosystems provide breeding and feeding habitats for a variety of important species, and the Department recognizes the importance of maintaining critical habitat corridors when planning for resources uses. S. 3075 will help protect and preserve the important resources of the greater Crown of the Continent ecosystem, including those within Glacier National Park.

#### *Conclusion*

The Department supports S. 3075 and commends the many parties involved in protecting the North Fork of the Flathead River and the important resources shared by the United States and Canada. We hope that this legislation and the efforts of the federal and state/provincial governments add to the important legacy of conservation in the Glacier/Waterton Lakes area and Flathead River basin.

#### *S. 3185*

Thank you for the opportunity to testify on S. 3185, the Elko Motocross and Tribal Conveyance Act. S. 3185 would convey, without consideration, approximately 300 acres of land managed by the Bureau of Land Management (BLM) to the County of Elko, Nevada. The legislation also directs that approximately 373 additional acres of BLM-managed lands be taken into trust for the Te-Moak Tribe of Western Shoshone Indians of Nevada. The BLM supports the conveyances. We would like to

work with the sponsor and the Committee on minor technical amendments to the bill.

*Background*

The Elko Motocross and Tribal Conveyance Act represents years of cooperative efforts between the Te-Moak Tribe of Western Shoshone Indians of Nevada (Tribe), the City of Elko (city), the County of Elko (county), and the BLM. Both the county and the Tribe have had on-going discussions with the BLM about various lands near the city.

The Recreation and Public Purposes Act (R&PP) Act authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes, including campgrounds, municipal buildings, hospitals, and other facilities benefitting the public, and this administrative authority could be utilized for the Elko conveyance. The county submitted an R&PP application to the BLM in 2005 for approximately 266 acres. The county intended to use the land for a motocross/off-highway vehicle training and recreation area for the public. This parcel is largely vacant, but contains a number of rights-of-way, including a road and a gas pipeline. The BLM Elko Resource Management Plan (RMP) identified this parcel as available for disposal in support of community expansion.

The land for which the Tribe seeks trust status is adjacent to an existing parcel of the Elko Colony. The Elko Colony, approximately 190 non-contiguous acres adjacent to the city, is one of four separate colonies inhabited by the Te-Moak Tribe of Western Shoshone Indians. The population of the Elko Band of the Te-Moak Tribe has grown steadily, but because their land base has remained unchanged for many years additional land is needed for housing and community development. This parcel is also largely vacant, but contains two rights-of-way held by the city for water pipelines and storage, and one pending right-of-way application for a future city road. The BLM Elko RMP also identifies this parcel as available for disposal in support of community expansion.

*S. 3185*

S. 3185 proposes to convey approximately 300 acres of BLM-managed lands to the county at no cost for a public motocross park. The conveyance would be subject to valid existing rights. The bill requires that the land be used only for purposes consistent with the R&PP Act and includes a reversionary clause to enforce that requirement. Finally, the bill requires the county to pay all administrative costs associated with the transfer.

The bill also directs that approximately 373 acres of land currently administered by the BLM be taken into trust for the Tribe. The bill requires the BLM, prior to the taking of land into trust, to complete the environmental review process for the conveyance of a pending right-of-way application for a city road. S. 3185 also addresses valid existing rights and gaming.

As a matter of policy, the BLM supports working with local governments to resolve land tenure issues that advance worthwhile public policy objectives. In general, the BLM supports conveyances if the lands are to be used for purposes consistent with the R&PP Act and include a reversionary clause at the discretion of the Secretary to enforce that requirement. The BLM strongly believes that open communication between the BLM and tribes is essential in maintaining effective government-to-government relationships. In this spirit, the BLM has had a cooperative working relationship with the Te-Moak Tribe of Western Shoshone Indians of Nevada on this requested conveyance. As such, the BLM supports S. 3185 with minor technical amendments.

*Conclusion*

Thank you for the opportunity to testify. We look forward to continuing to work with the bill's sponsor and Committee on this important legislation.

Senator WYDEN. Ms. Burke, thank you very much.

Ms. Krueger, welcome.

**STATEMENT OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Ms. KRUEGER. Mr. Chairman, thank you for the opportunity to provide the views of the Department of Agriculture on several bills being considered here today.

The first bill, S. 1241, directs the Secretaries of Interior and Agriculture, as mentioned earlier, to permit for a 12-month period and assess annual fees of \$200 for commercial filming on Federal lands. It would apply to crews of 5 persons or fewer.

Currently, we do not support the bill, as written, because we would not be able to issue separate permits based on important conditions that we may need.

We're also concerned that the bill would be interpreted to require authorization in wilderness areas without the opportunity to validate that it would be consistent with the purpose of the wilderness, as it's been enacted. We're sympathetic to the needs of small businesses, and the values they bring to public land, and we find that our existing laws and regulations adequately address commercial filming on Federal lands. Sometimes, but not always, 5-person crews can have serious impacts when they come on National Forest System lands. They can bring large vehicles, trailers, generators, or other equipment; and if we can tailor a permit to each location and individual request, it gives us the best opportunity for oversight of operators, and it also provides us to consider the potential resource impacts and impacts to our visitors on National Forest System lands.

The second bill, S. 2767—excuse me—2762, San Juan Wilderness Act of 2009, designates nine parcels of the Grand Mesa, Uncompahgre, and Gunnison National Forest lands as wilderness. A little under 25,000 acres of Colorado's most majestic and remote landscapes are included in this bill. It would add this acreage to 2 existing wilderness areas, Lizard Head and Mount Sneffels.

The second part of the bill would designate Sheep Mountain area as a special management area. It would instruct us to manage and maintain wilderness characteristics in the area.

The third part of the bill would provide for a withdrawal within a portion of the Naturita Canyon.

The Department supports S. 2762, and would like to offer a few minor modifications that we think would enhance wilderness values.

The third bill, S. 1571 and H.R. 1043, provide for a land exchange in the Mendocino National Forest. The lands are currently occupied by a youth facility that is owned and operated by Solano County. Approximately 82 acres of National Forest System lands would be exchanged for about a quarter section of land that the county owns in that same drainage.

We support this legislation and would like to work with the subcommittee in 3 areas: one is to retain water rights and instream flows for Stony Creek; the second is to provide access to National Forest System lands; and the third is to provide for survey needs on the 82-acre parcel that we will convey to the county.

The final bill is S. 3075, the North Fork Watershed Protection Act of 2010. This bill would withdraw approximately 291,000 acres of the Flathead National Forest from locatable and leasable mineral laws. This area is affectionately referred to as the Crown of the Continent Ecosystem and includes Canada and Glacier National Park.

This withdrawal would be subject to valid existing rights, and this bill would not affect current existing oil and gas leases, because an existing lease would constitute a valid existing right.

The Department also supports this bill.

This concludes my oral statement. I'd be happy to answer any questions you may have.

[The prepared statements of Ms. Krueger follow:]

PREPARED STATEMENTS OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF,  
FOREST SERVICE, DEPARTMENT OF AGRICULTURE

S. 1241

Mr. Chairman and members of the subcommittee, thank you for the opportunity to be here today and provide the Department of Agriculture's views on S. 1241.

S. 1241 would direct the Secretaries of the Interior and Agriculture to require annual permits and assess annual land use fees for commercial filming on federal lands involving a crew of 5 persons or fewer. Specifically, the bill would require permits for commercial filming involving a crew of 5 persons or fewer that would cover filming in areas designated for public use on federal lands during a 12-month period. In addition, the bill would require a fee of \$200 for those permits. USDA defers to the Department of the Interior for activities occurring on DOI lands.

USDA has significant concerns with S. 1241 and cannot support this bill. Upon enactment, the bill would supplant the authority of the Department of the Interior (DOI) and USDA to issue separate permits and charge separate permit fees for each commercial filming activity. In addition, the bill would supplant USDA's land use fee schedule for commercial filming involving a crew of 5 persons or fewer.

Although we are sympathetic to the needs of small businesses, we believe existing laws, regulations, and directives adequately address all commercial filming on federal lands. Even a five-person crew can have serious impacts on the land and interfere with normal visitor use.

Issuing permits tailored to each use and each location is one of the best tools we have for oversight of operators. Often film crews, even small crews, need large vehicles, trailers, generators, and other equipment to conduct their business. Each project needs to be evaluated separately to address potential impacts. In addition, each project should be assessed a land use fee based on market value. We are also concerned that the bill could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of requirements and considerations in the Wilderness Act.

#### *Background*

The Forest Service currently issues special use permits for commercial filming and still photography and collects land use fees for these activities. The current authority for these permits is Public Law 106-206, which was signed into law on May 26, 2000, and is codified at 16 U.S.C. 4601-6d. Prior to enactment of P. L. 106-206, the Forest Service had authority to issue special use permits and collect land use fees for these activities under the Organic Act of 1897, 16 U.S.C. 551.

#### *Current Policy*

In 2003, the Forest Service amended its directives to make them consistent with P. L. 106-206 and to implement the new authority to retain and spend land use fees for commercial filming and still photography. These directives contain a definition for "commercial filming" that establishes the types of filming activities for which a permit is required. The definition excludes filming of breaking news because the need to cover breaking news arises suddenly, may evolve quickly, and may cease to be newsworthy by the time a permit is issued.

#### *Land Use Fees*

The Forest Service collects land use fees for commercial filming and still photography based on regional and forest fee schedules. In accordance with P. L. 106-206, the Forest Service collects, retains, and spends these fees without further appropriation. Ninety percent of the fee revenues are retained and spent at the local units where they are collected to improve customer service and program management for commercial filming and still photography.

Land use fees for commercial filming and still photography are established using either regional or forest fee schedules, as required by P.L. 106-206. The \$200 fee proposed by S. 1241 does not represent market value for the use of federal lands.

While in certain low-impact scenarios this fee might represent the market rate, in many instances, \$200 will not reflect the value of the use of federal land for commercial filming. In addition, the lower the land use fee, the lower the amount available to DOI and USDA under the fee retention provisions of P.L. 106-206 to improve customer service and program management for commercial filming.

*Commercial Filming in Wilderness*

The Forest Service currently issues permits for commercial filming in a wilderness area if the proposed use would contribute to the purposes for which the area was established. Section 4(d)(5) of the Wilderness Act, states that commercial services may be performed in wilderness areas only to the extent necessary for activities that are proper for realizing the recreational or other wilderness purposes of the areas. In cooperation with DOI, we plan to publish for public notice and comment definitions and criteria for commercial filming in wilderness areas based on the purposes of the Wilderness Act and the limitation on commercial services in Section 4(d)(5) of the Wilderness Act.

We are concerned that S. 1241 could pre-empt these efforts, as it could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of other considerations and requirements in the Wilderness Act. Some of our most pristine lands would be open to commercial filming, regardless of these wilderness factors.

*Conclusion*

The proposed legislation has a significant potential to adversely affect federal lands, including wilderness areas. Current laws, regulations, and agency directives and the proposed interagency fee schedule and Forest Service directives on commercial filming in wilderness areas provide or would provide better resource protection and better management of commercial filming, as well as conform to existing statutory and regulatory requirements to obtain market value for the use of federal land. We would like to work with the Committee to address the concerns presented by S. 1241 and any concerns of the Committee with regard to accommodating small film crews under current law and policy.

Thank you, Mr. Chairman, and members of the Committee for the opportunity to comment on this bill today. We look forward to working with the Committee on this issue.

S. 1571

Mr. Chairman, Ranking Member Barrasso, Members of the Subcommittee, I appreciate the opportunity to appear before you today to provide the Department of Agriculture's views on S. 1571, regarding the exchange of certain lands in the Mendocino National Forest (MNF).

The Department supports S. 1571 because it would consolidate four parcels (approximately 162 acres) of private lands, that possess national forest character, partially within, and immediately adjacent to, the Snow Mountain Wilderness area of the Grindstone Ranger District, Mendocino National Forest for approximately 82 acres of National Forest System lands that have been developed by Solano County for their youth facility at Fouts Springs. The National Forest System lands, where the Fouts Springs Youth Facility is located have lost their national forest character because of the development of classrooms, culinary facilities, dormitories, maintenance and administrative facilities associated with the youth facility.

We respectfully suggest that S. 1571 be amended to ensure any necessary protection of the interests of the United States relating to the water rights associated with the National Forest parcel to be conveyed, to provide for survey of, and public access across, the land to be conveyed to the County, and to address other technical issues related to the exchange.

The National Forest System (NFS) lands to be conveyed are located within the Grindstone Ranger District. Those lands were acquired as part of a land exchange with the Setzer Box Company in 1944 and are currently occupied by the Fouts Springs Youth Facility (FSYF) under a special use authorization. A 30-year special use authorization allows Solano County to operate a 162 bed youth correctional facility. The current permit area is approximately 74 acres. The NFS land adjacent to the Fouts Springs Youth Facility is a heavily developed off-highway vehicle area managed by the Forest Service.

The non-federal lands to be conveyed are also located within the Grindstone Ranger District of the MNF. They are known as the Deafy Glade parcels totaling approximately 161.7 acres. The four parcels are adjacent to the southerly boundary of the Snow Mountain Wilderness Area.

### *Amendments*

We would appreciate the opportunity to work with the Committee to address any concerns regarding the transfer of water rights to the County as part of the exchange. At present, with the water right held by the United States, there is adequate in-stream flow in Stony Creek. If the Fouts Spring Youth Facility were to convey to Solano County, we want to ensure that an adequate in-stream flow is maintained in Stony Creek.

The NFS parcel to be conveyed has to be delineated and described by a Cadastral survey approved by the Bureau of Land Management.

Providing for a right-of-way across the parcel conveyed to the county would ensure access to the surrounding national forest for Forest Service administration and for wildfire suppression.

We also would appreciate the opportunity to work with the Committee on several technical aspects of the bill to require that the County provides acceptable title for the land its conveys, to refer specifically to the cash equalization provision in the reference to section 206 of Federal Land Policy Management Act, to require the County to pay appraisal costs, and to provide more specificity regarding the conditions on the use of the land after it is conveyed to the County.

Mr. Chairman, Ranking Member Barrasso, This concludes our prepared testimony. Thank you for the opportunity to present the Administration's views on S. 1571. I would welcome any questions you might have.

S. 2762

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S2762, the "San Juan Mountains Wilderness Act of 2009."

The Department supports S2762. We would like to offer minor modifications to S 2762 that would enhance wilderness values, clarify the special management area designation, and improve our ability to manage resources in the area. We thank Congressman Salazar for his collaborative approach and local involvement that have contributed to this bill.

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

S2762 would designate nine parcels of the Grand Mesa, Uncompahgre and Gunnison National Forests as wilderness under the National Wilderness Preservation System. These areas, totaling approximately 24,800 acres, encompass some of Colorado's most majestic, remote landscapes with many abundant wildlife species including elk, deer, bighorn sheep, bears and a variety of birds. Several world-class trout streams are also found in the areas. These areas also provide opportunities to experience solitude and primitive recreation use for members of the public seeking areas to connect with nature.

These parcels would be additions to two existing wildernesses: Lizard Head and Mount Sneffels. In addition, S2762 would designate the Sheep Mountain area as a Special Management Area to be managed to maintain the area's existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Also, S2762 would provide for a mineral withdrawal within a portion of Naturita Canyon.

#### *Lizard Head Wilderness Additions*

The Lizard Head Wilderness lies astride the spectacular San Miguel Mountains, 10 miles southwest of Telluride on the Uncompahgre and San Juan National Forests. Elevations in the area range from 9,500 to over 14,000 feet. The wilderness is evenly split between the two national forests and is 41,200 acres in size.

The proposed wilderness additions include five parcels, encompassing approximately 3,200 acres of National Forest System lands adjacent to the existing wilderness. Neither Forest Plans, completed in 1983, recommended any of the areas for wilderness designation. However, wilderness designation would be aligned with the current management of the area. No summer motorized recreation is currently allowed and effects to winter motorized recreation will be minimal as there is very little snowmobile use of the area.

#### *Mount Sneffels Wilderness Additions*

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

The proposed wilderness additions include four parcels that encompass approximately 21,600 acres of NFS lands adjacent to the existing wilderness. As with the

Lizard Head Additions, even though this area was not recommended as wilderness in the forest plan, designation is generally aligned with forest plan direction and will have minimal effects on summer and winter recreation.

We would like to work with the subcommittee to address some technical aspects of the bill. We recommend changing the wilderness boundary near Telluride to allow for potential construction work to address periodic floods with debris flows and provide for a more definitive boundary by following a cliff formation. Additionally, we remain concerned that the legislation would provide for continuation of a competitive footrace event in designated wilderness. Current Forest Service policy does not permit competitive events and this reflects the Wilderness Act prohibition against commercial enterprise.

#### *Sheep Mountain Special Management Area*

S2762 would also designate an area of about 21,700 acres of NFS land that lies south of the town of Ophir as a special management area. About 9,900 acres are within the Uncompahgre National Forest and about 11,800 acres are within the San Juan National Forest. This area contains some lands purchased recently with funds provided by Congress as part of the Ophir Valley Land and Water Conservation Fund project.

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

As with the Mount Sneffels Wilderness additions, we have concerns that if this area becomes wilderness, the legislation allows for the continuation of a competitive footrace event.

#### *Naturita Canyon Withdrawal*

S2762 would also provide for a withdrawal on approximately 6,600 acres of National Forest System lands within Naturita Canyon on the Uncompahgre National Forest, about five miles south of the community of Norwood. Naturita Canyon is relatively low-elevation river drainage (7,000 feet) with steep canyon walls that tower 1,000 feet. There are no current leases within the area proposed for withdrawal. Impacts on available oil and gas resources for this withdrawal are unknown. Further exploration information would be needed for a conclusive assessment.

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

S. 3075

Mr. Chairman, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 3075, the "North Fork Watershed Protection Act of 2010."

S. 3075 would, subject to valid existing rights, withdraw National Forest System (NFS) lands located in the North Fork of Flathead River watershed in Montana which are managed as part of the Flathead National Forest from location, entry, and patent under the mining laws and from disposition under the mineral and geothermal leasing laws. The Department supports S. 3075, however, I would like to clarify that although the Department has surface management authority concerning mineral operations, the management of the federal mineral estate falls within the jurisdiction of the Secretary of the Interior. We defer to the Department of the Interior on all issues related to the status of the existing claims and leases.

#### *Background*

The Forest Service administers surface resources on nearly 193 million acres of NFS lands located in forty-two states and the Commonwealth of Puerto Rico. The Forest Plan for the Flathead National Forest blends areas of multiple uses in the North Fork with areas of specific or limited uses elsewhere on the Forest. Under current law, NFS lands reserved from the public domain pursuant to the Creative Act of 1891, including those in S. 3075, are open to location, entry and patent under the United States Mining Laws unless those lands have subsequently been withdrawn from the application of the mining laws. This bill would withdraw approximately 291,000 acres of the Flathead NF from the operation of the locatable and leasable mineral laws subject to valid existing rights.

The North Fork of the Flathead has low to moderate potential for the occurrence of locatable and leasable minerals. Much of the North Fork was leased for oil and gas in the early 1980s. Subsequently, the Bureau of Land Management (BLM) and

Forest Service were sued and BLM suspended the leases in 1985 to comply with a District Court ruling (*Conner v. Burford*, 605 F. Supp. 107 (D.Mont.1985)). Presently, there are no active locatable or leasable operations, including oil and gas, in the North Fork. There are 115 leases that have been suspended by the Secretary of the Interior since 1985.

*Comments on S. 3075*

We recognize the bill would not affect the existing oil and gas leases because they would constitute valid existing rights. We also recognize the bill would not change the court's order in *Conner v. Burford* requiring the BLM and Forest Service to prepare an environmental impact statement (EIS) under the National Environmental Policy Act before authorizing any surface disturbing activities on the affected leases.

We are pleased that this bill would not preclude the removal and use of mineral materials found on the NFS lands that would be subject to the bill. The Flathead National Forest and Flathead County rely on the close proximity of local sources of aggregate to maintain roads economically and as a source of building materials. Commensurate with the goal of S. 3075 to protect the North Fork watershed, the ability to continue using those mineral materials would allow us to adequately maintain local roads and reduce erosion related impacts to streams and lakes in the North Fork.

We appreciate Senators Baucus and Tester's strong commitment to protecting Montana's natural resources.

I would be happy to answer any questions from the committee. Thank you.

Senator WYDEN. Ms. Krueger, Ms. Burke, here's what we're going to do. Both of you have given succinct statements. We're joined by Senator Udall. I have a few questions on just 2 of the bills that have come up, and it's my intent to do these briefly, and then we'll turn it over to Senator Udall, who I know is going to be interested in pursuing his bill, which I think is very constructive, and I want to see advance, as well.

First question, for you, Ms. Krueger. The Department testified in opposition to an earlier House version of the Deafy Glade Land Exchange bill in 2008. The Department is now supporting the new version of the bill. What's the Department's change of mind all about?

Ms. KRUEGER. We looked at a couple factors.

One factor, when we did a feasibility study, a couple years ago, it said that it wasn't in the public's best interest to do the land exchange, but didn't prohibit us from doing that. In this legislation, there's some statement that requires the county to maintain that facility, so we support that, as well as—we did ask the county to go out and purchase this land that we wanted to exchange, and they did that in good faith. So, when we combine those 2 factors, that's the reason we support this land exchange now.

Senator WYDEN. Question for both of you on the commercial film fee legislation, I think would be fair to characterize it. The current law on commercial filming fees directs your agencies, your 2 agencies, to establish reasonable filming fees, taking into account the number of filming days on Federal lands, the size of the film crew, and amount of filming equipment used. Do you all have a national fee schedule for the Department of Interior and the Forest Service that lays out what a "reasonable fee" is, or does each area establish fees on a case-by-case basis?

Ms. Burke.

Ms. BURKE. Thank you, Mr. Chairman. We do not have a national fee. We—even within the BLM, the fees vary, depending on location. However, we are working on a unified fee schedule at this time.

Senator WYDEN. Ms. Krueger.

Ms. KRUEGER. We're in the same situation. We do it on a case-by-case basis, as well.

Senator WYDEN. You're also working on a uniform fee schedule?

Ms. KRUEGER. We are working with Department of Interior on that, yes.

Senator WYDEN. OK.

The subcommittee has been told, by some organizations, that it's their view that the agencies charge fees that are geared to larger commercial filming operations, but, in their view, are unreasonable for the small production operations. What would be your response to that, Ms. Burke?

Ms. BURKE. I think that our proposed fee schedule that we're working on jointly within DOI and Agriculture would address those concerns about needing to treat different-sized operations differently.

Senator WYDEN. Ms. Krueger.

Ms. KRUEGER. I would like to add that we also look at the location of where they're going to do the filming. I've had experience where there's been some filming that's been done, but we've had to do crowd control or coordinate days when we go out to do the filming, versus on how active the public is going to be on a certain day.

I've also had experience where we've looked at wildlife concerns, nesting of birds at a certain period of time.

So, each situation, we like to look at, to make sure we are managing for our resources and our visitors.

Senator WYDEN. So, when would you expect to have these new rules out? I mean, in effect, what you told me—I guess you're making a little bit a news here this afternoon—is that you're interested in moving from a sort of case-by-case approach, with respect to filming fees, to your 2 agencies coming up with a coordinated approach that would be embodied in a rule, or something that would be made public. When do you expect that to be out publicly?

Ms. BURKE. Our hope is that it'll be soon. We are still undergoing departmental review, but we do have a working draft that is very close to being completed.

Senator WYDEN. So, you'd say 60 days?

Ms. BURKE. I would say "soon."

Senator WYDEN. Ninety days?

Ms. BURKE. I would say "soon."

[Laughter.]

Senator WYDEN. Ms. Krueger, can we—

Ms. KRUEGER. We're working on it.

Senator WYDEN [continuing]. Give a little bit more flesh to the concept of "soon"?

Ms. KRUEGER. I'm sorry, I can't give you more flesh to your answer—or, your question. We are working with Department of Interior. They are taking the lead on this. As they go through and create the regulations, we are going to adopt those.

Senator WYDEN. OK.

Ms. KRUEGER. So, we are working in tandem—

Senator WYDEN. I'd like, within a week, a response to the question.

Ms. KRUEGER. All right.

Ms. BURKE. Absolutely.

Senator WYDEN. All right.

How would the \$200 annual filming fee proposed in S. 1241 compare to your current fee structure?

Ms. Burke.

Ms. BURKE. Our current fee structure varies by State and by the type of activity, so it's difficult to say how the \$200 fee would impact us. One of our primary concerns is not—is that the annual permit would allow film crews to go into areas without us being able to adequately manage those activities.

Senator WYDEN. OK.

Ms. Krueger.

Ms. KRUEGER. As I mentioned, we're a case-by-case, as well. But, on the average, we charge about \$100 a day for a small filming crew. That's just a ballpark number. It would limit us in cost recovery, as well.

Senator WYDEN. OK.

I'm going to turn this over to Senator Udall.

The reason this information about your proposals is important is, we've got colleagues, on a bipartisan basis, that want to move forward with legislation. So, we will await that information within the week.

Look forward to working closely with you. It has always been easy to work with both of your agencies, as chair of this subcommittee.

I'll turn this over to Senator Udall, who's got a good bill, and I know he's going to want to ask a number of questions.

Senator Udall, the gavel is yours.

Senator UDALL [presiding]. Thank you, Senator Wyden. Thank you, before you have to depart, for holding this important hearing.

I couldn't help but note when you asked for a definition of "soon," that we're, right now on the floor of the Senate, working on a series of definitions on what—how you describe "hedges, derivative, swaps, credit default swaps, counterparties, and futures." "Soon" is the answer. So, we'll—

Thank you, Mr. Chairman.

I have a full statement I'd like to put in the record in regards to S. 2762, the San Juan Wilderness Act. It's a companion bill to the one that my colleague and friend in the House of Representatives, Congressman John Salazar, introduced late last year. I want to acknowledge the hard work that Congressman Salazar's put forth, along with many stakeholders in this wonderful and beautiful area of Colorado.

[The prepared statement of Senator Mark Udall follows:]

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

Thank you, Mr. Chairman.

I appreciate your agreeing to hold a hearing on S. 2762, the San Juan Wilderness Act.

This bill is a companion to H.R. 3914, the companion bill introduced by my House colleague, Representative John Salazar.

I want to express my appreciation for the extensive work of Representative Salazar and his staff in putting this bill together and working with all stakeholders on this bill.

This bill would designate over 22,000 acres of National Forest and Bureau of Land Management land in southwestern Colorado as wilderness. These would be

additions to some existing wilderness areas in this region. These are important lands that possess critical wildlife habitat, clean water, and other scenic values. They are very worthy additions.

It would also establish over 21,000 acres of National Forest as the Sheep Mountain Special Management Area. This is an area that is equally striking and contains equally critical resource and scenic value. It is being designated as a special management area so as to continue to allow heli-skiing opportunities.

Finally, the bill would withdraw from mineral entry over 6,500 acres in the Naturita Canyon area, a striking canyon west of Telluride, Colorado.

In addition to these designations, the bill protects existing water rights, allows continued grazing, does not affect the continued operation of a hydroelectric plant, and does not interfere with an important and popular footrace, called the Hard Rock 100.

I am pleased to join with Representative Salazar in preserving and protecting these scenic and important landscapes into our cherished wilderness and special management systems.

Mr. Chairman, thank you again for holding this hearing and I look forward to hearing from today's witnesses.

Senator UDALL. I wanted to, in particular, mention that the bill protects existing water rights, it allows continued grazing, it doesn't affect the continued operation of a hydroelectric plant, and it does not interfere with a important and popular footrace called the Hardrock One Hundred, which, incidentally, is because it involves a 100-mile footrace, which is no small accomplishment.

Congressman Salazar has, again, worked hard in order to protect these scenic, historic, and important landscapes that deserve in-perpetuity protection.

Ms. Krueger, maybe I could turn to you first. You've indicated that you'd like to work on some boundary adjustments regarding the Mount Sneffels Wilderness additions near Telluride. Could you be more specific about where you would like to see the boundary moved?

Ms. KRUEGER. Yes. We'd like to see the boundary move along a cliff area that gives a real succinct line, or demarcation, of where that boundary would be. We have been working with Telluride City, and they're OK with the boundary, as proposed. We believe the boundary going up to the cliff would help with the Hardrock One Hundred Race and keep that out of the Wilderness Area for a 5-mile segment. So, that's one area.

Senator UDALL. Is that the primary boundary adjustment you'd like to make?

Ms. KRUEGER. Yes.

Senator UDALL. Yes. Have you raised those concerns with Congressman Salazar, following the hearings of his version of the bill in the House? If so, what's the status of your discussions with him and his staff on these concerns?

Ms. KRUEGER. My understanding is our forest supervisor has been working with his office, but I'll have to get back with you on the status.

Senator UDALL. Will you do so?

Ms. KRUEGER. Yes, I will.

Senator UDALL. Just for the record, I'd be happy to work with you and his office on that issue and any others that might come up—

Ms. KRUEGER. All right, thank you.

Senator UDALL [continuing]. As we move forward.

Ms. Burke, thank you again for being here. You've indicated, in your testimony, that you'd like to work on some boundary issues, as well, in regards to this bill. Could you be more specific as to the nature of your concerns with those boundaries? Have you also raised this—your concerns, with Congressman Salazar? If so, what's the status of those discussions?

I fit 3 questions in there. My apology.

Ms. BURKE. Right. Yes, you're correct that we raised a boundary issue, and we would support expanding this bill to include the rest of the Wilderness Study Area—the southern portion of the Wilderness Study Area—which would help us with manageability. So, whether it's a natural barrier, as the Forest Service indicated, it would just be easier for us to manage that land for its wilderness characteristics.

Senator UDALL. Could I interrupt you there—and leaving the other 2 questions outstanding—is this the McKenna Peak designation?

Ms. BURKE. Yes.

Senator UDALL. So, you would—let me leave that there, and I'm going to come back to that, and I'll let you answer the other 2 parts of my initial question.

Ms. BURKE. The other 2 parts were, Are we working with Representative—

Senator UDALL. Congressman—

Ms. BURKE. Salazar.

Senator UDALL. Yes, and what's the status of those?

Ms. BURKE. What's the status of that work?

Senator UDALL. Yes.

Ms. BURKE. We've had discussions, but I'm not aware of the current status of those discussions.

Senator UDALL. OK. As I offered to Ms. Krueger, I'm certainly willing and, I think, able to be engaged, as well, in moving those discussions along.

Ms. BURKE. Thank you.

Senator UDALL. Let me follow up, as I suggested I would, on McKenna Peak. Do you have any sense as to what concerns, if any, constituencies may have with expanding the bill's wilderness designation to include the entire Wilderness Study Area, or as we know—as we call it, a WAS, including the portions in Delores County?

Ms. BURKE. Yes.

Senator UDALL. Thank you.

Ms. BURKE. We are not aware of any specific concerns as the Wilderness Study Area moves into a different county.

Senator UDALL. You are not.

Ms. BURKE. No.

Senator UDALL. Let's keep the conversation alive in that regard, if we might.

I think, at this point, I don't have any other additional questions.

Do either of you have any additional comments before I bring the hearing to a close?

Ms. BURKE. No, thank you.

Senator UDALL. Thanks again for making the trip to the Hill.

We will keep the hearing record open for 2 weeks. If any members of the committee have additional questions, we will submit them to you in writing.

Thanks again, to everybody.

The subcommittee's adjourned.

[Whereupon, at 3:20 p.m., the hearing was adjourned.]



## APPENDIXES

---

### APPENDIX I

#### Responses to Additional Questions

---

##### RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR BARRASSO

The Administration's testimony indicates that the land management agencies should be allowed to continue permitting and charging land use fees for any commercial film crew of any size. That policy includes individuals filming recreational trips to public land and amateur filmmakers entering contests. It also includes educational videos and those made by non-profit organizations. These individual filmmakers are impacting the public lands no more than any other hiker, biker or skier. Yet, the agencies are charging exorbitant fees and requiring a lengthy permit process. Other individual public lands users do not face the same kind of permitting and fee structure.

*Question 1a.* It seems to me that this policy is difficult to apply fairly. Does the Bureau of Land Management intend to apply this same standard to other individual users?

For example, would an amateur photographer have to pay for permitting and land use?

Answer. The Bureau of Land Management (BLM) does not charge for filming in cases of casual use. Casual use is defined in regulations as "any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities." (43 CFR 2920.0-5(k)). Amateur photography is considered casual use. The amateur photographer would not be charged fees on public lands, unless the photographer was taking still photographs that use models, sets or props, entered an area not generally open to the public, or conducted a photography session that requires agency oversight. (Public Law 106-206). Oversight would generally be required for larger still photography activities or in areas of fragile natural or cultural resources or higher visitation.

*Question 1b.* Would a non-profit organization leading educational hikes for a fee be charged per student?

Answer. The nonprofit organizational status of an entity is not a factor in determining if an activity is commercial in nature. The BLM issues many commercial recreation use permits to nonprofit organizations including Outward Bound, National Outdoor Leadership School, and many other recreational or outdoor activity based organizations that operate repeated trips, advertise, provide paid guide staff and charge fees for participants. However, organizations such as schools, clubs or groups who conduct occasional multi-day group outings, do not have paid guide staff and share costs among participants fall under organized group permits. The standard fee for organized group permit is set by regulation and is currently \$5.00 per person per day. Typically, short-term use of public lands by educational organizations or groups such as a one-day school field trip, day hikes, or use of day use facilities are not charged fees.

*Question 1c.* Does the Administration intend to charge the authors of trail guide books for land use?

Answer. No, the BLM does not charge authors of trail use books for land use.

*Question 2.* The Rainbow Gathering that took place near Pinedale, Wyoming in 2008 created significant impacts to Federal lands. Please explain the land use fee charged to that organization. Please also provide the fees charged to the group for 2009 and the permitting process and fee planned for 2010.

Answer. The Forest Service was the lead agency for the 2008 National Rainbow Family Gathering. We defer to the Forest Service as the 2008 "Rainbow Gathering" took place on Forest Service lands (Bridger-Teton NF).

*Question 3.* Over the past five years, what is the average land use fee charged for film crews of five persons or less permitted on Federal lands?

Answer. The Department of the Interior (Department) does not keep a centralized database of the permits issued or fees charged to film crews of five persons or less.

*Question 4.* Over the past five years, what is the average time required for the processing of each permit for film crews of five persons or less on Federal lands?

Answer. The Department also does not keep a centralized database of the average time required for processing of each commercial filming permit.

However, as a general matter, the National Park Service (NPS) estimates that a permit request for an activity involving a small crew may take from one to five days or more to process, depending on factors including the crew's size, preferred location, and their knowledge of NPS policy and regulations. For permits on public lands covered by a Programmatic Environmental Assessment (including popular filming locations in California, Nevada and Utah), the BLM estimates that a permit request may take one to five days to process. And the Fish and Wildlife Service (FWS) estimates that the special use permits for filming on refuge lands are generally processed within 2-3 weeks.

---

RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR MURKOWSKI

S.1241

You have testified that the Forest Service and DOI agencies should be allowed to continue permitting and charging land use fees for commercial film crews of any size.

*Question 1a.* Does the Forest Service intend to apply this same standard to other individual users?

For example, would an amateur photographer have to pay for permitting and land use, if they enter a photo a contest or get paid for a copy of a photo?

Answer. We defer to the Forest Service for its response to this question.

*Question 1b.* Would a non-profit organization leading educational hikes be charged per student?

Answer. We defer to the Forest Service for its response to this question.

*Question 1c.* Does the Forest Service intend to charge the authors of trail guides for land use?

Answer. We defer to the Forest Service for its response to this question.

*Question 2.* The Rainbow Gatherings all take place on federal lands and there are vendors who attend those gatherings who sell products at the gatherings. Using the logic provided in your testimony on small film crews; when will the Departments begin to charge the rainbow people or the vendors who attend those events a user fee?

Answer. Vending on public lands is considered a commercial recreational use. In accordance with 43 C.F.R. 2932.11(a), the vendors on public lands would be issued permits and charged fees by BLM for their activities. On parklands, the NPS would require each vendor to obtain a commercial use authorization and would charge a fee in accordance with Public Law 105-391.

*Question 3.* Other organizations advertise in environmental magazines to bring people to federal lands without permits and sell these tours to individuals, thus these activities are very likely commercial ventures. For example, you can find a good number of advertisements in the Sierra Club Magazine each issue. Some are even Sierra Club organized events.

Using the logic of your testimony on small film crews, when are your departments going to begin charging groups organized through such advertisements a fee to attend these hikes on Federal lands?

Answer. Under BLM regulations, organizations that advertise in national magazines to sell and conduct tours on public land would be considered commercial users, and the tours would be administered under the Special Recreation Permit regulations, 43 C.F.R. 2932.11 (a)(1). The NPS issues commercial use authorizations to commercial ventures and charges fees in accordance with Public Law 105-391. Non-profit organizations are not issued commercial use authorizations pursuant to Public Law 105-391 unless they derive taxable income from the activity, however, they may be subject to entrance fees.

*Question 4.* You indicated the agencies need to be able to recoup their costs; please provide the Committee with a detailed lists of the costs by forest (for the For-

est Service) or state (for the BLM), or park (for the Park Service) for each of the last 5 years for administering these film crew permits?

Answer. The NPS's cost recovery costs filming and photography permits for fiscal years 2006-2009 are provided below. Based upon the reporting system that is used, it is not possible to provide a detailed park listing.

FY 2006	\$289,398.16 (only represents a partial year)
FY 2007	\$822,771.57
FY 2008	\$697,565.10
FY 2009	\$727,216.10

The BLM's cost recovery costs are associated with both processing film permits and monitoring the filming. They are as follows by state over the last 5 years:

	FY2005	FY2006	FY2007	FY2008	FY2009	Totals
Arizona	\$4,205	\$4,539	\$200	\$486	\$23,484	\$32,914
California	\$66,323	\$44,553	\$116,963	\$93,247	\$53,390	\$373,476
Colorado	\$744	\$1,200	\$2,203	\$2,517	\$1,149	\$7,813
Idaho	\$175	\$454	0	0	0	\$629
Montana	\$1,288	\$300	\$104	\$700	\$2,230	\$4,622
New Mexico	\$1,669	\$6,312	\$4,923	\$8,065	\$3,510	\$24,479
Nevada	\$5,194	\$6,075	\$11,233	\$10,507	\$9,247	\$42,256
Oregon	\$350	0	\$3,385	\$2,603	\$2,370	\$8,708
Utah	\$11,986	\$12,380	\$9,661	\$11,494	\$6,753	\$52,274
Wyoming	\$1,029	\$1,416	0	0	\$709	\$3,154
Totals	\$92,963	\$77,229	\$148,672	\$129,619	\$102,842	\$551,325

May 10, 2010  
Information from BLM LR2000 (case recordation)

*Question 5.* Please also provide an estimate of the total FTE's utilized to administer these permits by forest, BLM district, or national park for each of the last five years?

Answer. The BLM has only three states with substantial filming activity—California, Utah and Nevada. Nevada estimates 2 to 3 work months per year or 1/2 of a FTE. Utah estimates 6 to 7 work months per year or 1/2 of a FTE total. California estimates between 8 and 10 FTEs annually.

In most park units processing requests for special park use permits, which includes activities such as special events, first amendment activities, commercial filming, and still photography is a collateral duty. Less than 20 parks have staff dedicated to managing the special park uses program and processing permit requests. Levels of monitoring vary from project to project. For example, a crew of five filming in an historic building would generally be assigned a curator and an electrician to monitor the filming activity. In parks without staff dedicated to special park uses, monitoring this activity takes employees away from their other duties.

*Question 6.* For the BLM, the Forest Service, and US Fish & Wildlife Service where hunting or fishing is allowed:

The states have the responsibility for hunting and fishing licensing and management of those recreationists. If a hunter and one other person film a hunting or fishing trip would they fall under the commercial filming permit program?

Answer. The BLM would consider activities such as described in this question as “casual use” and would not require a permit. 43 CFR 2920.0-5(k) defines “casual use” as any short-term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

Under the National Wildlife Refuge System Administration Act, the determination of whether a filming activity is a commercial use of a national wildlife refuge, or whether the activity requires a Special Use Permit, is left to the refuge manager's professional judgment based on the individual circumstances. In this particular case, it is highly unlikely that the activity would require a permit unless the people filming required special treatment due to access, amount of equipment, interference with other visitors' use of the refuge, etc. If a permit was required for some reason, a fee would potentially be charged in accordance with the requirements of Public Law 106-206.

*Question 7.* If a family is on a lake on federal lands and the father video's one of his children fishing: would that fall under the commercial filming permit program?

Answer. For the BLM, this activity would also be considered casual use and would not require a permit. On a national wildlife refuge, it is highly unlikely that this activity would require a Special Use Permit.

*Question 8.* In either event described above: if either the hunter or the family happened to capture a trophy animal or fish on film or video and then sold the footage to one of the many outdoor shows, would that fall within the commercial filming permit program?

Answer. For the BLM, because the original intent as described in this question was casual use and not commercial, this activity would not require a permit under BLM regulations. On a national wildlife refuge, as described above, the determination of whether a Special Use Permit is required for filming on a national wildlife refuge, and whether a fee will be charged, is made before an activity takes place. In this case, if no permit was required beforehand, FWS would not seek to charge a fee if the footage was later sold for profit.

*Question 9.* How does your agency deal with video taken by private individuals of events on public lands that then get shown on TV?

Answer. For the BLM, a permit would not be required if the original intent was casual use or if the filming was associated with broadcasting news. A permit would be required for a planned sporting or other event that is filmed for the purpose of broadcasting on a regularly scheduled television show. On a national wildlife refuge, as described above, the determination of whether a Special Use Permit is required for filming on a national wildlife refuge, and whether a fee will be charged, is made before an activity takes place.

*Question 10.* Does either Department charge its employees a permit fee for taking video that then gets viewed on a public TV station or on the Internet—say for instance video from rainbow gatherings, or wildfires? Why not?

Answer. If filming is undertaken by federal employees on government time, any material or product created (video for example) is owned by the federal government. If the employee was acting beyond their scope of work, or on their own time, the employee would have to comply with the provisions of federal law regarding filming.

*Question 11.* Since the states have responsibility for the regulation of hunting and fishing why should Congress allow the federal land management agencies to regulate filming on federal lands done in conjunction with hunting or fishing?

Answer. Although States have responsibility for regulation of certain hunting and fishing, the federal land agencies are responsible for the natural resources and habitats that support wildlife populations. The federal land agencies must assess, evaluate and authorize (permit) the use activity when public land resources are being used, regardless of the type of use activity including filming, energy or mineral development, right of ways, range or grazing uses, commercial or competitive recreation activities and other land uses.

*Question 12.* If Congress does develop a small film crew permit program, are both Departments willing to share the receipts from the program with State Fish and Game Departments for those permit fees collected related to hunting or fishing activities?

Answer. Because the filming takes place on federal lands, the federal land management agencies, including BLM, NPS and FWS, with responsibility for protecting those land resources appropriately should retain any fees collected. This will cover costs for managing filming on federal lands and will provide a fair return to the American taxpayer for the use of those resources, allowing these fees to be reinvested in conservation of those resources for future generations.

---

RESPONSES OF FAYE KRUEGER TO QUESTIONS FROM SENATOR BARRASSO

S. 1241

The Administration's testimony indicates that the land management agencies should be allowed to continue permitting and charging land use fees for any commercial film crew of any size. That policy includes individuals filming recreational trips to public land and amateur filmmakers entering contests. It also includes educational videos and those made by non-profit organizations. These individual filmmakers are impacting the public lands no more than any other hiker, biker or skier. Yet, the agencies are charging exorbitant fees and requiring a lengthy permit process. Other individual public lands users do not face the same kind of permitting and fee structure.

*Question 1a.* It seems to me that this policy is difficult to apply fairly. Does the Forest Service intend to apply this same standard to other individual users? For example, would an amateur photographer have to pay for permitting and land use?

Answer. The statutes governing commercial filming (16 U.S.C. 4601-6d) and 36 CFR 251.50(c)(2) require a permit and permit fee for still photography that involves the use of models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities; takes place at a location where members of the public generally are not allowed; or takes place at a location where the Forest Service is likely to incur additional administrative costs as a direct result of the still photography. Amateur photographers do not need to obtain a permit or pay a permit fee to take still photographs as long as none of these criteria applies.

*Question 1b.* Would a non-profit organization leading educational hikes for a fee be charged per student?

Answer. Per 36 CFR 251.51, leading hikes for a fee would be classified as outfitting and guiding, not commercial filming. Per 36 CFR 251.50(a) and 251.57(a) and Forest Service Handbook (FSH) 2709.11, chapters 30 and 40, outfitting and guiding requires a permit and a permit fee. If the activity involves 75 or more people, a free noncommercial group use permit would be required, per 36 CFR 251.50(c)(1).

*Question 1c.* Does the Administration intend to charge the authors of trail guide books for land use?

Answer. Authors of trail guide books about National Forest System lands do not have to obtain a permit or pay a permit fee. Photographers who take pictures on National Forest System lands for trail guide books do not need to obtain a permit or pay a permit fee as long as none of the criteria listed in the response to question 1a applies.

*Question 2.* The Rainbow Gathering that took place near Pinedale, Wyoming in 2008 created significant impacts to U.S. Forest Service land. Please explain the land use fee charged to that organization. Please also provide the fees charged to the group for 2009 and the permitting process and fee planned for 2010.

Answer. A permit is required for noncommercial group uses (36 CFR 251.50(c)(1)). Noncommercial group uses are gatherings on National Forest System lands that involve 75 or more people where no entry or participation fee is charged and where the primary purpose is not the sale of a good or service (36 CFR 251.51). Per 36

CFR 251.57(d), no fee may be charged for a noncommercial group use permit (NCGUP). National Rainbow Family gatherings like the 2008 Pinedale, Wyoming, event and the 2009 Santa Fe, New Mexico, event are noncommercial group uses. With respect to the permit requirement, in 2007 and 2008 the Forest Service managed the national Rainbow Family gathering with an operating plan in lieu of a permit to test the feasibility of an alternative method to obtain voluntary compliance with resource requirements from the Rainbow Family. In 2009, the responsible official issued an NCGUP for the Rainbow Family gathering held in the Santa Fe National Forest. The establishment of cooperative relationships between the Forest Service and Rainbow Family gatherers led to both execution of the permit and development of an operating plan.

For the 2010 national Rainbow Family gathering held in the Allegheny National Forest, the responsible federal official worked with gathering participants on how to meet the mutual objectives of having a safe, healthy, gathering with mitigation of resource impacts. Discussions included execution of an NCGUP as well as the use of a mutually agreed upon operating plan. Following several days of discussions, the responsible official, pursuant to their delegated authority, approved a mutually agreed upon operating plan containing sufficient standards to ensure that the foregoing objectives were met. The establishment of a positive relationship for the 2010 national Rainbow Family gathering resulted in all the objectives being met by participants. These objectives continue to be met during cleanup and rehabilitation of the gathering site.

*Question 3.* Over the past five years, what is the average land use fee charged for film crews of five persons or less permitted on the National Forest System?

Answer. For still photography, depending on the location, the land use fee for a crew of five persons or less ranges from \$50 to \$132 per day, and from \$150 to \$193 per day for commercial filming, depending on the location. Most Forest Service regions developed their fee schedules in the early 1990s and have not updated the fees for inflation.

*Question 4.* Over the past five years, what is the average time required for the processing of each permit for film crews of five persons or less on the National Forest System?

Answer. Regardless of the size of the crew, a still photography or commercial filming permit generally can be issued in five days if the proposed activity is consistent with applicable Forest Service directives and the Forest Service has all the required information from the applicant. We recommend that an applicant contact the affected administrative unit at least ten days prior to the proposed activity to facilitate processing of a proposal.

#### RESPONSES OF FAYE KRUEGER TO QUESTIONS FROM SENATOR MURKOWSKI

S. 1241

*Question 5a.* You have testified that the Forest Service and DOI agencies should be allowed to continue permitting and charging land use fees for commercial film crews of any size. Does the Forest Service intend to apply this same standard to other individual users? For example, would an amateur photographer have to pay for permitting and land use, if they enter a photo a contest or get paid for a copy of a photo?

Answer. The statutes governing commercial filming (16 U.S.C. 4601-6d) and 36 CFR 251.50(c)(2) require a permit and permit fee for still photography that involves the use of models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities; takes place at a location where members of the public generally are not allowed; or takes place at a location where the Forest Service is likely to incur additional administrative costs as a direct result of the still photography. Amateur photographers do not need to obtain a permit or pay a permit fee to take still photographs as long as none of these criteria applies.

*Question 5b.* Would a non-profit organization leading educational hikes be charged per student?

Answer. Per 36 CFR 251.51, leading hikes for a fee would be classified as outfitting and guiding, not commercial filming. Per 36 CFR 251.50(a) and 251.57(a) and Forest Service Handbook (FSH) 2709.11, chapters 30 and 40, outfitting and guiding requires a permit and a permit fee. If the activity involves 75 or more people, a free noncommercial group use permit would be required, per 36 CFR 251.50(c)(1).

*Question 5c.* Does the Forest Service intend to charge the authors of trail guides for land use?

Answer. Authors of trail guide books about National Forest System lands do not have to obtain a permit or pay a permit fee. Photographers who take pictures on

National Forest System lands for trail guide books do not need to obtain a permit or pay a permit fee as long as none of the criteria listed in the response to question 1a applies.

*Question 6.* The Rainbow Gatherings all take place on federal lands and there are vendors who attend those gatherings who sell products at the gatherings. Using the logic provided in your testimony on small film crews, when will the Departments begin to charge the rainbow people or the vendors who attend those events a user fee?

Answer. A permit is required for noncommercial group uses (36 CFR 251.50(c)(1)). Noncommercial group uses are gatherings on National Forest System lands that involve 75 or more people where no entry or participation fee is charged and where the primary purpose is not the sale of a good or service (36 CFR 251.51). Per 36 CFR 251.57(d), no fee may be charged for a noncommercial group use permit (NCGUP). National Rainbow Family gatherings like the 2008 Pinedale, Wyoming, event and the 2009 Santa Fe, New Mexico, event are noncommercial group uses. With respect to the permit requirement, in 2007 and 2008 the Forest Service managed the national Rainbow Family gathering with an operating plan in lieu of a permit to test the feasibility of an alternative method to obtain voluntary compliance with resource requirements from the Rainbow Family. In 2009, the responsible official issued an NCGUP for the Rainbow Family gathering held in the Santa Fe National Forest. The establishment of cooperative relationships between the Forest Service and Rainbow Family gatherers led to both execution of the permit and development of an operating plan.

For the 2010 national Rainbow Family gathering held in the Allegheny National Forest, the responsible federal official worked with gathering participants on how to meet the mutual objectives of having a safe, healthy, gathering with mitigation of resource impacts. Discussions included execution of an NCGUP as well as the use of a mutually agreed upon operating plan. Following several days of discussions, the responsible official, pursuant to their delegated authority, approved a mutually agreed upon operating plan containing sufficient standards to ensure that the foregoing objectives were met. The establishment of a positive relationship for the 2010 national Rainbow Family gathering resulted in all the objectives being met by participants. These objectives continue to be met during cleanup and rehabilitation of the gathering site.

*Question 7.* Other organizations advertise in environmental magazines to bring people to federal lands without permits and sell these tours to individuals, thus these activities are very likely commercial ventures. For example, you can find a good number of advertisements in the Sierra Club Magazine each issue. Some are even Sierra Club organized events.

Using the logic of your testimony on small film crews, when are your departments going to begin charging groups organized through such advertisements a fee to attend these hikes on Federal lands?

Answer. Per 36 CFR 251.51, leading hikes for a fee would be classified as outfitting and guiding, not commercial filming. Per 36 CFR 251.50(a) and 251.57(a) and Forest Service Handbook 2709.11, chapters 30 and 40, outfitting and guiding requires a permit and a permit fee. The activity would not require a permit unless the activity involved 75 or more people, in which case a free noncommercial group use permit would be required, per 36 CFR 251.50(c)(1).

*Question 8.* You indicated the agencies need to be able to recoup their costs; please provide the Committee with a detailed lists of the costs by forest (for the Forest Service) or state (for the BLM), or park (for the Park Service) for each of the last 5 years for administering these film crew permits?

Answer. The table below lists the detailed costs by forest. Please note that the numbers in parenthesis represent negative values. Our budgeting structure displays costs charged against other accounts instead of incurred, as negative values. For example if a large permit was administered across two forests for one project, one forest would maintain the account. Also note that some of the expenses listed under travel and vehicles, while small value are accurate. During multipurpose trips, proportions of the expenses are charged against each activity which results in which results in small amounts of funds being charged for this activity.

UNIT #		SALARY	TRAVEL	VEHICLES	OTHER	TOTAL
<b>FY 2006</b>						
0108	Custer National Forest	953.79			160.00	1,113.79
0110	Flathead National Forest	(717.67)				(717.67)
0111	Gallatin National Forest	(37.41)				(37.41)
	Grand Mesa Uncomp Gunnison National Forest	516.63				516.63
0206	Medicine Bow-Routt National Forest	3,970.67		30.13		4,000.80
0210	Arapaho-Roosevelt National Forest	3,926.09				3,926.09
0213	San Juan National Forest	1,489.60				1,489.60
0214	Shoshone National Forest	(99.59)				(99.59)
0215	White River National Forest	3,225.58				3,225.58
0304	Coconino National Forest	5,763.10		536.13		6,299.23
0310	Santa Fe National Forest	6,259.85		403.92		6,663.77
0312	Tonto National Forest	(2,850.48)				(2,850.48)
0403	Bridger-Teton National Forest	23,961.96	3.83		647.54	4,613.33
0414	Sawtooth National Forest	1,195.64				1,195.64
0415	Caribou-Targhee National Forest	832.74				832.74
0417	Humboldt-Toiyabe National Forest	5,474.82				5,474.82
0418	Uinta National Forest	3,097.79				3,097.79
0460	Regional Office		1,135.04			1,135.04
0501	Angeles National Forest	6,386.74		41.28	918.02	7,346.04
0502	Cleveland National Forest	216.78		14.28		231.06
0503	Eldorado National Forest	3,443.38	490.34			3,933.72
0504	Inyo National Forest	28,046.44				28,046.44
0507	Los Padres National Forest	11,832.98			74.00	11,906.98
0512	San Bernardino National Forest	8,203.13			536.46	8,739.59
0513	Sequoia National Forest	793.61		498.00		1,291.61
0515	Sierra National Forest	271.12				271.12
0517	Tahoe National Forest	3,267.01	36.50	4.20		3,347.71
0519	Lake Tahoe Basin Mgt Unit				358.40	358.40
0520	Regional Office		397.64			397.64
0601	Deschutes National Forest	502.99				502.99
0605	Mt Baker-Snoqualmie National Forest	7,816.11				7,816.11
0606	Mt Hood National Forest	1,485.54				1,485.54
0612	Siuslaw National Forest	2,183.68				2,183.68
0617	Okanogan-Wenatchee National Forests Columbia River Gorge National Scenic Area	1,739.26			50.5	1,744.31
0622	Area	1,181.92				1,181.92
0922	White Mountain National Forest	830.09			262.00	1,092.09
<b>FY 2006</b>		<b>135,163.89</b>	<b>2,063.35</b>	<b>1,567.94</b>	<b>2,961.47</b>	<b>141,756.65</b>
<b>TOTALS</b>						

FY 2007	Missoula Technology and Development Center	SALARY	TRAVEL	VEHICLES	OTHER	TOTAL
0103	Bitterroot National Forest	880.21				880.21
0108	Custer National Forest	420.12				420.12
0111	Gallatin National Forest	6,267.41				6,267.41
0202	Bighorn National Forest	1,424.07				1,424.07
	Grand Mesa Uncomp Gunnison National Forest	3,492.24				3,492.24
0204	National Forest	3,492.24				3,492.24
0206	Medicine Bow-Routt National Forest	5,055.52				5,055.52
0210	Arapaho-Roosevelt National Forest	2,336.04				2,336.04
0213	San Juan National Forest	557.12				557.12
0214	Shoshone National Forest	9,621.80				9,621.80
0215	White River National Forest	4,595.70				4,595.70
0216	White River National Forest	2,464.14				2,464.14
0304	Coconino National Forest	10,667.39		351.00		11,018.39
0310	Santa Fe National Forest	21,078.99				21,078.99
0403	Bridger-Teton National Forest	19,490.48			(257.38)	9,233.10
0407	Dixie National Forest	299.26				299.26
0413	Salmon-Challis National Forest	712.73				712.73
0414	Sawtooth National Forest	6,685.34				6,685.34
0417	Humboldt-Toiyabe National Forest	5,605.03				5,605.03
0418	Uinta National Forest	26,815.36				26,815.36
0419	Wasatch-Cache National Forest	3,948.63				3,948.63
0460	Regional Office		585.47			585.47
0501	Angeles National Forest	21,545.89		34.20	374.94	21,955.03
0502	Cleveland National Forest	631.06				631.06
0503	Eldorado National Forest	3,808.33				3,808.33
0504	Inyo National Forest	11,704.62		2.35	5.21	11,712.18
0507	Los Padres National Forest	12,344.94	45.65		293.13	12,683.72
0512	San Bernardino National Forest	6,810.64		1,240.00		8,050.64
0513	Sequoia National Forest	22,584.32		487.11	9.74	23,081.17
0514	Shasta Trinity National Forest	2,135.91				2,135.91
0517	Tahoe National Forest	2,306.74	199.61			2,506.35
0519	Lake Tahoe Basin Mgt Unit	74.33				74.33
0520	Regional Office	10,485.38	700.11			11,185.49
	Mt Baker-Snoqualmie National Forest	10,088.09				10,088.09
0605	Forest	10,088.09				10,088.09
0606	Mt Hood National Forest	4,758.07				4,758.07
0612	Siuslaw National Forest	1,354.36			1,929.46	3,283.82
	Okanogan-Wenatchee National Forests	3,409.74				3,409.74
0617	Forests	3,409.74				3,409.74
	Columbia River Gorge National Scenic Area	1,860.69		479.30		2,339.99
0622	Scenic Area	1,860.69		479.30		2,339.99
0627	Regional Office	1,142.99			12.79	1,155.78
	National Forests in North Carolina	2,563.23				2,563.23
0811	National Forests in North Carolina	2,563.23				2,563.23
0816	Caribbean National Forest	636.12			1,645.00	2,281.12
0922	White Mountain National Forest	6,144.54			4.73	6,149.27
1005	Tongass National Forest	2,683.72				2,683.72
<b>2007</b>						
<b>TOTALS</b>		<b>261,491.29</b>	<b>1,530.84</b>	<b>2,593.96</b>	<b>4,017.62</b>	<b>269,633.71</b>

FY 2008		SALARY	TRAVEL	VEHICLES	OTHER	TOTAL
0108	Custer National Forest	940.43				940.43
0110	Flathead National Forest	2,990.92		75.00		3,065.92
0111	Gallatin National Forest	2,482.70				2,482.70
0114	Kootenai National Forest	781.90				781.90
0202	Bighorn National Forest	1,281.35				1,281.35
	Grand Mesa Uncomp Gunnison National Forest	338.10				338.10
0204	Medicine Bow-Routt National Forest	4,302.63				4,302.63
0207	Nebraska National Forest	1,066.04	100.50			1,166.54
0210	Arapaho-Roosevelt National Forest	2,250.84				2,250.84
0212	Pike-San Isabel National Forest	479.25				479.25
0214	Shoshone National Forest	2,353.30				2,353.30
0215	White River National Forest	41,251.58			1,571.91	42,823.49
0304	Coconino National Forest	7,339.24		298.00		7,637.24
0310	Santa Fe National Forest	6,578.99				6,578.99
0402	Boise National Forest	(367.05)	367.05			
0403	Bridger-Teton National Forest	0,669.94	536.20		10,999.78	32,205.92
0407	Dixie National Forest	671.53				671.53
0412	Payette National Forest	256.62				256.62
0413	Salmon-Challis National Forest	2,671.07				2,671.07
0414	Sawtooth National Forest	6,912.95				6,912.95
0415	Caribou-Targhee National Forest	2,510.06	963.52			3,473.58
0417	Humboldt-Toiyabe National Forest	3,538.82				3,538.82
0418	Uinta National Forest	5,304.92				5,304.92
0419	Wasatch-Cache National Forest	5,428.50				5,428.50
0460	Regional Office	(473.91)	2,999.89			2,525.98
0501	Angeles National Forest	65,747.13	1,294.18	293.56		67,334.87
0503	Eldorado National Forest	1,907.13	490.34			2,397.47
0504	Inyo National Forest	7,123.17				7,123.17
0507	Los Padres National Forest	3,539.68	458.97		5,036.24	9,034.89
0512	San Bernardino National Forest	1,280.48		944.00	0.92	2,225.40
0513	Sequoia National Forest	8,782.76		168.00		8,950.76
0514	Shasta Trinity National Forest					
0517	Tahoe National Forest	669.59	236.11	268.00		1,173.70
0519	Lake Tahoe Basin Mgt Unit	(609.74)	609.74			
0520	Regional Office	1,153.89	4,182.21			5,336.10
0601	Deschutes National Forest				317.96	317.96
	Mt Baker-Snoqualmie National Forest	7,022.54	150.68			7,173.22
0605	Mt Hood National Forest	5,113.23			10.38	5,123.61
0612	Siuslaw National Forest	4,879.30				4,879.30
	Okanogan-Wenatchee National Forests	462.54			5.04	467.58
0618	Willamette National Forest	3,096.25				3,096.25
<b>FY 2008</b>		<b>SALARY</b>	<b>TRAVEL</b>	<b>VEHICLES</b>	<b>OTHER</b>	<b>TOTAL</b>
0622	Columbia River Gorge National Scenic Area	699.98				699.98
0627	Regional Office	524.18				524.18
0804	Cherokee National Forest	810.94				810.94
0811	National Forests in North Carolina	1,386.87				1,386.87
0816	Caribbean National Forest	318.04			7,375.00	7,693.04
0912	Hoosier National Forest	388.66				388.66
0922	White Mountain National Forest				1,094.02	1,094.02
1005	Tongass National Forest	22,028.63				22,028.63
<b>2008</b>		<b>257,885.97</b>	<b>12,389.39</b>	<b>2,046.56</b>	<b>26,411.25</b>	<b>298,733.17</b>
<b>TOTALs</b>						



FOREST SERVICE FTEs FOR COMMERCIAL FILMING AND STILL  
PHOTOGRAPHY PERMITS<sup>1</sup>

Fiscal Year	Administrative Expenditure in \$	FTEs
2009	318,550	3.0
2008	306,763	3.0
2007	292,454	2.5
2006	139,756	1.0
2005	182,574	1.5

<sup>1</sup>From Foundation Financial Information System (FFIS) Performance and Accountability System (PAS) actual transaction register data for the listed fiscal years.

*Question 10.* For the BLM, the Forest Service, and US Fish & Wildlife Service where hunting or fishing is allowed:

The states have the responsibility for hunting and fishing licensing and management of those recreationists. If a hunter and one other person film a hunting or fishing trip would they fall under the commercial filming permit program?

Answer. If the person accompanying the hunter is providing outfitting or guiding services, that person would have to have an outfitting and guiding permit and pay a fee for that permit (36 CFR 251.51 and FSH 2709.11, ch. 30 and 40). If the film of the trip is part of the services authorized by the outfitting and guiding permit (e.g., if the outfitter and guide is filming the trip to provide a memento to the client), no commercial filming permit would be required. However, if the film of the trip is not part of the authorized outfitting and guiding services and the filming involves the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props, unless the filming is associated with broadcasting breaking news, authorization of the filming would be required (16 U.S.C. 4601-6d; 36 CFR 251.51), either in the outfitting and guiding permit or a separate commercial filming permit. For example, authorization of the filming would be required if the outfitter and guide has agreed to allow an independent film company to create a film of the trip for sale.

If the person accompanying the hunter is not providing outfitting and guiding services, no outfitting and guiding permit would be required. However, a commercial filming permit would be required if the filming involves the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props, unless the filming is associated with broadcasting breaking news (36 CFR 251.51).

*Question 11.* If a family is on a lake on federal lands and the father videos one of his children fishing: would that fall under the commercial filming permit program?

Answer. No. A commercial filming permit would not be required for a videotape made by a father of his child fishing because the filming does not involve the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props.

*Question 12.* In either event described above: if either the hunter or the family happened to capture a trophy animal or fish on film or video and then sold the footage to one of the many outdoor shows, would that fall within the commercial filming permit program?

Answer. A commercial filming permit is required if the filming involves creation of a product for sale. If a film is sold, there is a presumption that it was created for that purpose.

*Question 13.* How does your agency deal with video taken by private individuals of events on public lands that then get shown on TV?

Answer. A commercial filming permit is required if the filming involves the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props, unless the filming is associated with broadcasting breaking news.

*Question 14.* Does either Department charge its employees a permit fee for taking video that then gets viewed on a public TV station or on the Internet—say for instance video from rainbow gatherings, or wildfires? Why not?

Answer. Forest Service employees filming on National Forest System lands outside the scope of their official duties have to obtain a commercial filming permit and pay a permit fee if the filming involves the advertisement of a product or service,

the creation of a product for sale, or the use of actors, models, sets, or props, unless the filming is associated with broadcasting breaking news. Forest Service employees filming on National Forest System lands within the scope of their official duties do not have to obtain a commercial filming permit and pay a permit fee because the filming does not involve the advertisement of a product or service, the creation of a product for sale, or the use of actors, models, sets, or props.

*Question 15.* Since the states have responsibility for the regulation of hunting and fishing why should Congress allow the federal land management agencies to regulate filming on federal lands done in conjunction with hunting or fishing?

Answer. Federal land management agencies like the Forest Service are responsible for addressing resource protection and public safety on the lands they manage. This responsibility is reflected in 16 U.S.C. 4601-6d, which authorizes the Forest Service to regulate commercial filming on National Forest System lands, including commercial filming of hunting and fishing. The Forest Service must ensure that proposed commercial filming meets the evaluation criteria for special use proposals in 36 CFR 251.54(e), including consistency with applicable law and the applicable land management plan. As stated in the response to question 9, if a film of an outfitted and guided hunting or fishing trip is part of the services authorized by the outfitting and guiding permit (e.g., if the outfitter and guide is filming the trip to provide a memento to clients), no commercial filming permit is required.

*Question 16.* If Congress does develop a small film crew permit program, are both Departments willing to share the receipts from the program with State Fish and Game Departments for those permit fees collected related to hunting or fishing activities?

Answer. As stated in the response to question 14, the federal land management agencies have authorities and responsibilities under federal law that are independent of the authorities and responsibilities of states to regulate hunting and fishing. Congress has directed that land use fee revenues for all commercial filming and still photography permits, regardless of the size of the crew involved, be retained and spent by the federal land management agencies that collect them for use and protection of federal lands.

## S. 1571 AND H.R. 1043

*Question 1.* In previous Congresses the Forest Service and the Department have testified against this proposal pointing to a finding that it was not in the public interest. Today, you have reversed course and are now saying that you can support the proposal.

Some on your staff have indicated the reversal has to do with a Forest Supervisor, who unbeknownst to the Washington D.C. office, suggested support for the proposal if Solano County would acquire some lands and trade them to the Forest Service.

Is it now the position of the Administration that the previous 2006 analysis was flawed? If so, what were the specific flaws?

Answer. No, the Department's position is that the Feasibility Analysis for the Proposed Fouts Springs Land Exchange between Solano County and the Mendocino National Forest, prepared in 2006, is not flawed.

*Question 2.* Will you provide the Committee with a copy of that analysis from 2006 which indicated the exchange was not in the public interest, along with any subsequent white papers or analysis describing the reversal in attitude related to the proposed exchange?

Answer. Attached is a copy of the 2006 Feasibility analysis, as requested. There are no subsequent white papers or analysis describing the change of Administration Position. The change occurred as a result of discussion between the Regional Office, Forest and Washington Office.

## S. 2762

*Question 1.* This bill has two interesting provisions that I would like to better understand and a significant amount of private lands that are the result of old mining claims.

In the proposed Sheep Mountain Special Management area—the agency is directed to manage its wilderness values and to allow heli-skiing and other motorized activities to continue at current levels—but then it directs the area gain a big wilderness designation when those “non-conforming” activities have ended.

Am I correct that commercial helicopter skiing is not compatible with a Wilderness designation?

Answer. Yes. Landing of helicopters, including dropping off supplies or persons is prohibited in National Forest Wilderness by CFR (36 CFR 261.18).

*Question 2.* Given the direction to convert the area to wilderness when the Secretary of Agriculture certifies these non-conforming activities have ended; when will the Secretary be outlawing these activities in the Sheep Mountain Special Management area?

Answer. There are no current plans to terminate the non-conforming uses specified in the Act. We anticipate the heliskiing permit would terminate when demand for the use diminished to the point that the permit was no longer economically viable and the holder did not want to continue and there was not another qualified operator. Official "termination" for the purposes of this Act designating the area as wilderness would include a published notice in the Federal Register.

*Question 3.* Wouldn't it be better to manage the area for back country recreation and to allow the motorized activity to continue?

Answer. Under our current Forest Plans for the San Juan and Grand Mesa-Uncompahgre and Gunnison National Forests (GMUG) and preliminary revised Forest Plans, we would manage the area for backcountry recreation and allow the heliskiing permit to continue. As detailed in our written testimony, we recommend that this area be managed as a special management area and not be designated wilderness until the non-conforming use of permitted helicopter landings for recreation ceases.

*Question 4.* Both in the Whitehouse East Addition and in the Sheep Mountain Special Management Area there are a large number of parcels of private property.

If these areas are made into wilderness, how will the Forest Service assure reasonable access to those private parcels?

Answer. Law (16 USC 3210) and regulation (36 CFR 251 Subpart D) require the agency to provide such access to nonfederally owned land as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment of the non-Federal land. Authorized access will vary by parcel reflecting the customary means of access used for similarly-situated non-Federal land, and the combination of routes and modes of travel which will cause the least lasting impact on the wilderness but which will permit the reasonable use of the non-Federal land.

*Question 5.* Will you allow the land owners to continue to access their lands with jeeps or ATVs, if that is how they access them now?

Answer. If a landowner is now accessing their land with an ATV, Jeep or other motorized vehicle on an open Forest Service system road or trail, and the road or trail was closed to public motorized use by Wilderness legislation, the landowner would need to apply for a special use permit to continue using that method of access. The Forest Service could grant the special use permit to the landowner for ATV, jeep or other motorized vehicle use to travel to their property if the motor vehicle use was determined to permit reasonable use of the non-Federal land. Some private property owners have obtained easements under the Federal Land Policy Management Act (FLPMA), which allows for motorized use on roads constructed in the FLPMA easement. The Forest Service would work with the holders of the easements to protect Wilderness character and at the same time assure that the reasonable enjoyment and use of the private property would continue.

*Question 6.* Will you allow them to access them by helicopter if that is the mode of transportation they have used in the past?

Answer. A helicopter could be one of the transportation modes for travelling to their private lands. Landing of helicopters is prohibited in Wilderness, but if the landowner is landing on their own private land, a permit from the Forest Service would not be required. Where Wilderness is designated, the Federal Aviation Administration (FAA) has issued an aviation advisory for pilots to maintain a 2,000 foot above-ground-level (AGL) flight plan. The Forest Service would make the landowners aware of that advisory, but it does not have regulatory authority over airspace or on private land.

*Question 7.* Considering that the "hand of man" impacted these lands during previous mining booms, do these proposed areas fit the Forest Service's typical description of Wilderness?

Answer. While historic mining activities have affected the landscape, often many of the wilderness characteristics are still present. The Forest Service inventory criteria for potential wilderness may include evidence of historic mining. Typically the activity would have occurred over 50+ years ago, and would not include significant mineral activity such as prospecting with mechanical or motorized earthmoving equipment.

*Question 8.* Were these areas recommended for wilderness in current and previous forest plans?

Answer. The GMUG's Forest Plan, completed in 1983, did not recommend any areas for wilderness. The GMUG developed a preliminary proposed action in 2008 under the 2005 Planning Rule. That preliminary proposed action included lands pro-

posed for wilderness. Some of the lands proposed as wilderness in HR 3914 were proposed for wilderness in the 2008 Forest Plan revision efforts.

The Forest Plan for the San Juan National Forest, completed in 1983, did not recommend the San Miguel Roadless Area (which included the Sheep Mountain area) for wilderness; it did recognize the wilderness character of the high alpine areas in the Sheep Mountain area. The management emphasis is semi-primitive non-motorized recreation.

The Draft Forest Plan for the San Juan NF (DEIS, 2007, being completed under the 1982 Planning Rule) does not recommend San Juan NF portion of the Sheep Mountain area as wilderness, but proposes to allocate it to semi-primitive non-motorized.

APPENDIX II

Additional Material Submitted for the Record

U.S. SENATE,  
Washington, DC, April 28, 2010.

Hon. RON WYDEN,  
*Chairman, Committee on Energy and Natural Resources, Subcommittee on Public  
Lands and Forests, 304 Dirksen Senate Building, Washington, DC.*

Hon. JOHN BARRASSO,  
*Ranking Member, Committee on Energy and Natural Resources, Subcommittee on  
Public Lands and Forests, 304 Dirksen Senate Building, Washington, DC.*

DEAR CHAIRMAN WYDEN, RANKING MEMBER BARRASSO, AND SUBCOMMITTEE MEMBERS: As the Senate leaders of the Congressional Sportsmen's Caucus, we want to thank you for having a hearing on S. 1241 and express our support for this legislation that directs the Secretary of the Interior and the Secretary of Agriculture to require a permit and assess an annual fee of \$200 for commercial filming activities or similar projects on federal lands and waterways administered by the Secretary for any film crew of five persons or fewer. In addition, for those individuals and others that would hold such a permit, it would prohibit assessing any additional fee for commercial filming activities and similar projects that occur in those areas.

While we certainly understand the need to implement controls to limit the potential damage that can be caused by large film crews, the majority of filming and still photography that takes place on federal lands and waterways has no deleterious impacts on the landscape, the people who visit them, or the fish and wildlife that reside on them. S. 1241 addresses the inequities, enforcement and process confusion as well as the severe burden placed on individual journalists or small film crews that result from the current regulations.

Bearing in mind that the leading reason that active sportsmen become former sportsmen is that they can no longer find places to hunt and fish, television has become an important, even primary, means for educating them about the remaining opportunities to access hunting and fishing spots. These individuals often get this information from programs produced by individual journalists or small film crews. These programs are tailored to an audience who actively use public lands and waterways for pursuits like hunting and fishing that are of supreme importance to the future conservation of these lands.

We thank you for taking the time to hold a hearing on this legislation and understand our concerns. We invite you to contact us for any additional information or assistance in moving this legislation forward.

Sincerely,

BEN NELSON,  
*Chair, Congressional Sportsmen's Caucus.*

MIKE CRAPO,  
*Chair, Congressional Sportsmen's Caucus.*

JON TESTER,  
*Vice-Chair, CSC.*

JOHN THUNE,  
*Vice-Chair, CSC.*

STATEMENT OF N. GUY EASTMAN, PUBLISHER, EASTMANS' PUBLISHING, INC.

This law has caused and cost our company to scale down our workforce and cut back our over-all expenditures which has had a direct impact on both our local economy as well as our National economy.

If this law could be changed it would free our small business up to explore and promote wild places and public spaces out West for the dedicated DIY public outdoorsman/taxpayer/voter. This will have a direct impact on the local economies and businesses in the hard to reach and much forgotten small towns in the Western United States.

Countries like Canada and New Zealand actually reimburse and incentivize film crews to come and promote the hunting and fishing in their regions in order to boost their local tourism economies in the hard to reach and otherwise much forgotten regions of their countries.

It has always been a mystery to me why in the world our Government, who is supposed to be so small business friendly and based in the First Amendment would make it so difficult, sometimes even impossible to promote tourism in our own country, own communities, on our OWN public lands and be charged all along the way of doing so.

My grandfather, an outdoor filming pioneer and world class adventurer in this business/industry is surely rolling over in his grave at what this seemingly free country has become. For the good of our small businesses, our economy, our small communities and our First Amendment right, see to it that this bill is passed.

I'm confident the future revenues from this bill will far exceed what is currently in place under the very misleading and confusing fee structure that our Government currently has in place. Thank you for the time.

---

STATEMENT OF THE AMERICAN FISHERIES SOCIETY\*

On behalf of the millions of hunters and anglers, fish and wildlife professionals, and fish and wildlife businesses, we want to thank you for having a hearing on S. 1241. The undersigned groups express our support for this legislation that will direct the Secretaries of the Interior and Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal lands and waterways for film crews of 5 persons or fewer.

The need for this legislation arose from concerns about the recently proposed rules for filming and photographing on federal lands and waterways. While we certainly understand the need to implement controls to limit the potential damage that can be caused by large film crews, the majority of filming and still photography that takes place on federal lands and waterways has no deleterious impacts on the landscape, the people who visit them, or the fish and wildlife that reside on them. In fact, many of our most treasured public lands, such as Yellowstone and Yosemite National Parks, would never have been set aside for the enjoyment of millions of citizens had their unique resources not been photographed and disseminated to the American public.

Several of the undersigned organizations sponsor or are major contributors to televised hunting and fishing programs that air on a variety of popular and widely disseminated networks. These programs, which would be seriously affected by the newly proposed rules, reach millions of American people each week with messages that celebrate America's outdoor heritage, its public lands, and our shared fish and wildlife resources.

These programs are tailored to an audience who actively use public lands and waterways for pursuits like hunting and fishing that are of supreme importance to the future conservation of these lands. Our viewers fuel state fish and wildlife budgets through license sales and they boost the local economies that depend on seasonal influxes of hunters and anglers. Bearing in mind that the leading reason that active sportsmen become former sportsmen is that they can no longer find places to hunt and fish, television has become an important, even primary, means for educating them about the remaining opportunities to access hunting and fishing spots.

Production schedules and budgets for producing these programs are both characteristically tight. Even under the current rules, a substantial amount of time and

---

\*Other undersigned groups: American Sportfishing Association, Archery Trade Association, Bass Pro Shops, Berkley Conservation Institute, Boone and Crockett Club, Bowhunting Preservation Alliance, Campfire Club of America, Catch—A—Dream Foundation, Congressional Sportsmen's Foundation, Conservation Force, Dallas Safari Club, Mule Deer Foundation, National Assembly of Sportsmen's Caucuses, National Rifle Association, National Shooting Sports Foundation, National Wild Turkey Federation, North American Bear Foundation, North American Grouse Partnership, Pheasants Forever, Pure Fishing, Quality Deer Management Association, Quail Forever, Rocky Mountain Elk Foundation, Ruffed Grouse Society, Safari Club International, Shimano American Corp., Texas Wildlife Association, Theodore Roosevelt Conservation Partnership, U.S. Sportsmen's Alliance, Whitetails Unlimited, Wild Sheep Foundation, and Wildlife Forever.

money is spent procuring necessary permits and permissions. We fear that these newly proposed standards will cause significant increases in both time and money to bring these programs to air. In some cases, these increases may cause producers to focus less time and attention on public lands. In others, the newly proposed standards may cause producers to avoid public lands entirely.

We thank you for taking the time to hold a hearing on this legislation and understand our concerns. We invite you to contact us for any additional information or assistance in moving this legislation forward.

---

NATIONAL RIFLE ASSOCIATION OF AMERICA,  
INSTITUTE FOR LEGISLATIVE ACTION,  
*Washington, DC, April 23, 2010.*

Hon. JAMES R. INHOFE,  
*453 Russell Office Building, Washington, DC.*

DEAR SENATOR INHOFE: The National Rifle Association supports S. 1241, which would amend PL 106206 by creating a separate permit and fee structure for small film crews using federal lands under the jurisdiction of the Departments of Agriculture and Interior.

The NRA supports the concept of payment for the commercial use of a public benefit, such as federal lands, in order to off set management costs to provide such use. However, an Administration proposal would set fee and permit rates at such a level to be unaffordable to sportsmen's organizations that require film crews to provide information to their members about hunting and fishing opportunities on federal lands. Your legislation, S. 1241, will ease that financial burden by requiring a fee and permit structure that is commensurate with the level of impact that small film crews actually have on the landscape.

This legislation is vitally important to the NRA, as our film crews provide photographs and video for a host of NRA education outlets including the American Hunter and American Rifleman magazines; the American Hunter, American Rifleman, and American Guardian television shows; our websites; and our webchannel news program. To pay permits and fees at the same rates that will be applied to commercial filming on federal lands is onerous financially to non-profit organizations such as the NRA. Combined with the costs in time and staff to obtain the required permits, the expense will undermine our ability to reach our members with high quality educational information in a timely manner.

The NRA, along with other national hunting and wildlife conservation organizations and all fifty state fish and wildlife agencies, are developing and implementing programs to recruit and retain new hunters and keep our older hunters in the field. The reasons most often given by hunters for not continuing to hunt is the loss of access and the lack of information about where to hunt. Our television shows, magazines, and news programs are designed to create interesting and informative stories that will ignite interest in hunting, rekindle former interest, and sustain and build on the excitement that present day hunters have for going afield. It is the visuals that attract today's viewers and readers to hunting stories and outdoor programs. Thus, filming has become an essential component of delivering information to current and future generations of American hunters.

The NRA very much appreciates the importance that S. 1241 places on communicating with America's hunters and anglers by requiring a separate fee structure for small film crews.

Sincerely,

CHRIS W. COX,  
*Executive Director.*

---

STATEMENT OF THE PROFESSIONAL OUTDOOR MEDIA ASSOCIATION,\* ON S. 1241

The undersigned stand in support of S. 1241, to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of five persons or fewer.

The Professional Outdoor Media Association (POMA) represents more than 350 individual traditional outdoor sports journalists and 140 companies, conservation as-

---

\*Other undersigned groups: American Society of Media Photographers, National Shooting Sports Foundation, U.S. Sportment's Alliance, North American Media Group, Inc., Orion multimedia, New York State Outdoor Writers Association, and Eastmans' Publishing, Inc.

sociations and media outlets that produce news, editorial and educational content on/about public-lands issues, recreation, and land use. POMA members reach tens of millions of Americans daily through broadcast, print, and digital content.

Joining POMA in support of S. 1241 and in providing testimony before this committee are several national and state media organizations, publishing/broadcasting entities, conservation and traditional outdoor sports trade organizations, small media businesses and individual journalists. Included in those supporting S. 1241 are the American Society of Media Photographers, National Shooting Sports Foundation and U.S. Sportsmen's Alliance.

Collectively, the undersigned and those providing additional testimony, represent thousands of journalists, the outdoor industry and the tens of millions of Americans who depend upon these organizations, businesses and individual journalists for information, news, and educational content on/about our public lands and the culturally important activities occurring there.

Although we do not believe, based on First Amendment provisions, any fees should be charged to journalists reporting on public-lands issues, land use, or recreational activities thereon, S. 1241 addresses the inequities, enforcement and process confusion as well as the severe burden placed on individual journalists/small film crews that result from the current regulations.

Current regulations do not support the mission of the Department of the Interior (DOI), severely penalize working journalists, and are contrary to the freedoms outlined in the First Amendment.

- DOI's mission is to sustain, conserve, and provide access to our natural resources. Traditional outdoor media, individual still photographers and videographers, and small film crews play a critical role in disseminating the message of conservation and provide vicarious access to public lands to our citizens.
- Excessive land-use fees are regressive in nature, discourage or impede the media's access to public lands and are contrary to DOI's mission.
- The definitions of news coverage and commercial filming in the current rules are vague and restrictive. The rules allow DOI agencies to classify as "commercial filming" activities which are clearly news coverage, such as news documentaries, coverage of resource management issues and public land activities.
- A distinction should be drawn between large Hollywood-style location shoots and traditional journalists—photographers and videographers—with an exemption for small crews and photographers. Currently, some agencies charge the same land-use fee for one videographer as is charged for a crew of up to 29.
- Interpretation of the current regulations is left to individual public-land employees, resulting in vast irregularity in enforcement, permitting procedures, and fee amounts charged photographers.
- Journalists are suffering harm and the media's ability to cover public lands and public-lands issues effected. Evidence of harm is provided in Exhibit A to this letter.
- Americans are being denied access to information about public lands as a result of media refusal to cover public land issues and activities because of restrictive fees.

While we urge continuing discussion and action, based on constitutional issues, regarding the elimination of fees charged to journalists reporting on/about public lands, we support S. 1241 as a positive step forward.

S. 1241 resolves or lessens the severity of the issues outlined herein. It does so simply, while ensuring the integrity of public lands, access for use by the public and individual journalists, and small film crews' more affordable access. Additionally, the bill maintains the ability of land units to regulate large, non-journalistic productions.

We urge the committee to bring this legislation forward—to allow journalists to freely report on/about our public lands and the culturally important activities occurring there.

Thank you for this opportunity to testify.

---

STATEMENT OF DAVID P. TRUST, CHIEF EXECUTIVE OFFICER, PROFESSIONAL PHOTOGRAPHERS OF AMERICA, ALLIANCE OF VISUAL ARTISTS, ON S. 1241

Our purpose for writing is to offer comments and air concerns with regard to the Subcommittee's consideration of S. 1241, an amendment to Public Law 106-206 which directs the Secretary of the Interior and Secretary of Agriculture to require

annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer.

Professional Photographers of America (PPA) is joined in these comments by the Alliance of Visual Artists (AVA), which, in addition to PPA, includes the Society of Sport and Event Photographers, Commercial Photographers International, Evidence Photographers International Council the Student Photographic Society, and the Stock Artists Alliance. Together with our state and local affiliates, AVA represents some 42,000 photographers and their families. PPA is the oldest and largest trade association for professional photographers with members engaged in all facets of photography and imaging.

On behalf of our members, we appreciate this opportunity to offer the Subcommittee written comments on this bill and the existing permit structure on the assumption that once it becomes law its application may extend beyond "commercial filming activities".

Our customer service center regularly receives telephone calls and e-mails from photographers regarding the permit requirements imposed by Federal land management entities. We believe there is a need to both streamline and clarify the requirements for photography permits. If worded correct, this bill, or some version of it, may reduce the confusion within the photographic community and help ensure photographers are better able to abide by Federal permit regulations.

We recognize that assigning permits and requesting payment of applicable fees may be necessary for Federal lands to uphold their mission; reduce the abuse of natural resources; and ensure fair and equitable access to highly desirable locations for those with competing interests. We must however, express our concern with regard to the existing permit process as a potentially cost-prohibitive practice to professional photographers.

As it stands, the requirements for acquiring a permit (both fees and wait times), in addition to accounting for cost recovery fees, has the potential to greatly impact a photographer's bottom line. The creation of an annual permit as proposed by S. 1241 could prove to be an effective way for professional photographers to ensure they are able to legally create images on Federal land.

It is important for the Subcommittee to note that professional photographers are among the smallest of small business owners. The average photographer works 50 hours a week while earning just \$35,000 a year. Most are "mom and pop shops" with 1-3 employees. To ensure they are able to earn even this modest salary, they must expertly manage their costs of doing business which means turning away assignments that represent additional, and possibly unpredictable, expenses.

For example, a single professional photographer creating a family portrait is likely to work with a minimal amount of equipment while shooting in areas already open to the general public. In our opinion, this type of work simply cannot be equated with a commercial film crew creating a motion picture, or other intensive production, requiring extensive set building, and a significant number of crew members. To this end, the option of applying for an annual permit which includes a reasonable fee would protect the public's interests while ensuring photographers can better satisfy their clients' needs.

If the committee feels a permit must be required, we strongly urge the consideration of an annual permit which would reduce time requirements and reduce costs for both photographers and the consuming public.

The above said, we presume it is not the intent of S. 1241 to alter the overall definition of "commercial" as it applies to still photography under PL 106-206. The law currently states the mere fact that still photography is "commercial" in some sense, shall not be sufficient to allow the land-management agency to prohibit it or require fees or permits for it to take place. It instead defines the need for a permit based on the use of models, sets, or props.

Changing the definition of "commercial" could prove to be a source of confusion to the individual professional photographer entering Federal lands to create images for selfassignment or capture landscapes for a client. These photographers are likely to behave no differently than the average visitor, the sole distinguishing factor being their professional quality camera (a distinction that is blurred by the ever increasing availability of high quality photography equipment by the public). In fact, those photographers creating works for their portfolio may not know they have created an image they can use "commercially" until they return to their studio to upload the memory card or develop their film.

Of course, photographers determining their need for a permit based on their use of models, sets, or props are often left bewildered and potentially open to significant fines if they err. A photographer may not reasonably assume that capturing a family portrait for personal use is engaging in a shoot featuring "models" or a Boy Scout troop holding a banner would constitute the use of "props".

The same has the potential to occur as a result of the addition of the word “crew” in determining the need for a permit. S. 1241 states the term “‘film crew’ includes all persons present on Federal land under the Secretary’s jurisdiction who are associated with the production of a certain film.” Applying this model to a photographic shoot, a photographer with clients may easily exceed the 5 person or fewer limit on any given session. This could lead to photographers incorrectly applying for annual permits or failing to apply for additional permits as required. To this end, it is important for the Subcommittee to consider further defining or otherwise qualifying such ambiguities in both the bill and the existing law.

We appreciate the Subcommittee’s consideration of this bill as a means of making the permit guidelines and fee schedules consistent on Federal lands. We hope that you will take our comments and concerns into consideration as you move S.1241 through the Energy and Natural Resources Committee. We are happy to supply the committee or subcommittee with any information or assistance it may need in moving forward.

---

STATEMENT OF CHRISTY GEORGE, PRESIDENT, SOCIETY OF ENVIRONMENTAL  
JOURNALISTS, ON S. 1241

The Society of Environmental Journalists welcomes this opportunity to submit comments to you on S. 1241 and the regulation by the Departments of Interior and Agriculture of commercial filming on public lands.

It’s an issue that affects journalists—as well as ordinary citizens—in all parts of the country. With more than 1,500 members, SEJ is the world’s largest and oldest organization of individual working journalists, educators and students covering environmental issues.

The manner in which the Departments of Interior and Agriculture regulate commercial filming and photography today is arbitrary and contrary to the public’s interest. As a result, the public is deprived of vital insights into the natural splendor of its lands and how they are being managed. SEJ believes this problem needs to be fixed.

We believe in accordance with the First Amendment, journalists should generally be exempt from having to get permits or pay fees, regardless of the medium in which they’re reporting. Many journalists today work in multi-media, meaning they may be reporting in some combination of print, audio and visual formats, wielding pen or pencil, tape recorder and camcorder or digital camera.

Thus, we believe that the departments should use the broadest possible definition of who is a journalist and of what constitutes news coverage in deciding what filming activities would be exempt from fees and permits.

We wish S. 1241 was the vehicle to create a workable solution, but sadly it is not. While it attempts to standardize federal regulation of commercial filming, it will leave the national parks and other federal lands largely inaccessible to many free-lance or independent journalists who work in visual media. Their livelihood will be impaired, and the public will ultimately be the poorer as a result.

Congress passed a law in 2000 directing the Departments of Interior and Agriculture to assess fees for commercial filming on public lands. It spelled out a few factors to be considered in determining the amount of fees to be charged, and it carved out a broad exemption for still photography, unless it involves the use of models or unnatural props. In both cases, the law appeared intended to regulate large Hollywood-style motion picture productions and advertising photo shoots.

Yet today, many kinds of commercial filming and still photography are governed by a crazy-quilt of guidelines, policies and practices that vary among federal agencies—and even among individual land units managed by the National Park Service. Journalists, both free-lance and news staff employees, have repeatedly been caught in this regulatory web. In some cases, they have been directed to apply for permits and pay fees of \$250 a day to film or take still photographs on national park land because the stories they were covering were not deemed to be “breaking news”. Yet many of our most significant environmental stories are slow-moving, such as the decline or recovery of forests or endangered species.

For instance, in November 2008, a Baltimore newspaper reporter, photographer and affiliated television film crew were told to apply for a permit and pay \$250 to accompany scientists checking on a bat population inside a tunnel on park service property. In 2007, a free-lance journalist reporting for public radio was directed to apply for a permit and pay a fee before she could record an audio interview with a federal biologist about the management of wolves in another national park.

In both cases, the park service dropped its demands when the journalists objected. But the service’s own guidelines and policies appear to allow such fees.

In 2007, the Departments of Interior and Agriculture proposed a regulation intended to standardize their approach to implementing PL106-206. It proposed to exempt news coverage, but the definition was unworkably vague and restrictive. It allowed agencies to classify as “commercial filming” activities that are clearly news coverage, such as news documentaries or “non-breaking” coverage of resource management issues. It also proposed to expand regulation of still photography beyond what the law called for, and it even proposed to require permits and fees of audio recording, an activity which wasn’t even mentioned in PL 106-206.

Some media groups—particularly those that focus on portraying hunting, fishing and other outdoors activities—have decided to back S.1241, viewing it as an improvement over the current mish-mash of policies and practices. We share their quest for a more uniform approach, and have joined with them in the past to argue for that. However, we cannot go along with the \$200 annual fee called for in S.1241. That would pose a hardship for many of our members, especially for free-lance and independent photographers, film-makers and videographers. In many cases, the filming fee may equal or even exceed whatever the journalist or photographer might be paid for his or her work.

Exceptions to the general exemption for news coverage may arise when photographers or film crews plan to go where the public is not allowed. Beyond that, PL 106-206 already directs the departments not to allow filming or photography that would damage resources or disrupt the public’s enjoyment of them. What more is needed?

There must be a better way. We stand ready to work with you to find it. Whether by legislation or regulation, we believe any oversight of commercial filming must respect the First Amendment rights of journalists and the public while ensuring a free flow of visual information about the status and management of the public’s lands. The public has a right to expect no less.

---

PREPARED STATEMENT OF STEVE SCOTT, ON S. 1241

I am Steve Scott, an independent television producer from Norman, Oklahoma. I am past Chairman of the Board of the Professional Outdoor Media Association, and a designated representative to this Committee for the Wild Sheep Foundation, Dallas Safari Club, and USA Shooting. I appreciate the opportunity to submit testimony before this Committee.

The current system of issuing permits and collecting fees for filming on public lands has evolved into a system in which federal law is interpreted and administered by DOI and DOA field offices that apply their own standards and criteria before issuing a permit, if they will issue a permit at all. Financial issues notwithstanding, the most important aspect of SB 1241, is that it will standardize the permitting system and its criteria throughout the U.S., and eliminate the harmful arbitrary and capricious enforcement of the current standards by local DOI and DOA field personnel.

The Department of Interior’s mission states, in part, they are to “protect and provide access to our Nation’s natural and cultural heritage.” The professional outdoor media of this country are one of the Department’s most valuable allies, as we disseminate the message of conservation, and create public awareness to stimulate critical thinking about current issues concerning our public lands. However, the present system of inconsistent standards for access and regressive land-use fees has had a chilling effect on the reporting and promotion of public land issues, and, in fact, has prompted outdoor producers, photographers, and videographers to seek alternative venues to our public lands, including private property, and foreign soil.

The public land of this nation is just that: public land. It should be available to be freely used and enjoyed by its citizens and visitors. But as changing demographics have created a society that is ninety percent urban, the majority of Americans will never have the opportunity to visit a national park or designated wilderness area. However, with the proliferation and specialization of information in this country, the outdoor media provides our citizens nearly zero impact access to our rich natural heritage, while at the same time, making them aware of issues that affect public lands. Outdoor media is the conduit between the pristine and isolated wilderness, and an informed electorate, the majority of which will never set foot on public lands. Unfortunately, this vicarious access to our shared natural heritage is now being greatly restricted, to the detriment of all of our citizens.

Throughout the public lands systems, well meaning, but misinformed federal employees have taken it upon themselves to “protect” federal lands by severely restricting, and in many cases, banning, commercial filming and photography in their jurisdictions. The de-facto authority of field personnel to decide access, use, and fees for

commercial activities on public land has resulted in little or no access for filming/photography on public lands, inconsistent fee structures, and a climate of confusion regarding the land-use system and the role of outdoor media. This labyrinth of standards of the current system has created a tremendous hardship for scores of freelance writers, photographers, videographers and producers, myself included.

When we produce an episode for one of our television series on public lands, it takes a great deal of time, planning, and money. Usually, a big game tag must be applied for months in advance, with no assurance that tag will be procured. Often, there are many more applicants than there are tags, so they are allocated by a draw, or lottery, basis. If the tag is obtained, a non-resident hunting license must be purchased, the services of a guide/outfitter must be secured, as well as scheduling travel and personnel for the shoot, all of which requires a significant amount of monies paid in advance. The shoot is then scheduled on the production calendar as one of the thirteen episodes for the upcoming production season. The filming permit is usually applied for within sixty days of the shoot. If at that time, the film permit is denied, we are without recourse to appeal, and all that has been invested in the pre-production process is for naught. In addition, the episode that would have resulted from the shoot that has been denied must be replaced on the production schedule; nearly always with a program of lesser interest.

The previous scenario is not an anticipation of a possible problem in the future. The situation is happening now to myself, and other outdoor media members, with damaging consequences.

We have scheduled two hunts in the Washakie Wilderness of the Shoshone National Forest near Cody Wyoming in the fall of 2010. Tags have been applied for and obtained. Travel, labor, and guide/outfitter services have been contracted for. However, based on a recent pronouncement by Wyoming Forest Service personnel, we may now be prohibited from filming these hunts.

On April 21, 2010, at a meeting of the Cody Country Guide and Outfitters Association, Mr. Bill Oliver, Permit Administrator and Mr. Loren Poppert, Recreational Staff Officer, both from the US Forest Service, informed the audience that no film permits would be issued in the Washakie Wilderness, and the question would be reviewed in May.

We have filmed in the Washakie for the past several years, and garnering a film permit has never been an issue. Now, for reasons unknown, local Forest Service employees have decided they need to "review" the situation before making a decision. The same thing is happening in the Bridger-Teton in Wyoming, in Utah, and on countless other public lands throughout the federal system, creating a circumstance that is damaging and untenable for a small business like mine.

A familiar admonition for users of our public lands is "Leave nothing but footprints. Take nothing but pictures." Considering the outdoor media provides virtually zero-impact access to our Nation's natural resources for millions of Americans, how can we reasonably be denied access to our public lands, when in reality, we are providing the Department a vitally important service? SB 1241 will remedy the problems I/we have encountered, by providing a uniform standard for access which is both fair and appropriate.

In addition to the critical issues regarding access, there are also concerns regarding the current fee structure.

Members of the outdoor media periodically ply their craft on public lands, with the intent of earning a living. Thus, by the current standard, the activity is deemed commercial, and land-use fees are assessed. Often, however, the activity is anything but profitable, as numerous outdoor media projects are undertaken on a speculative basis. The freelance writer's article and photo package detailing the dependency of Alaskan bears on the annual salmon run; the wildlife photographer building an inventory of photos for potential inclusion in a stock photo agency's catalog; the independent television producer, filming a documentary on wolf depredation on ungulates in the Yellowstone ecosystem; all commercial activities under the present standard, but in the reality of the marketplace, unlikely to generate commercial gain.

An exception to the permit requirement does exist. Media crews covering what is considered "breaking news" do not have to apply, wait for approval, and pay for land-use permits. This applies to public lands in both Washington state and Washington D.C.. But a follow-up story on the aftermath of the Yellowstone fire, or the reintroduction of wolves into the ecosystem, would require a media land-use permit, while interviewing Government officials on the same topics on the public land of the National Mall would not.

Be it print, radio, or television, traditional news media is clearly a "for profit" venture. However, an exception from obtaining land-use permits for news media is intu-

itive and appropriate, as the news media was not the target of the enabling legislation.

An exception for outdoor media should also exist. Drawing attention to a field that receives few headlines, the outdoor media provides the public valuable information that they otherwise would not receive. The outdoor media that facilitates the mission of our public lands by providing vicarious access to our Nation's natural beauty, were not the intended targets of the original regulations either. The legislation was promulgated to address large-scale commercial productions that generate significant profits filming on public land.

The intent of the original legislation is clear. A sponsor of the bill, the late Sen. Craig Thomas of Wyoming, told the Rocky Mountain News "the provision was meant for larger-scale Hollywood movie productions, not small-scale nature films." But what was originally created as a net to capture fees from Hollywood production crews, has become more like a seine, netting and extracting a toll from the solitary nature photographer and documentary producer to such an extent they no longer see the forest for the fees.

Capturing nature on film or in photographs is very different from scripted and storyboarded commercial productions. When the director of a Rocky Mountain-based Coors commercial says "action," a trained animal receives a cue, performs its trick, and the scene is done. For the professional outdoor photographer or videographer, the wolf, bear, or wild sheep which is the subject at hand is often, less cooperative. By its very nature, wildlife photography is extremely time consuming, often done in the harshest conditions; an important distinction that points out one of the inherent inequities in the proposed rules. While large film and television production crews need relatively little time on public lands to complete their project, our nation's professional outdoor media may spend weeks or months in the field in order to capture a few magic seconds of unstaged Nature in its pristine state. And when outdoor media members spend time in the field, under the current fee structure, we also spend money, and lots of it.

The current fee system is implemented if an activity has potential for commercial gain. If the activity is deemed for commercial purposes, then time and numbers of participants on the public land location are utilized to calculate the total land-use fee. As the rules exist today, acclaimed nature photographer Ansel Adams, the creator of those magnificent and historically significant black-and-white photographs which inspire an appreciation for natural beauty and the conservation ethic, and author of the classic book *Ansel Adams: The National Parks Service Photographs*, would have been charged \$250 for each and every day he spent in Yosemite Park with camera in tow. If public land-use fees had been in effect in Adams' day, I wonder if we would have had the opportunity to enjoy his remarkable photographs today.

Nature photography, documentary, and television projects, traditionally low-budget productions to begin with, must spend a significantly greater amount of time in the field to capture wildlife drama than the Hollywood crews staging and blocking trained bears, canines, and other cooperative beasts. As fee payments are required as a multiple of the time spent on public land, outdoor media members are required to pay significantly greater amounts than those in the entertainment industry.

However, the most significant inequity of the current system is the disproportionate application of fees as they pertain to the number of individuals actually on public land. This inherent imbalance in the current system transforms the land-use fee into a de facto regressive tax as it applies to outdoor media.

As an example of the inherent bias in the system, consider the Bureau of Land Management's "Filming on Public Lands" guidelines. The land-use fee in California is the same for a crew of one as it is for a crew of up to thirty people. A single wildlife documentary maker pays the same daily land-use fee as would a feature-film's entire location crew, including talent, camera operators, directors, producers, grips, electricians, sound technicians, and probably even a "best boy." Perhaps more telling; if a remake of *The Ten Commandments* was shot today on BLM land in California, the daily land-use fee for the Exodus scene, where Moses leads a cast of thousands of out Egypt, would be slightly more than the \$250 daily fee paid by the lone wildlife documentary maker. BLM's daily-use charge for sixty or more people, which includes the cast and crew of the remade Exodus, would be \$600.

As mentioned previously, we have filmed a number of hunts in the Shoshone National Forest in northwest Wyoming. My guide, Monte Horst of Ishaowooa Outfitters, is a licensed outfitter and guide who pays a substantial annual fee to bring clients into his guide territory. Mr. Horst is a competent videographer, and instead of bringing along an additional camera operator, Mr. Horst assumes the duties of camera operator, so as not to incur the additional expense of pack mules and horses for another crew member. Mr. Horst and I complete our shoot in four days. The only

difference between my experience, and that of the usual, other six clients in camp, is that as working outdoor media, I pack in an additional twenty pounds of camera gear. Four days on location to make a television program, with no additional personnel or pack animals on National Forest land, and my use fee is, like the remake of *The Ten Commandments*, \$600.

This illustrates the inequity of the current system: charging a crew of one the same fee as is charged a crew of thirty, is inequitable and inherently unfair. In addition, while the expense of land-use fees are an inconsequential part of a feature film or network commercial's budget, the cumulative, daily fees that accrue against an independent producer or freelance photographer are not only significant budgetary expenses, they are, proportionately, such a large percentage of the project's budget, the fees could reasonably be viewed as a regressive tax, and will often, be the catalyst for moving a project from public land to another location.

I am also submitting testimony as a representative of the Wild Sheep Foundation, (WSF) a service-based conservation organization that focuses on the betterment of wild sheep in North America and elsewhere. In addition to being a life member of this organization, I have also the executive producer of their television series, *Hittin' the Outdoors*. The series promotes the conservation of wild sheep and other big game species of the western United States. Sustained-use sport hunting is an integral part of modern wildlife species management, and as a tool of conservation, is an important part of the television series.

WSF is an organization that raises and spends millions of dollars each year for the sole purpose of "putting sheep on the mountain." Their conservation projects are numerous, and include sheep capture and relocation, wildlife research, habitat improvement, and acquisition of buffer lands to prevent transmission of disease from domestic stock to wild sheep. Since 1984, WSF has raised and spent over \$30,000,000 for habitat and wildlife conservation projects, many of which were DOI/DOA initiated, and funded by WSF at the Department's request.

Many of these DOI/DOA projects benefit wild sheep, as three of the four wild sheep species of North America are indigenous to the United States. Wild sheep live in wild places, and obtaining footage of these magnificent creatures can be a long and arduous task. The average television shoot for wild sheep is fifteen days, and virtually all of the filming would take place on Federal land. Based on the current regulations, our production budget to produce on US public land would need to be increased by \$20,000 to \$25,000 dollars to pay the land-use fees, which generate no return on investment.

As we created the WSF television series, many of the storylines we developed should have focused on one or more of the DOI or DOA conservation projects that has benefited from the millions of dollars donated by the Foundation. As you may already surmise, the paradoxical result for WSF, a benefactor of Federally-initiated conservation projects, would be the assessment of daily land-use fees to promote the very projects they have funded on behalf of the Government. The sad reality is, due to financial considerations in the competitive arena of the television industry, numerous otherwise US-located shoots, have been, and continue to be, scheduled in Canada and Mexico, where wild sheep also live, and where the Governments are more receptive to the positive publicity that is generated by a television feature. The same is true for the Dallas Safari Club and USA Shooting, the governing body for the US's Olympic Shooting Sports. Both are involved in the production of television programs based on public lands, and both, to varying degrees, have encountered the same difficulties and financial hardships as the Wild Sheep Foundation.

It is a difficult crafting rules to apply to broad and diverse circumstances. Most would agree that public access to public land at little or no cost is desirable. A majority also understand it is reasonable to assess appropriate fees for feature-film production that takes place on public land. This was the intent of the original legislation. The problem occurs in finding a fair and equitable solution for the thousands of individuals and small businesses that occasionally utilize public land in their craft, but have little or no impact on the land, and often, provide important benefits to the Government and the citizens of this country.

The Government has chosen to use three criteria to determine liability for fees: commercial venture, time on federal land, and number of people involved. Determination of when or whether a venture is commercial is often subjective and difficult to codify. Time spent "on the ground" is a reasonable factor to evaluate when considering any given venture, but it is hardly indicative of the impact of that venture on Federal land. In my opinion, and in the consensus opinion of the professional outdoor media of this country, the most telling and appropriate variable to consider in assessing fair and equitable land-use charges is to consider the number of individuals that are actually present on public land. At present, this criterion is

the most unjust aspect of the current rules, yet the modifications in the proposed bill will go far to remedy the inequity of the present circumstance.

Basing fees on the actual number of persons engaged in the project on federal land is a reasonable standard of measure. However, the Government's factor for consideration that one person on public land is the same as thirty is inaccurate and renders an unfair result. The outdoor media should not be categorized in the same manner as a Hollywood production crew, but when the prevailing math considers one and thirty to be equal, unforeseen and unintended results have occurred. However, the proposed exception provided in SB 1241 for production crews of five or less to pay an annual fee of \$200 corrects the current inequities. The bill standardizes the fee structure, as well as the process by unifying and standardizing the rules throughout all Government agencies. By standardizing the criteria for access to public lands, and creating an exception for crews of five or less for outdoor media and other low-impact groups, the unforeseen and unintended outcome of the current regulations will be remedied. Appropriate payments will continue to be made by those for which the fees were intended, and the independent outdoor media will once again, be free to report on and feature conservation issues of our public lands without overly-burdensome access and/or financial consequences. We strongly support SB 1241, and look forward to its swift passage and implementation.

Thank you for the opportunity, and for your consideration.

---

STATEMENT OF MARK J. BONINI, CHIEF PROBATION OFFICER, AMADOR COUNTY,  
JACKSON, CA, ON S. 1571

I am writing to express Amador County's support of S 1571, the Deafy Glade Land Exchange Act. This legislation would direct the Secretary of Agriculture to transfer title to Fouts Springs Ranch in the Mendocino National Forest to the County of Solano in exchange for the County transferring property known as Deafy Glade in the Mendocino Forest to the Secretary.

Fouts Springs Youth Facility is a youth correctional camp available for our County's use, as an alternative placement for wards that are approaching the level of committing serious delinquent acts that may warrant a commitment to the State Division of Juvenile Justice. Solano County operates the camp under a joint powers authority with Colusa County on approximately 82 acres of Forest Service land in the Mendocino National Forest, which is leased from the National Forest Service. At the camp, youth participate in a structured cognitive behavioral program that includes counseling, behavior modification and education; with the goal of giving them skills in preparation for reentry into their local community. The Facility has six month, nine month, and one year program components, depending on the needs of the local judiciary.

We are seeking your continued support and assistance in our efforts to assure that this valuable resource remains available, not only to our County, but to all the potential user Counties throughout the State of California.

The facility provides an invaluable service by removing youth from their current environment where it is all too easy to return to criminal behavior and gives them the skills to change their lives. Fouts Springs, which has been in operation since 1959, is in need of major repairs. Solano County is reluctant to continue to make capital improvements to the Facility since it does not own the land on which it is located. Solano County, therefore, purchased another parcel of land in the Mendocino Forest that is of equal or greater value which it has proposed to swap with the Secretary for the Fouts Springs land. We urge you to continue to support this important legislation which would consummate the transfer and allow Solano County to continue to invest in Fouts Springs and provide alternative treatment to delinquent youth of the juvenile courts. Your ongoing support is especially important during these difficult times when other youth correctional camps in the state are closing their doors.

We appreciate your consideration and continued support.

---

STATEMENT OF DON AMADOR, WESTERN REPRESENTATIVE, BLUERIBBON COALITION,  
INC., OAKLEY, CA, ON S. 1571

Just as last year, the BlueRibbon Coalition, a national trail-based recreation group, is strongly opposed to the Deafy Glade Land Exchange Act. S. 1571 would permanently site a youth correctional facility in the center of a prime Forest Service recreation area that provides for both the motorized and non-motorized activities. A recent FS analysis showed this site should remain in federal ownership to help meet future recreation needs such as camping and parking.

With the passage of the North Coast Wilderness Bill in 2006, the recreation public has been directed to use destination recreation areas such as exists at Fouts Springs. As you know, there are 6 camping areas where families gather within 1/4 miles of the correctional facility. These campsites provide access to both the Stonyford OHV Area and the Snow Mountain Wilderness Area.

BRC believes both the recreation public and the correctional facility's long-term interests would be best served if an alternate site was found in the nearby Indian Valley Area possibly on other federal lands (FS, BOR, BLM). As before, BRC stands ready to assist Congress, the agency, and local authorities find a more suitable site that is not directly adjacent to highly-valued family-oriented recreational opportunities.

Should the subcommittee vote in favor of S. 1571, BRC suggests that reversion language be added to the final bill should the county decide at a future date to dispose of the property. Please distribute this letter to all members of the subcommittee.

---

STATEMENT OF STEVEN K. BORDIN, CHIEF PROBATION OFFICER, COLUSA COUNTY,  
COLUSA, CA, ON S. 1571

I am writing to express Colusa County's support of S 1571, the Deafy Glade Land Exchange Act. This legislation would direct the Secretary of Agriculture to transfer title to Fouts Springs Ranch in the Mendocino National Forest to the County of Solano in exchange for the County transferring property known as Deafy Glade in the Mendocino Forest to the Secretary.

Fouts Springs Youth Facility is a youth correctional camp available for our County's use, as an alternative placement for wards that are approaching the level of committing serious delinquent acts that may warrant a commitment to the State Division of Juvenile Justice. Solano County operates the camp under a joint powers authority with Colusa County on approximately 82 acres of Forest Service land in the Mendocino National Forest, which is leased from the National Forest Service. At the camp, youth participate in a structured cognitive behavioral program that includes counseling, behavior modification and education; with the goal of giving them skills in preparation for reentry into their local community. The Facility has six month, nine month, and one year program components, depending on the needs of the local judiciary.

We are seeking your continued support and assistance in our efforts to assure that this valuable resource remains available, not only to our County, but to all the potential user Counties throughout the State of California.

The facility provides an invaluable service by removing youth from their current environment where it is all too easy to return to criminal behavior and gives them the skills to change their lives. Fouts Springs, which has been in operation since 1959, is in need of major repairs. Solano County is reluctant to continue to make capital improvements to the Facility since it does not own the land on which it is located. Solano County, therefore, purchased another parcel of land in the Mendocino Forest that is of equal or greater value which it has proposed to swap with the Secretary for the Fouts Springs land. We urge you to continue to support this important legislation which would consummate the transfer and allow Solano County to continue to invest in Fouts Springs and provide alternative treatment to delinquent youth of the juvenile courts. Your ongoing support is especially important during these difficult times when other youth correctional camps in the state are closing their doors.

We appreciate your consideration and continued support.

---

STATEMENT OF LIONEL D. CHATMAN, CHIEF PROBATION OFFICER, CONTRA COSTA  
COUNTY, MARTINEZ, CA, ON S. 1571

I am writing to express Contra Costa County Probation Department's support of S 1571, the Deafy Glade Land Exchange Act. This legislation would direct the Secretary of Agriculture to transfer title to Fouts Springs Ranch in the Mendocino National Forest to the County of Solano in exchange for the County transferring property known as Deafy Glade in the Mendocino Forest to the Secretary.

Fouts Springs Youth Facility is a youth correctional camp available for our County's use, as an alternative placement for wards that are approaching the level of committing serious delinquent acts that may warrant a commitment to the State Division of Juvenile Justice. Solano County operates the camp under a joint powers authority with Colusa County on approximately 82 acres of Forest Service land in the Mendocino National Forest, which is leased from the National Forest Service.

At the camp, youth participate in a structured cognitive behavioral program that includes counseling, behavior modification and education; with the goal of giving them skills in preparation for reentry into their local community. The Facility has six month, nine month, and one year program components, depending on the needs of the local judiciary.

We are seeking your continued support and assistance in our efforts to assure that this valuable resource remains available, not only to our County, but to all the potential user Counties throughout the State of California.

The facility provides an invaluable service by removing youth from their current environment where it is all too easy to return to criminal behavior and gives them the skills to change their lives. Fouts Springs, which has been in operation since 1959, is in need of major repairs. Solano County is reluctant to continue to make capital improvements to the Facility since it does not own the land on which it is located. Solano County, therefore, purchased another parcel of land in the Mendocino Forest that is of equal or greater value which it has proposed to swap with the Secretary for the Fouts Springs land. We urge you to continue to support this important legislation which would consummate the transfer and allow Solano County to continue to invest in Fouts Springs and provide alternative treatment to delinquent youth of the juvenile courts. Your ongoing support is especially important during these difficult times when other youth correctional camps in the state are closing their doors.

We appreciate your consideration and continued support.

---

STATEMENT OF RICHARD A. MUENCH, CHIEF PROBATION OFFICER, TEHAMA COUNTY,  
RED BLUFF, CA, ON S. 1571

I am writing to express Tehama County's support of S 1571, the Deafy Glade Land Exchange Act. This legislation would direct the Secretary of Agriculture to transfer title to Fouts Springs Ranch in the Mendocino National Forest to the County of Solano in exchange for the County transferring property known as Deafy Glade in the Mendocino Forest to the Secretary.

Fouts Springs Youth Facility is a youth correctional camp available for our County's use, as an alternative placement for wards that are approaching the level of committing serious delinquent acts that may warrant a commitment to the State Division of Juvenile Justice. Solano County operates the camp under a joint powers authority with Colusa County on approximately 82 acres of Forest Service land in the Mendocino National Forest, which is leased from the National Forest Service. At the camp, youth participate in a structured cognitive behavioral program that includes counseling, behavior modification and education; with the goal of giving them skills in preparation for reentry into their local community. The Facility has six month, nine month, and one year program components, depending on the needs of the local judiciary.

We are seeking your continued support and assistance in our efforts to assure that this valuable resource remains available, not only to our County, but to all the potential user Counties throughout the State of California.

The facility provides an invaluable service by removing youth from their current environment where it is all too easy to return to criminal behavior and gives them the skills to change their lives. Fouts Springs, which has been in operation since 1959, is in need of major repairs. Solano County is reluctant to continue to make capital improvements to the Facility since it does not own the land on which it is located. Solano County, therefore, purchased another parcel of land in the Mendocino Forest that is of equal or greater value which it has proposed to swap with the Secretary for the Fouts Springs land. We urge you to continue to support this important legislation which would consummate the transfer and allow Solano County to continue to invest in Fouts Springs and provide alternative treatment to delinquent youth of the juvenile courts. Your ongoing support is especially important during these difficult times when other youth correctional camps in the state are closing their doors. We appreciate your consideration and continued support.

---

STATEMENT OF HELEN M. THOMSON, CHAIRWOMAN, YOLO COUNTY BOARD OF  
SUPERVISORS, WOODLAND, CA, ON S. 1571

The Yolo County Board of Supervisors would like to express its support of S 1571, the Deafy Glade Land Exchange Act. This legislation would direct the Secretary of Agriculture to transfer title to Fouts Springs Ranch in the Mendocino National Forest to the County of Solano in exchange for the County transferring property known as Deafy Glade in the Mendocino Forest to the Secretary.

Fouts Springs Youth Facility is a youth correctional camp available for our County's use, as an alternative placement for wards that are approaching the level of committing serious delinquent acts that may warrant a commitment to the State Division of Juvenile Justice. Solano County operates the camp under a joint powers authority with Colusa County on approximately 82 acres of Forest Service land in the Mendocino National Forest, which is leased from the National Forest Service. At the camp, youth participate in a structured cognitive behavioral program that includes counseling, behavior modification and education; with the goal of giving them skills in preparation for reentry into their local community. The Facility has six month, nine month, and one year program components, depending on the needs of the local judiciary.

We are seeking your continued support and assistance in our efforts to assure that this valuable resource remains available, not only to our County, but to all the potential user Counties throughout the State of California.

The facility provides an invaluable service by removing youth from their current environment where it is all too easy to return to criminal behavior and gives them the skills to change their lives. Fouts Springs, which has been in operation since 1959, is in need of major repairs. Solano County is reluctant to continue to make capital improvements to the Facility since it does not own the land on which it is located. Solano County, therefore, purchased another parcel of land in the Mendocino Forest that is of equal or greater value which it has proposed to swap with the Secretary for the Fouts Springs land. We urge your continued support for this important legislation which would consummate the transfer and allow Solano County to continue to invest in Fouts Springs and provide alternative treatment to delinquent youth of the juvenile courts. Your ongoing support is especially important during these difficult times when other youth correctional camps in the state are closing their doors. We appreciate your consideration and continued support.

---

STATEMENT OF KEVIN R. COLBURN, NATIONAL STEWARDSHIP DIRECTOR, AMERICAN  
WHITewater, ON S. 3075

My name is Kevin Colburn and I am the National Stewardship Director of American Whitewater. I live and work in Missoula, Montana. American Whitewater is a national non-profit organization with a mission of conserving and restoring our nation's whitewater resources while enhancing opportunities to enjoy them safely. Since 1954 our organization has represented conservation-oriented non-commercial whitewater canoeists, kayakers, and rafters in a wide range of river stewardship issues. American Whitewater has over 5,000 members and 100 affiliate clubs distributed across the United States. We have one affiliate club and a stewardship office in Montana. We strongly believe that healthy rivers are a vital component of healthy communities.

Our members and staff have been deeply concerned with the threats to the North Fork of the Flathead River for the past several years. The North Fork of the Flathead River offers paddlers one of the most spectacular river trips in the Northern Rockies. This Class II+ (beginner/intermediate) river can be paddled in a wide diversity of craft by people of almost any ability level. Paddlers are awestruck by the massive peaks of Glacier National Park which tower over the east side of the river. Wildlife abounds, the water is clean and radiant green, and the fishing is great. While one-day trips are possible, many groups choose to spend two or more days on the river. Beaches and cobble bars provide superb campsites. Easy access, no permitting requirements, and a long season further contribute to the river's appeal. I have personally rowed a raft down the North Fork with my wife, and assure you it is a very special place deserving careful protection.

Mineral extraction and energy development in the North Fork Watershed could impact recreational experiences by impacting water quality and related fisheries, wildlife viewing opportunities, scenery, road safety, and the natural soundscape. These impacts would diminish the values previously recognized and protected by Congress when they designated the river under the Wild and Scenic Rivers Act. The North Fork Watershed Protection Act of 2010, S. 3075, offers timely protection from very real threats to this spectacular Wild and Scenic river and its enjoyment. American Whitewater is fully supportive of S. 3075, and we encourage its prompt passage.

We respectfully ask that you consider expanding the scope of the bill to include the South Fork and Middle Fork of the Flathead River as well as the North Fork. The three forks of the Flathead are Wild and Scenic, each offer important wildlife and fisheries habitat, and each are cherished recreational paddling destinations. Expanding the geographical scope of the S. 3075 would ensure the protection of these

important values, and would further protect the ecology and water quality of Flathead Lake.

Thank you for considering this testimony.

---

STATEMENT OF DUCKS UNLIMITED, GREAT PLAINS REGIONAL OFFICE,  
BISMARCK, ND

NEWS RELEASE

HELENA, Mont., March 11, 2010—Ducks Unlimited supports legislation sponsored by Montana’s senators to protect the Upper Flathead Valley. Sens. Max Bacus and Jon Tester introduced The North Fork Watershed Protection Act that protects the North Fork of the Flathead Drainage. The legislation is in conjunction with a similar measure in British Columbia.

“The legislation will protect the water quality of downstream flows to key wetlands in this drainage area. This is a critical staging area for migrating waterfowl and supports more than 50,000 waterfowl each year,” said Robert Sanders, DU manager of conservation programs for Montana. “For example, the region’s large number of small wetlands has been known to support one of the highest densities of nesting redheads in the U.S.”

Most of the land in the Flathead Valley is federally owned, with miles of grassland dotted with hundreds of small wetlands. The Intermountain West Joint Venture Coordinated Bird Conservation Plan and numerous federal and state level bird conservation plans list this valley as a priority landscape for waterfowl and other birds.

“It’s imperative water quality in this key area be maintained,” Sanders said, “and DU supports the North Fork legislation as a way to ensure water quality is maintained for these important habitats.”

Ducks Unlimited is the world’s largest non-profit organization dedicated to conserving North America’s continually disappearing waterfowl habitats. Established in 1937, Ducks Unlimited has conserved more than 12 million acres thanks to contributions from more than a million supporters across the continent. Guided by science and dedicated to program efficiency, DU works toward the vision of wetlands sufficient to fill the skies with waterfowl today, tomorrow and forever.

---

STATEMENT OF ROBIN STEINKRAUS, EXECUTIVE DIRECTOR, AND GREG McCORMICK,  
TREASURER, FOR LARRY ASHCRAFT, PRESIDENT, FLATHEAD LAKERS, POISON, MT,  
ON S. 3075

On behalf of the Flathead Lakers, we extend our sincere thanks for your leadership in protecting the Flathead Watershed from upstream coal mines. Your work on this threat to clean water in the North Fork Flathead River on downstream to Flathead Lake was instrumental in leading to the landmark agreement between Governor Schweitzer and Premier Campbell that will greatly benefit the Flathead’s priceless waters, wildlife and scenic beauty on both sides of the international boundary for many generations to come.

We see this agreement as the culmination of decades of hopes, dreams and hard work of many leaders and groups, and the beginning of a new era of transboundary cooperation to sustain the qualities that make the Flathead a unique and special place.

The Flathead Lakers endorse your bill, S.3075—the North Fork Watershed Protection Act of 2010, to withdraw public lands from leasing for mining and energy extraction in the North Fork Watershed. In addition, we support adding to the bill the area adjacent to Glacier National Park along the Middle Fork Flathead River corridor, and areas in the Whitefish River headwaters near Big Mountain and at Haskill Basin, which drains into the mainstem Flathead River.

Passage of this bill will not only protect Flathead waters and natural heritage for the future, but will also be a big step toward implementing the Montana-British Columbia agreement and demonstrating to B.C. officials the sincerity of Montana and the United States in ensuring that we uphold our commitments on the U.S. side of the border.

STATEMENT OF JOE UNTERREINER, PRESIDENT AND CEO, KALISPELL CHAMBER OF  
COMMERCE, ON S. 3075

We are very encouraged by the recent breakthrough between Montana and British Columbia on the Transboundary Flathead issue. We write you today to thank you for your work to secure this victory and to encourage you to press on to finalize the needed conservation goals for both sides of the international boundary.

In particular, we are aware of the project to permanently retire the dormant oil and gas leases that cover 200,000 acres of the Whitefish Range west of Glacier Park on the Flathead National Forest. The Flathead Basin Commission supports this withdrawal. We write you today in support of the retirement of the leases within the North Fork drainage.

We also believe that the only way to prevent the B.C. government from repealing their "Order in Council" that established the mining and energy ban in the Flathead is to establish a bi-national watershed agreement of some kind between both federal governments.

The Kalispell Chamber of Commerce exists to promote responsible and sensible economic development. The Flathead Valley is blessed with many natural, renewable resources that have provided the foundation for a healthy and diversified local economy.

Glacier National Park and the North Fork River Valley play a very important part in our economic vitality. Flathead Lake also serves as a critical economic engine for the region.

The Chamber wishes to ensure that Glacier Park, the North Fork River, and Flathead Lake remain as economically productive as they are today. We think that oil and gas development in the Whitefish Range would be inconsistent with our interest to see the entire watershed protected from upstream (Canadian) pollution. How can we ask the Canadians to forego development of their coal and gas resources within the North Fork watershed if we are not willing to make the same decision?

It is for these reasons that we support the retirement of the oil and gas leases in the Whitefish Range. We ask that you make this issue a priority in 2010. We think the model established for the Rocky Mountain Front (a willing seller/willing buyer system with legislated oil and gas withdrawal) could be the appropriate retirement method.

We also urge you to find a way to bring both federal governments to the table to negotiate some form of a watershed agreement for the Transboundary Flathead.

After 36-years of conflict with B.C. over appropriate resource development in the North Fork we are delighted that the B.C. government recognizes the river's special character. We once again urge you to seize this historic moment to make this victory permanent.

---

STATEMENT OF JEREMY MORCRET, PRESIDENT, POLSON CHAMBER OF COMMERCE,  
ON S. 3075

Thank you for introducing Senate Bill 3075, the North Fork Watershed Protection Act of 2010. The Polson Chamber of Commerce supports this legislation which withdraws future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land in Montana's North Fork Flathead River watershed.

We also support slightly expanding the boundary of S. 3075 to incorporate the remainder of the Middle Fork of the Flathead River corridor to complete the protection of Glacier Park, the south flank of the Whitefish Range and Haskill Basin to protect recreation assets and Whitefish City's water supply, and the Coram Canyon area to protect the Flathead River and recreation. The attached map shows the proposed boundary.

Flathead Lake is an important asset to Polson, its economy and our businesses. S. 3075 will help protect Flathead Lake water quality and the economic health of our city from upstream threats of industrial energy development. S. 3075 is a critical step towards implementing the Montana—British Columbia agreement signed by Governor Schweitzer and Premier Campbell that bans mining and oil and gas extraction in the transboundary North Fork Flathead Valley.

The United States and Canada have a historic opportunity to protect the North Fork of the Flathead River, Glacier National Park, and Flathead Lake for future generations. S. 3075 represents a crucial component of this legacy. Thank you for your efforts to protect Flathead waters.

## STATEMENT OF ANACONDA SPORTSMEN CLUB,\* ON S. 3075

We the undersigned organizations represent hundreds of thousands of hunters and anglers from across the country and right here in Montana are writing to express our full and strong support for S. 3075, the North Fork Watershed Protection Act of 2010, to withdraw US Forest Service land in the North Fork Watershed from future oil and gas leasing activities. Our memberships represent a diverse group of the American public for who hunting, fishing and outdoor recreation is a way of life.

The North Fork of the Flathead is one of Montana's most special places to hunt and fish. Public lands in this valley provide unique and unparalleled opportunities to access our nation's rich natural heritage. The watershed provides critical habitat for bull and cutthroat trout and since the days of Theodore Roosevelt, hunters have been coming to the valley to pursue world class mule deer, elk and moose opportunities. This valley truly is one of the wildest valleys in the continental United States, and we believe the next generation should have the same opportunity we have to experience this special place.

The North Fork Watershed Protection Act is an important step in ensuring that traditional land-uses, such as timber and outdoor recreation are protected in this valley. Oil, gas and hard rock mineral extraction in the North Fork would forever change this special place and cause serious harm to water and air quality, native trout, and big game populations. That means big business in Montana, where hunters and anglers contribute \$1 billion annually to the state economy.

In addition to impacting sportsmen and women, oil and gas extraction would have negative impacts on the regional economy—as millions of tourists spend over \$150 million dollars each year to experience the clean water and wildlife of Glacier National Park.

We understand our need for fossil fuels and hard rock minerals, and we believe that part of responsible development is recognizing that some places are too special to be industrialized. The North Fork of the Flathead is one of these places.

A final reason we support S. 3075 is to be a good neighbor. British Columbia has now banned mining in the Canadian Flathead and asked us to do the same. For decades, proposals for massive coal strip-mines in the Canadian headwaters of the North Fork have threatened the water quality of the Flathead River, Flathead Lake, and Glacier National Park.

Today there is a unique and special opportunity to protect the North Fork of the Flathead and Glacier National Park forever, preserving our sporting traditions for those unborn generations. S. 3075 is a necessary and essential piece of legislation to complete this legacy. Our organizations look forward to working with you to pass this important legislation.

## STATEMENT OF THE WILDERNESS SOCIETY, ON S. 3075

The Wilderness Society (TWS), representing over 500,000 members and supporters from across the United States, would like to go on the record as enthusiastically supporting S. 3075, the "North Fork Watershed Protection Act of 2010" introduced by Montana Senators Max Baucus and Jon Tester. Glacier National Park, as well as many of the national forest lands addressed in this bill, are of national significance and S. 3075's passage would benefit many Americans from all walks of life as well as future generations. In addition, passage of this bill ensures that the United States "acts by example" and fully engages in the coordinated, partnership approach requested by the province of British Columbia when they agreed this winter to take action to protect the Canadian side of the North Fork Flathead from coal, oil and gas, and mining development. Also important is that this bill has almost no active opposition, as to our knowledge, no organized group, relevant elected official,

\*Other undersigned groups: Backcountry Hunters and Anglers, Big Blackfoot Chapter Trout Unlimited, Billings Rod and Gun Club, Bitter Root Chapter of Trout Unlimited, Ducks Unlimited, Inc., Flathead Valley Chapter Trout Unlimited, Flathead Wildlife Inc., Gallatin Wildlife Association, George Grant Chapter Trout Unlimited, Helena Hunters and Anglers, Hellgate Hunters and Anglers, Izaak Walton League of America, Joe Brooks Chapter Trout Unlimited, Kootenai Valley Trout Club, Lewis and Clark Chapter Trout Unlimited, Libby Rod & Gun Club, Madison-Gallatin Chapter Trout Unlimited, Magic City Fly Fishers, Medicine River Canoe Club, Montana Backcountry Hunters and Anglers, Montana River Action Network, Montana Trout Unlimited, Montana Wildlife Federation, National Wildlife Federation, Park County Rod and Gun Club, Pat Barnes Missouri River Chapter Trout Unlimited, Polson Outdoors, Inc., Snowy Mountain Chapter Trout Unlimited, Theodore Roosevelt Conservation Partnership, Trout Unlimited, West Slope Chapter Trout Unlimited.

Montana newspaper, or affected constituency has spoken out against S. 3075. Instead, there has been an impressive outpouring of diverse and formal support from local businesses, civic groups, Chambers of Commerce, City Councils, sportsmen and conservation groups, and others.

As explained below, we would like to see some mostly minor additions and improvements made to the bill. Thus, we stand ready to work with Senators Baucus and Tester, the Committee and Senate staff to ensure this bill is refined and quickly becomes law.

#### THE CROWN OF THE CONTINENT CONTEXT

With its rugged peaks, native grasslands, and sparkling waters, Montana is one of the most ecologically intact states in the union and one of its most precious regions is the Crown of the Continent Ecosystem (the Crown). The Crown, comprised of the 10 million-acre area where Montana, British Columbia, and Alberta converge, is one of the few remaining large, intact, temperate ecosystems in the world. It encompasses multiple climatic zones, including rainforest, alpine, and prairie; contains high levels of biodiversity; and is one of only two bioregions in the lower 48 states that has retained its full complement of native species. In fact, except for wild bison, all the species present when Lewis and Clark first came to this area still make the Crown their home.

Just as significant, the Crown provides key areas of connectivity in the Northern Rockies, which are critical to sustaining ecological processes at a large enough scale to promote increased resilience to climate change. It also includes key wildlife migration corridors and serves as habitat for bears, wolves, elk, deer, native cutthroat trout, and grayling. The ecosystem also provides clean, cold water for surrounding human communities, contains cultural and religious sites important to the Blackfoot Tribe, and boasts world-class hunting, wildlife viewing, backpacking, and horseback riding opportunities.

There has also been an impressive history of conservation achievements in the Crown over many decades. From the world's first International Peace Park at Glacier-Waterton Parks, to the state's first game range with Sun River Refuge, to the first citizen initiated addition to the National Wilderness Preservation System (Scapegoat Wilderness), as well as others, there have been numerous investments and actions taken to preserve this world renown ecosystem.

These efforts have continued in more recent times. In 2006, Senator Baucus successfully spearheaded legislation that withdrew approximately 500,000 acres of federal lands and minerals on the Rocky Mountain Front which makes up the eastern portion of the Crown. In 2008, the Senator secured federal funding for the Montana Legacy Project which is bringing into federal ownership over 300,000 acres of western Montana forestland, including important areas in the southwestern Crown. And Senator Tester has introduced S. 1474 which among other things would designate over 86,000 acres of new wilderness in the Blackfoot region of the Crown. Meanwhile, there is also under consideration a collaboratively developed proposal, the "Rocky Mountain Front Heritage Act," which would add 87,000 acres to the Bob Marshall Wilderness complex and designate a 307,000 acre "conservation management area" for all BLM and Forest Service lands on the Front. Passage of S. 3075 would build upon this proud legacy and complement these other efforts.

#### THE TRANS-BOUNDARY CONTEXT

With its headwaters in British Columbia and its downstream reaches in Montana, the trans-boundary Flathead river valley is a crucial component to not only Glacier-Waterton Parks but also to the local ecology and economy. Besides tremendous big game populations, this valley supports the greatest density of grizzly bears in interior North America and some of the continent's healthiest runs of native bull trout and cutthroat trout. There are also many fishing, rafting, and tourism businesses dependent upon the Flathead watershed remaining clean, wild, and healthy. It is for this reason that the Kalispell Chamber of Commerce, as well as numerous individual businesses, have written letters of support. To quote from the Chamber's April 5, 2010 letter to Senator Baucus: "The Chamber wishes to ensure that Glacier Park, the North Fork River Valley, and Flathead Lake remain as economically productive as they are today. We think that oil and gas development in the Whitefish Range would be inconsistent with our interest to see the entire watershed protected from upstream (Canadian) pollution."

Indeed, passing S. 3075 would not only help protect the United States side of this watershed but also help ensure resolution of the threats on the upstream, Canadian side of the watershed. Swift passage of this bill is a critical step toward implementing the International Flathead agreement that was signed in February by Mon-

tana Governor Brian Schweitzer and British Columbia Premier Gordon Campbell. It banned all types of mining and oil and gas extraction in the entire Transboundary Flathead and committed each country to take action to protect its respective portion of the watershed. The United States can demonstrate its strong support and compliance with this agreement in part by passing S. 3075. This will help ensure that Canadians comply and forego development of their coal and oil and gas resources within the upstream North Fork watershed.

#### A PROVEN APPROACH

In recent years federal legislation permanently withdrawing sensitive national forest and/or BLM lands from new oil and gas leasing, mineral entry, and other forms of energy development has been passed for several places. Besides the 2006 legislation mentioned earlier for Montana's Rocky Mountain Front, Congress has also passed legislation withdrawing approximately 101,000 acres in the Valle Vidal portion of the Carson national forest (New Mexico) and 1.2 million acres in the Wyoming Range on the Bridger Teton National Forest.

Much of the lands in the Flathead Forest relating to S. 3075 have leases on them that were issued in the 1980s but then found to be issued in violation of the National Environmental Protection Act and the Endangered Species Act and so were suspended by the Department of Interior. No actions have been taken to remedy the legal deficiencies over the last twenty five years and no drilling has occurred on any of these leases. In a sense, these lands have remained in a legal limbo where leaseholders could not easily proceed to develop them but the public could also not be assured that they were fully protected from energy development.

Given this situation, it is instructive to see how withdrawal legislation passed for both the Rocky Mountain Front and the Wyoming Range has helped to protect those areas and see the resolution of similarly complicated leasing situations. With the Front, there were over 150,000 acres of leases within the withdrawal area passed by Congress and these were all valid leases, unlike those at issue with S. 3075. There have now been five separate lease retirement agreements that has resulted in almost 111,000 acres of these leases being retired, either through purchase by conservation buyers or by donation to the government. The most recent agreement was in January 2010 when Occidental Petroleum, Rosewood Resources, XTO Energy, BP, and Williams voluntarily donated leases totaling 28,370 acres in the Badger Two Medicine portion of the Front near Glacier Park. Meanwhile, with the Wyoming Range, there were approximately 44,000 acres of leases within the withdrawal area that were offered and/or issued with legal deficiencies in 2005-2006. Now there is a Forest Service process underway which should result in the cancellation and removal of all these leases and the return of the holders acquisition costs (the February 2010 Draft EIS on these leases has as its preferred alternative the cancelling/removing of all these leases).

#### NEED FOR SLIGHT EXPANSION OF S. 3075'S WITHDRAWAL AREA

While we understand that S. 3075's withdrawal boundary was originally drafted on a strict hydrologic boundary for the North Fork Flathead drainage, there is a need to slightly expand this withdrawal line to include some adjacent federal lands/minerals that similarly relate to protecting Glacier National Park and to the ecologic, economic, and recreational values at stake for the Flathead drainage. As shown in the attached map (areas in grey), these areas are technically in the watersheds for the Middle Fork Flathead, South Fork Flathead, and Whitefish Lake drainages. These requested additions to the withdrawal area total between 5,000 and 6,000 acres. While not formally in the North Fork Flathead watershed, they share the same problem of issued/questionable oil and gas leases and also have a strong and diverse constituency seeking their protection from oil and gas development. Numerous businesses, individuals, and elected bodies have written to not only endorse S. 3075 but to also ask for the expansion of its withdrawal area to include nearby, connected lands. Here is an excerpt from the City of Whitefish's letter to Senators Tester and Baucus:

In addition, we would encourage your offices to support expanding the geographic scope of S. 3075 to include federal lands located in the headwaters of Haskill Creek, a tributary to the Whitefish River in the upper Flathead River watershed. . . .Withdrawing future mining, oil and gas drilling, and geothermal development on federal lands located in the headwaters of Haskill Creek will help achieve this goal, and further safeguard our community's water supply for existing and future generations of Montanans.

We would like to go on the record as supporting withdrawal expansion requests like these. In addition to being consistent with the North Fork Flathead agreement, we would also note that it is important to see S. 3075's withdrawal boundary expanded to "fill the gap" around Glacier Park, during this year, the Park's centennial. Senator Baucus' Front withdrawal understood the need to not just limit its withdrawal boundary to a strict definition of the Front and so its boundary actually crossed out of the Lewis and Clark Forest and into the Flathead Forest to take in lands along Highway 2 and next to the southern boundary of Glacier national park. This withdrawal took in all the lands between the Great Bear Wilderness and Glacier Park going as far west as almost Essex. S. 3075 as introduced covers all the federal lands along Glacier's western boundary down to the town of West Glacier. This leaves a small but important corridor next to Glacier—along the Middle Fork from West Glacier to Essex—unaddressed unless the withdrawal boundary is expanded to take in this area (see attached map).

Should there be any expansion of S. 3075's withdrawal boundary, as we hope, Section 2 of the bill's definition of "eligible federal land" would have to be slightly amended, since it now limits the withdrawn area to a map with the North Fork watershed boundary.

#### OTHER SUGGESTED REFINEMENTS

1) Clarification on withdrawal applying to future acquired lands: Within S. 3075's withdrawal boundary, there are some private and state owned minerals that would not be addressed by this legislation. It has come to our attention, that in some situations, confusion has arisen when land trades or purchases have acquired such non federal interests years (or decades) after Congress has passed a withdrawal for the area. In essence, there is a question on whether the withdrawal applied to only federal minerals at issue at the time of enactment or also included any mineral interests that the federal government should acquire after enactment and within the withdrawal boundary. We propose S. 3075's definition for "Eligible Federal Land" (Section 2) be amended to make this clear. For example, a phrase could be inserted so that the definition read: ". . . means any federally owned land or interest in land—or acquired land or interest—as depicted on the map as within the North Fork Flathead watershed."

2) Formal clarification that no impact on lease validity = Since almost all the leases on the Flathead Forest were issued with just an Environmental Assessment, successfully challenged (*Conner v Burford*) for inadequate cumulative effects analysis, and then suspended, we think it is important to make clear that Congress acting on a withdrawal here (which pertains to only part of the Flathead Forest) not be interpreted to have some impact on the legal sufficiency of these leases or on any subsequent determination of the appropriateness of leasing other areas on the Flathead Forest. A similar situation arose with the Wyoming Range Legacy Act and so during mark up language was inserted in that legislation addressing this. We propose this same language be inserted in S. 3075:

(e) PRIOR LEASE SALES.—Nothing in this section  
 22 prohibits the Secretary from taking any action necessary  
 23 to issue, deny, remove the suspension of, or cancel a lease,  
 24 or any sold lease parcel that has not been issued, pursuant  
 25 to any lease sale conducted prior to the date of enactment  
 1 of this Act, including the completion of any requirements  
 2 under the National Environmental Policy Act of 1969 (42  
 3 U.S.C. 4321 et seq.).

3) Authorization for lease retirements = Concurrent and beyond passage of this legislation, The Wilderness Society and other groups are committed to efforts to see the leases within S. 3075's boundary retired. Similar to the Rocky Mountain Front example described earlier, we plan to try to convince current leaseholders to retire their leases whether via sale or donation. While we understand that this will have to be on a voluntary basis and without federal appropriations, we believe S. 3075 could play a helpful role in helping catalyze such voluntary lease retirements. Specifically we think it would be helpful in outreach to leaseholders (and to show the British Columbia government the intent of the United States Congress to fully protect our side of the North Fork Flathead) to have language that authorizes lease retirement. This sort of language was included in both the Rocky Mountain Front and Wyoming Range withdrawal bills and serves to explicitly acknowledge government's interest in ac-

cepting lease donations (Wyoming Range Legacy Act) and/or provide tax breaks for this purpose (Rocky Mountain Front legislation). We would hope that text could be added to S. 3075 similarly authorizing lease retirements.

4) Requirement for DOI engagement with leaseholders = Related to the above point, we feel it would be helpful to include language requiring that following passage the Department of Interior must contact all leaseholders within the withdrawal area to let them know of Congress' intent to protect the area and of the donation/retirement opportunities. Again, this was part of the Wyoming Range Legacy Act and read:

**SEC. 4. ACCEPTANCE OF THE DONATION OF VALID EXISTING MINING OR LEASING RIGHTS IN THE WYOMING RANGE.**

(a) **NOTIFICATION OF LEASEHOLDERS.**—Not later than 120 days after the date of enactment of this Act, the Secretary shall provide notice to holders of valid existing mining or leasing rights within the Wyoming Range Withdrawal Area of the potential opportunity for repurchase of those rights and retirement under this section.

(b) **REQUEST FOR LEASE RETIREMENT.**—

(1) **IN GENERAL.**—A holder of a valid existing mining or leasing right within the Wyoming Range Withdrawal Area may submit a written notice to the Secretary of the interest of the holder in the retirement and repurchase of that right.

(2) **LIST OF INTERESTED HOLDERS.**—The Secretary shall prepare a list of interested holders available to any non-Federal entity or person interested in acquiring that right for retirement by the Secretary.

(c) **PROHIBITION.**—The Secretary may not use any Federal funds to purchase any right referred to in subsection (a).

(d) **DONATION AUTHORITY.**—The Secretary shall—

(1) accept the donation of any valid existing mining or leasing right in the Wyoming Range Withdrawal Area from the holder of that right or from any non-Federal entity or person that acquires that right; and

(2) on acceptance, cancel that right.

**CONCLUSION**

TWS enthusiastically supports the overarching goal and components of S. 3075 and sincerely thank Senators Baucus and Tester for their leadership on this issue and their ongoing dedication to protecting this nationally important portion of the Crown of the Continent Ecosystem. We are committed to working to see S. 3075's passage and look forward to engaging with the Committee, Senator Tester and Senate staff to ensure that the final version of the bill is most effectively and serves Montana well for decades to come.

**STATEMENT OF SCOTT BOSSE, NORTHERN ROCKIES DIRECTOR, AMERICAN RIVERS,  
ON S. 3075**

On behalf of American Rivers, I am pleased to present our written testimony in support of S. 3075, the North Fork Watershed Protection Act of 2010 introduced by Montana Senators Max Baucus and Jon Tester. After carefully reviewing the bill, and having spent a considerable amount of time visiting the landscape it would affect, we believe S. 3075 offers substantial conservation benefits for one of the most spectacular watersheds in North America, the local communities that are sustained by it, and the millions of tourists from across the nation and around the world who visit Glacier National Park and the greater Flathead region. This vital legislation is strongly supported by a broad cross-section of Montanans including local residents and elected leaders, businesses, chambers of commerce, hunters and anglers, and conservation organizations. To our knowledge, no organized group in Montana has spoken out in opposition to this bill.

**ABOUT AMERICAN RIVERS**

American Rivers is the largest and most trusted river conservation organization in the nation, with more than 65,000 members and supporters from all 50 states—including hundreds of Montanans—who share a commitment to protecting and restoring our nation's rivers for the benefit of people, wildlife and nature. For decades we have worked with local partners in Montana to permanently protect the North Fork of the Flathead River from various forms of mining and oil and gas drilling. In 2009, American Rivers included the North Fork on its annual list of Most Endan-

gered Rivers™ due to threats from industrial-scale coal mining, gold mining, and oil and gas drilling in its headwaters along the Montana-British Columbia border.

#### GLOBALLY SIGNIFICANT FISH & WILDLIFE RESOURCES

Due to its remoteness, lack of development, and pristine water quality, the North Fork serves as a globally significant stronghold for native fish, wildlife and plant species. Among the native fish species found in the North Fork are bull trout, a federally threatened species, and westslope cutthroat trout, which have been petitioned for listing under the Endangered Species Act and are considered a Species of Special Concern by the U.S. Forest Service and state of Montana. Both fish species migrate from Flathead Lake in Montana up to 150 miles upstream to the headwaters of the North Fork in British Columbia where they spawn in some of the cleanest, coldest water in North America. The migratory bull trout of the North Fork can reach over 15 pounds and three feet in length.

Thanks to its status as the last remaining undeveloped low-elevation valley in the Northern Rockies and its unique location at the crossroads of five major ecosystem types, the North Fork supports an unparalleled diversity of wildlife species including grizzly and black bears, gray wolves, wolverines, lynx, elk, mule deer, whitetail deer, moose, bighorn sheep and mountain goats. Among its superlatives, the North Fork is believed to contain the greatest density of carnivores in North America and the greatest diversity of plant species in Canada including over 1,000 species of wildflowers.

#### WILD & SCENIC RIVERS

The North Fork, along with the Middle Fork and South Fork of the Flathead, were added to the National Wild and Scenic Rivers System in 1976 in order to protect their outstandingly remarkable values, which include recreation, scenery, historic sites, and unique fisheries and wildlife. In passing the Wild and Scenic Rivers Act, Congress stated:

It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dams and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

In addition to the North Fork already being designated as a Wild and Scenic river, the U.S. Forest Service has found 113 miles of its tributaries to be eligible for inclusion in the National Wild and Scenic Rivers System. These tributaries, all of which flow into the North Fork from the Whitefish Range, include Big Creek, Coal Creek, South Fork Coal Creek, Cyclone Creek, Gateway Creek, Hallowat Creek, Langford Creek, Mathias Creek, Moose Creek, Red Meadow Creek, Shorty Creek, South Fork Shorty Creek, Trail Creek, and Whale Creek (see Appendix B\* for map showing all designated and eligible river reaches in the Flathead watershed). Under the Wild and Scenic Rivers Act and the Flathead National Forest's current Forest Plan, these eligible tributaries are supposed to be managed as if they were already designated.

#### OIL & GAS RESOURCES NEGLIGIBLE

While some public lands in the North Fork watershed were leased for oil and gas drilling in the 1980s, the Department of the Interior subsequently suspended all of those leases due to legal deficiencies pertaining to National Environmental Policy Act and Endangered Species Act compliance. Consequently, no oil and gas drilling has occurred on public lands in the North Fork watershed, and no economic impacts would occur if these leases were permanently withdrawn.

There is recent precedent for Congress withdrawing certain outstanding public lands from mining and oil and gas leasing due to unacceptable impacts to water quality, air quality, fish and wildlife, scenery, and archeological sites. For example,

\* Appendix A-C have been retained in subcommittee files.

in 2006 Senator Baucus sponsored legislation that withdrew 500,000 acres of public lands along the Rocky Mountain Front from oil and gas leasing. In the Omnibus Public Lands Management Act of 2009, Congress withdrew 1.2 million acres of the Wyoming Range in northwest Wyoming from oil and gas leasing, and another 101,000 acres in New Mexico's Valle Vidal.

#### RECENT AGREEMENT BETWEEN MONTANA & BRITISH COLUMBIA

Following more than three decades of highly contentious battles over proposed mining and oil and gas drilling in the headwaters of the North Fork, British Columbia announced in February 2010 its intention to withdraw its portion of the Flathead watershed from all forms of mining and oil and gas drilling. Shortly thereafter, Montana Governor Brian Schweitzer and British Columbia Premier Gordon Campbell signed an international agreement that committed the U.S. and Canada to, among other things: "Remove mining, oil and gas, and coal development as permissible land uses in the Flathead River Basin." By passing S. 3075, Congress can uphold the promises Montana made in the agreement, while also increasing the likelihood that British Columbia will follow through on its commitments.

#### SUGGESTED EXPANSION OF WITHDRAWAL AREA

While American Rivers fully supports the language and overarching goals of S. 3075 and understands that the bill is targeted towards protecting the North Fork watershed, we believe it makes sense to expand the withdrawal area to include those lands previously leased in adjacent portions of the Middle Fork Flathead, South Fork Flathead and Whitefish Lake drainages (see map in Appendix C for recommended additions to withdrawal area). This would increase the area of land withdrawn by approximately 5,000-6,000 acres. Withdrawing these additional public lands from future mining and oil and gas drilling would help protect the Wild and Scenic Middle Fork and South Fork of the Flathead River, their outstanding native fish and wildlife resources, and local businesses which depend on clean water, healthy fish and wildlife, and spectacular scenery.

#### CONCLUSION

Given the globally significant environmental values of the North Fork watershed including its pristine water quality, wild rivers, and unparalleled abundance and diversity of fish and wildlife; the non-existent role that mining and oil and gas drilling in the North Fork plays in the local economy; the widespread local support for permanently protecting the watershed from such activities; and the recent agreement signed by Montana and British Columbia; American Rivers strongly supports passage of S. 3075 with our recommended additions and commends Senators Baucus and Tester for taking a leadership role in introducing it. As our nation celebrates the 100-year anniversary of Glacier National Park this year, Congress could give the nation no greater gift than to protect the pristine waters that form its western boundary.

Thank you for taking our testimony into consideration.

---

STATEMENT OF CHUCK STEARNS, CITY MANAGER, MIKE JENSON, MAYOR, JOHN MUHLFELD, COUNCILOR, CITY OF WHITEFISH, WHITEFISH, MT, ON S. 3075

On behalf of the City of Whitefish, Montana, we are writing to express our support for S. 3075 North Fork Watershed Protection Act of 2010 that would withdraw future mining, oil and gas drilling, and geothermal development on USDA Forest Service lands in the North Fork Flathead River drainage in western Montana. In addition, we would encourage your offices to support expanding the geographic scope of S. 3075 to include federal lands located in the headwaters of Haskill Creek, a tributary to the Whitefish River in the Upper Flathead River watershed. The City of Whitefish, with a population of over 7,000 residents, derives its municipal water supply from surface water diversions located in Second Creek and Third Creek, two primary tributaries to Haskill Creek. A majority of the watershed area located upstream of these intake facilities, is comprised of Flathead National Forest lands.

We support efforts that will result in the protection of both surface water and groundwater resources in the City's municipal watershed. Withdrawing future mining, oil and gas drilling, and geothermal development on federal lands located in the headwaters of Haskill Creek will help achieve this goal, and further safeguard our community's water supply for existing and future generations of Montanans.

Thank you for your consideration and the opportunity to comment on this important matter.

STATEMENT OF BRIANNA RANDALL, WATER POLICY DIRECTOR, CLARK FORK  
COALITION, MISSOULA, MT, ON S. 3075

Thank you for the opportunity to present written testimony in support of S. 3075, the North Fork Watershed Protection Act of 2010, introduced by Montana Senators Max Baucus and Jon Tester. The Clark Fork Coalition strongly believes that this important piece of legislation offers immense conservation value and provides natural resource benefits nationwide.

The Clark Fork Coalition, founded in 1985, is a non-profit organization based in Missoula, Montana that represents 1,500 members united behind the cause to create healthy rivers and vibrant communities. We work to protect and restore the 22,000-square-mile Clark Fork watershed in western Montana and northern Idaho. This legislation now before your committee, S. 3075, will protect public lands and water quality in our basin by withdrawing future mining, oil and gas drilling, and geothermal development from the spectacular lands in the North Fork of the Flathead watershed. In addition to supporting this bill wholeheartedly, the Coalition also urges you to expand the scope of the legislation beyond the North Fork to include portions of the Middle and South Fork of the Flathead Rivers highlighted in the attached map.

The Flathead River is the largest tributary in the Clark Fork River basin and is comprised of the South, Middle, and North Forks—world-renowned rivers draining unique mountain ranges, wilderness areas and parks (including the world's first International Peace Park spanning Waterton-Glacier National Parks) before coming together to form the deep, clean waters of Flathead Lake.

The North Fork watershed, which forms the western boundary of Glacier National Park and carries waters drained from the southeast corner of British Columbia, has long been threatened by Canadian mining interests seeking to exploit mineral resources. Proposed mining and drilling projects in the headwaters of the Flathead River prompted this recently-signed agreement, which was accompanied by legislation in British Columbia to make mining off-limits north of Glacier.

This legislation will protect public lands, rivers and streams in the North Fork Flathead watershed by withdrawing rights for future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land. In effect, dormant mineral leases in this drainage could be swapped or bought out. As Senator Baucus has noted, companies will likely make more money by negotiating out of leases by avoiding the costly uphill battles that would face any new mining project proposed for this politically and environmentally sensitive landscape.

The land and water resources in the Flathead provide vital economic benefits and ecological services for Montana as well as the Northern Rockies and Cascadia ecosystems.

- Its headwaters flow through some of the richest and most diverse habitat in the lower 48, and supply clean, cold water to Flathead Lake, one of the most pristine lakes in the world.
- The groundwater and streams provide drinking water for several communities in western Montana.
- The trout streams, magnificent forests and towering peaks in the Flathead watershed offer unparalleled public recreational opportunities beloved by Coalition members and cherished by people nationwide. Tourists spend an estimated \$150 million every year in the Flathead Valley.

These are just a few of the reasons why the Clark Fork Coalition is supportive of S. 3075, and why we are also asking the Committee to consider protecting all of the headwaters of the Flathead River by adding the Middle Fork and South Fork into S. 3075. Like the North Fork, the public lands that drain into these two rivers also contain oil and gas leases that have been suspended since the mid-1980s. Though much of the Middle and South Fork lie within wilderness areas, these watersheds still have unprotected—and irreplaceable—lands within the Flathead National Forest that have existing mining leases and would benefit from this mineral withdrawal legislation.

In conclusion, the Clark Fork Coalition and our members fully support S. 3075, and appreciate your time on this bill. We also believe that including mineral withdrawal for all three forks of the Flathead River in S. 3075 would create a complete package that ensures the Flathead watershed's natural resources can sustain and recharge the Clark Fork watershed—and provide public recreation and natural resource amenities for the nation—for the long-haul.

Thank you for considering our testimony.

STATEMENT OF DAVE HADDEN, DIRECTOR, HEADWATERS MONTANA, WHITEFISH, MT,  
ON S. 3075

On behalf of our thousands of Montana members who cherish Glacier National Park, the North Fork Flathead River valley, and Flathead Lake, we write to express our organizations' enthusiastic support for S. 3075, the North Fork Watershed Protection Act of 2010, which withdraws future mining, oil and gas drilling, and geothermal development on US Forest Service land in Montana's North Fork Flathead River watershed.

We also ask that you slightly expand the boundary of S. 3075 to incorporate the remainder of the Middle Fork of the Flathead River to complete the protection of Glacier Park, the south flank of the Whitefish Range and Haskill Basin to protect recreation assets and Whitefish City's water supply, and the Coram Canyon area to protect the Flathead River and recreation. The attached map illustrates our recommended boundary.

Our organizations have worked for years to permanently protect the waters of the Transboundary Flathead River. We strongly commend your work and your cooperative efforts with the Governor's office to quickly implement the provisions called for in the B.C.—Montana Memorandum of Understanding (MOU).

With its headwaters in British Columbia and its downstream reaches in Montana, the Transboundary Flathead River Valley forms the core of Waterton-Glacier International Peace Park and the Crown of the Continent ecosystem. This ecosystem supports an unmatched diversity of wildlife including the greatest density of grizzly bears in interior North America and some of the continent's healthiest runs of native bull trout and cutthroat trout. The river also functions as a major tributary to the Flathead River that delivers pristine water to Flathead Lake.

We view S. 3075 as a critical step towards implementing the MOU that calls for a ban all types of mining and oil and gas extraction in the Transboundary Flathead Valley. Only the United States Congress has the legislative authority to implement this agreement on federal lands on the Montana side of the border. Senate Bill 3075 accomplishes this goal in part.

Today, as we prepare to celebrate the 100th anniversary of Glacier National Park, the United States and Canada have an historic opportunity to permanently protect the North Fork of the Flathead River, Glacier National Park, and Flathead Lake for the next generation. Senate Bill 3075 represents a crucial component of this legacy and we look forward to working with you to secure its passage.

---

STATEMENT OF CHUCK WHITSON, CHAIRMAN, AND PADDY TRUSLER, MEMBER, BOARD  
OF LAKE COUNTY COMMISSIONERS, POISON, MT, ON S. 3075

The Lake County Commission supports Senate Bill 3075, the North Fork Watershed Protection Act of 2010, which withdraws future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land in Montana's North Fork Flathead River watershed.

We also support slightly modifying the boundary of S. 3075 to incorporate the remainder of the Middle Fork of the Flathead River corridor to complete the protection of Glacier Park, the south flank of the Whitefish Range and Haskill Basin to protect recreation assets and Whitefish City's water supply, and the Coram Canyon area to protect the Flathead River and recreation. The attached map shows the proposed boundary.

The Flathead Watershed is a unique and special place, and Flathead Lake is an important asset to Lake County, our communities, our economy and our local businesses, as well as to the greater Flathead region, the state of Montana and beyond. The quality of Flathead Lake is dependent on the quality of the waters that feed it. The headwaters of this unique resource are inappropriate for mining and oil and gas development, which could significantly degrade its quality. S. 3075 will help protect Flathead Lake water quality and the economic health of our communities from these upstream threats. S. 3075 is an important step towards implementing the Montana-British Columbia agreement signed by Governor Schweitzer and Premier Campbell that bans mining and oil and gas extraction in the transboundary North Fork Flathead Valley.

The United States and Canada have a historic opportunity to protect the North Fork of the Flathead River, Glacier National Park, and Flathead Lake for future generations. S. 3075 represents a crucial component of this legacy. Thank you for your work to protect Flathead Waters.

STATEMENT OF CAROLYN BEECHER, CHAIR, LAKE COUNTY DEMOCRATS, POISON, MT,  
ON S. 3075

As citizens who value the quality of our water and our environment, Lake County Democrats urge you to attend to the matter of retiring the oil and gas leases in the Whitefish Range to the west of the North Fork of the Flathead River. From the perspective of the Canadians, we look quite foolish to be asking them to deny coal leases north of the border when we retain them just south of the border.

As you well know, Glacier National Park has been declared endangered by the threat of coal mining, both open pit and coalbed methane, up the headwaters of the North Fork of the Flathead River. Pollutants flowing into this river, which forms Glacier's western boundary and contributes to the waters of Flathead Lake, would heavily impact water quality, wildlife and fisheries in this pristine territory and alter the quality of life for residents of Lake County and the Salish/Kootenai Reservation.

We ask you to take action, as you have previously proposed, to retire the oil and gas leases in the North Fork Flathead Watershed to demonstrate to British Columbia and Canada that the U.S. is willing to make sacrifices to protect Flathead waters and wildlife on our side of the international boundary. Retiring the leases will hopefully prompt B.C. to engage in further cross-boundary discussions rather than taking unilateral action that would cause permanent damage. Since court action in the Conner v. Burford case has left the leases in limbo since 1988, we presume that retiring the North Fork leases can be accomplished in a simple and cost-effective way.

We also believe it is critical for Montana's Congressional delegation to revive the dialogue between the U.S. and Canadian governments on this topic to ensure that B.C. engages Montana and both federal governments in full and open discussion of possible actions to resolve our concerns. We continue to support a comprehensive transboundary cumulative impacts analysis of coal and other potential resource extraction proposals.

Thank you for making this important issue a priority for your time and attention.

---

STATEMENT OF JOHN ENGEN, MAYOR, CITY OF MISSOULA, MISSOULA, MT, ON S. 3075

Thank you for introducing S. 3075, the North Fork Watershed Protection Act of 2010. The City of Missoula supports this important piece of legislation and its goal of protecting public lands and water quality by withdrawing future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land. However, we urge you to expand the scope of the legislation beyond the North Fork to include all lands in the Flathead National Forest.

A significant portion of property owners in the Flathead region are residents of and voters in Missoula. These citizens own cabins, second homes, or land along the lakes and streams and in the forests and mountains of the Flathead watershed. Like the North Fork watershed, the public lands throughout the Flathead also contain oil and gas leases that have been suspended since the mid-1980s.

We believe that the irreplaceable lands within the Middle and South Forks of the Flathead River watersheds that are now unprotected from mineral development would also benefit from this legislation. The land and water resources in the Flathead National Forest provide vital economic benefits and ecological services for Montanans, including drinking water for several communities, as well as unparalleled public recreational opportunities beloved by Missoula residents and cherished by people nationwide.

Please consider protecting all of the headwaters of the Flathead River—the North, Middle, and South Fork drainages—by expanding the scope of S. 3075. By passing a “complete package,” this legislation will ensure that the headwaters of the Flathead River can sustain our communities for future generations of Montanans.

Thank you again for introducing S. 3075. We fully support this legislation, and appreciate all of your work on behalf of Missoula's residents and natural resources.

---

STATEMENT OF MICHELE LANDQUIST, CHAIR, BILL CAREY, COMMISSIONER, JEAN CURTISS, COMMISSIONER, BOARD OF COUNTY COMMISSIONERS, MISSOULA, MT, ON S. 3075

Thank you for introducing S. 3075, the North Fork Watershed Protection Act of 2010. Missoula County supports this important piece of legislation and its goal of protecting public lands and water quality by withdrawing future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land. We also encour-

age you to consider expanding the legislation beyond the North Fork to include the South and Middle Forks of the Flathead River.

A significant portion of property owners in the Flathead region are residents of, and voters in, Missoula County. These citizens own cabins, second homes, or land along the lakes and streams and in the forests and mountains of the Flathead watershed. Like the North Fork watershed, the public lands in the South and Middle Forks contain oil and gas leases that have been suspended since the mid-1980's.

We believe that the irreplaceable lands within the Middle and South Forks of the Flathead River watersheds, that are now unprotected from mineral development, would also benefit from this legislation. The land and water resources in the Flathead watersheds provide vital economic benefits and ecological services for Montanans, including drinking water for several communities. It provides unparalleled public recreational opportunities beloved by County residents and cherished by people nationwide.

Please consider protecting all of the headwaters of the Flathead River—the North, Middle, and South Fork drainages—by expanding the scope of S. 3075. By passing a “complete package,” this legislation will ensure that the headwaters of the Flathead River can sustain our communities for future generations of Montanans.

Thank you again for introducing S. 3075. We fully support this legislation and its goals. We appreciate all of your work on behalf of Missoula County's residents and natural resources.

---

STATEMENT OF ROSE SCHWENNESEN, PRESIDENT, FLATHEAD COALITION, JOHN FREDERICK, PRESIDENT, NORTH FORK PRESERVATION ASSOCIATION, DAPHNE HERLING, PRESIDENT, MONTANA WILDERNESS ASSOCIATION, JIM JENSEN, EXECUTIVE DIRECTOR, MONTANA ENVIRONMENTAL INFORMATION CENTER

On behalf of our thousands of Montana members who cherish Glacier National Park, the North Fork Flathead River valley, and Flathead Lake, we write to express our organizations' enthusiastic support for S. 3075, the North Fork Watershed Protection Act of 2010, which withdraws future mining, oil and gas drilling, and geothermal development on US Forest Service land in Montana's North Fork Flathead River watershed.

We also ask that you slightly expand the boundary of S. 3075 to incorporate the remainder of the Middle Fork of the Flathead River to complete the protection of Glacier Park, the south flank of the Whitefish Range and Haskill Basin to protect recreation assets and Whitefish City's water supply, and the Coram Canyon area to protect the Flathead River and recreation. The attached map illustrates our recommended boundary.

Our organizations have worked for years to permanently protect the waters of the Transboundary Flathead River. We strongly commend your work and your cooperative efforts with the Governor's office to quickly implement the provisions called for in the B.C.—Montana Memorandum of Understanding (MOU).

With its headwaters in British Columbia and its downstream reaches in Montana, the Transboundary Flathead River Valley forms the core of Waterton-Glacier International Peace Park and the Crown of the Continent ecosystem. This ecosystem supports an unmatched diversity of wildlife including the greatest density of grizzly bears in interior North America and some of the continent's healthiest runs of native bull trout and cutthroat trout. The river also functions as a major tributary to the Flathead River that delivers pristine water to Flathead Lake.

We view S. 3075 as a critical step towards implementing the MOU that ban all types of mining and oil and gas extraction in the Transboundary Flathead Valley. Only the United States Congress has the legislative authority to implement this agreement on federal lands on the Montana side of the border. Senate Bill 3075 accomplishes this goal in part.

Today, as we prepare to celebrate the 100th anniversary of Glacier National Park, the United States and Canada have an historic opportunity to permanently protect the North Fork of the Flathead River, Glacier National Park, and Flathead Lake for the next generation. Senate Bill 3075 represents a crucial component of this legacy and we look forward to working with you to secure its passage.

## STATEMENT OF MARGIE ALT, EXECUTIVE DIRECTOR, ENVIRONMENT AMERICA,\* ON S. 3075

On behalf of our millions of members who cherish America's national parks, public lands and wild and scenic rivers, we are writing to express our organizations' enthusiastic support for S. 3075, the North Fork Watershed Protection Act of 2010, which would withdraw US Forest Service land in Montana's North Fork Flathead River watershed from future mining, oil and gas drilling, and geothermal leasing and extraction.

With its headwaters in British Columbia and its downstream reaches in Montana, the Transboundary Flathead River Valley forms the core of Waterton-Glacier International Peace Park and the Crown of the Continent ecosystem. This ecosystem supports an unmatched diversity of wildlife including the greatest density of grizzly bears in interior North America and some of the continent's healthiest runs of native bull trout and cutthroat trout.

Passing S. 3075 is a critical step toward implementing the International Flathead Agreement signed last month by Montana Governor Brian Schweitzer and British Columbia Premier Gordon Campbell to ban all types of mining and oil and gas extraction in the Transboundary Flathead Valley. Only the United States Congress has the legislative authority to implement this agreement on federal lands in the Montana portion of the watershed.

The benefits of passing S. 3075 are national in scope. Not only is the Transboundary Flathead River Valley one of America's last great wild places, but the snow-fed rivers and streams of Glacier National Park are the headwaters of North America. These rivers flow through 16 states and four Canadian provinces on their way to the Atlantic, Pacific and Arctic oceans. As the effects of climate change become more acute, the abundant source of clean water that emanates from Glacier's snow-covered peaks will become even more valuable over the coming decades.

Today, as we prepare to celebrate the 100th anniversary of Glacier National Park, the United States and Canada have an historic opportunity to protect the North Fork of the Flathead River, Glacier National Park, and the Crown of the Continent ecosystem for the next generation of North Americans. Passage of S. 3075 is absolutely vital to complete this legacy.

Our organizations look forward to working with you, the United States Congress, and the Obama Administration to pass this important legislation. Please feel free to contact us if we may be of further assistance.

## STATEMENT OF THE NATIONAL PARKS CONSERVATION ASSOCIATION, ON S. 3075

Thank you for the opportunity to submit written testimony regarding S. 3075 The North Fork Watershed Protection Act—an important piece of legislation that will help preserve the international legacy of Waterton-Glacier International Peace Park. We thank Senators Baucus and Tester for introducing this legislation and take particular note of Senator Baucus' thirty-year commitment to protect Glacier National Park and the North Fork of the Flathead Watershed from industrial mining, in both the Canadian headwaters and the Montana portions of the watershed.

Since 1919, the National Parks Conservation Association (N PCA) has been the leading voice of the American people on behalf of our national parks. Our mission is to protect and enhance America's National Park System for current and future generations. On behalf of our more than 330,000 members, we urge the Committee's support and passage of S. 3075.

Our national parks are home to some of the nation's most iconic and sacred landscapes, monuments, and historic sites. They are among the most recognizable places in the world. In just three weeks, on May 11th, our nation will commemorate the 100th anniversary of Glacier National Park. The passage of S. 3075 represents a historic opportunity for this Congress to build upon this legacy in its own right.

Protecting over one million acres of public lands in northwest Montana, Glacier National Park is a crown jewel of the national park system. Established one hundred years ago "for the benefit and enjoyment of the people of the United States," Glacier's sculpted peaks, mountain valleys, and clean waters are enjoyed by more

\*Other undersigned groups: Frances Beinecke, President & CEO, Natural Resource Defense Council; Michael Brune, Executive Director, Sierra Club; Thomas Kiernan, President, National Parks Conservation Association; Daniel B Magraw Jr., President, Center for International Environmental Law; William H. Meadows, President, The Wilderness Society; Trip Van Noppen, President, Earthjustice; Erich Pica, President, Friends of the Earth; Larry Schweiger, President & CEO, National Wildlife Federation; Mark Tercek, President & CEO, The Nature Conservancy; Rebecca Wodder, President, American Rivers.

than two million people each year and provide crucial habitat for threatened species including the grizzly bear, bull trout, and Canada lynx.

The natural and ecological benefits provided by Glacier National Park extend beyond the park's boundaries. The snow-fed streams and mountain rivers of Glacier are the headwaters of North America, and are the source of rivers that flow into the Pacific Ocean, the Gulf of Mexico, and Hudson Bay. Before reaching these bodies of water, these rivers flow through 16 States and four Canadian provinces. Glacier's snow-covered peaks serve as a natural reservoir and essential source of clean water—which is one of our continent's most important and essential resources.

The park also plays a significant role in the regional economy of many Montana communities. More than two million visitors come to Glacier each year providing a direct economic impact that exceeds \$150 million dollars. The Kalispell, Montana Chamber of Commerce estimates that 20 percent of the Flathead Valley's economic activity is the direct result of Glacier National Park. The economic value of protecting Glacier's unique and pristine waters and surrounding public lands through this legislation cannot be understated.

S. 3075 WILL PROTECT THE WORLD'S FIRST INTERNATIONAL PEACE PARK AND STRENGTHEN U.S. RELATIONS WITH CANADA

In 1932, acts of the U.S. Congress and Canadian Parliament designated Glacier National Park and Waterton Lakes National Park in Alberta, Canada as Waterton-Glacier International Peace Park—the world's first international peace park. This relationship of peace and goodwill has served as a source of inspiration for nations around the world and today there are more than one hundred international peace parks on five continents.

The exceptional natural values of Waterton-Glacier International Peace Park are of global significance. National Geographic has deemed it “one of the most diverse and ecologically intact natural ecosystems in the temperate zones of the world,” and in 1995 Waterton-Glacier was added to the list of the United Nations Educational, Scientific and Cultural Organization's (UNESCO) World Heritage sites in recognition of the peace park's unique geology, abundant and diverse plant and animal communities, and glacial landscape. Earlier this year, the IUCN/World Heritage Center delivered a report to the governments of Canada and the United States that supported prohibiting mining in the Flathead Valley and in support of developing a conservation and wildlife management plan for the peace park.

More recently, Governor Schweitzer and British Columbia Premier Gordon Campbell signed a Memorandum of Understanding (MOU) and Cooperation on environmental protection, climate action, and energy. The MOU identifies broad areas for cooperation and partnership; and, most importantly, it also contains some very specific language regarding the North Fork: “BC and Montana commit to remove mining, oil and gas, and coal development as permissible land uses in the [North Fork].” The MOU must be implemented by changing applicable laws in both countries. In British Columbia, the Premier amended three different laws to ban mining in the Canadian Flathead the day after the signing of the MOU. For the U.S., S. 3075 is a crucial step forward in meeting the State of Montana's responsibilities under the MOU and enjoys strong support from numerous communities, including the Kalispell Chamber of Commerce.

TO BETTER SAFEGUARD GLACIER NATIONAL PARK AND THE CROWN OF THE CONTINENT ECOSYSTEM, THE WITHDRAWAL BOUNDARY SHOULD BE EXPANDED

While NPCA strongly supports S. 3075, we also believe that this legislation can be improved with the inclusion of a boundary expansion to include the withdrawal of certain public lands from mining and mineral activities in the Wild & Scenic River corridor of the Middle Fork of the Flathead River, which is the primary access point for the more than 2 million people who visit Glacier each year. Inclusion of the Middle Fork corridor would “fill the gap” around Glacier National Park and prevent future inappropriate mining activity on critical wildlife habitat and front country area enjoyed by park visitors.

We also believe that expanding the boundary to include the Haskill Basin is warranted since it is a source of municipal water drinking supply for more than 10,000 local residents in the Whitefish area and also has tremendous conservation value. Here is an excerpt from the City of Whitefish's letter to Senators Tester and Baucus:

In addition, we would encourage your offices to support expanding the geographic scope of S. 3075 to include federal lands located in the headwaters of Haskill Creek, a tributary to the Whitefish River in the upper Flathead River watershed. ...Withdrawing future mining, oil and gas drilling, and 4

geothermal development on federal lands located in the headwaters of Haskill Creek will help achieve this goal, and further safeguard our community's water supply for existing and future generations of Montanans.

Furthermore, Winter Mountain Sports, I nc., which operates Whitefish Mountain Resort, supports S. 3075 and the inclusion of Haskill Basin. In the CEO's letter to Senators Baucus and Tester, he states:

In particular, I support your legislation S. 3075, the North Fork Watershed Protection Act of 2010 that would withdraw future mining, oil and gas drilling, and geothermal development on U.S. Forest Service land in the North Fork Flathead. As the leaseholder for the Whitefish Mountain Resort at Big Mountain (Winter Sports Inc.), we would also support including withdrawals for the Big Mountain and Haskill Basin in S. 3075.

We understand that the existing, judicially suspended leases (in 1988) may in fact have little or no legal basis for being maintained. It would make sense, therefore, to resolve this issue at the perimeter of the North Fork watershed (the Big Mountain area). Winter Sports Inc. does not think oil, gas or mineral development on its lease area would be an appropriated use.

As the attached map (areas in grey) demonstrates, these areas are technically outside the North Fork Watershed; however, they are important landscapes that drain into Flathead Lake, the largest natural body of freshwater in the western United States. These requested additions will afford vital protections to beloved recreational access sites and municipal drinking water.

NPCA believes there is clear local support for these amendments to the legislation: businesses, individuals, and elected bodies have written to endorse S. 3075 and ask for the expansion of its withdrawal area to include nearby, connected lands.

Mr. Chairman and Ranking Member Murkowski, with S. 3075 you have a tremendous opportunity to make a lasting contribution to the international legacy of Glacier National Park. Americans love our national parks, and this legislation affords the opportunity for our generation to give our kids and grandkids the opportunity to experience a wild and scenic Flathead River—just as we have.

---

STATEMENT OF CHARLES MYERS, CHAIRMAN, ELKO COUNTY BOARD OF COMMISSIONERS, ELKO, NV, ON S. 3185

In 2002 Elko County was approached by several different user groups that included motorized recreational vehicles. These groups were very frustrated and unsure as to continued uses of OHV / ATV uses and other types of motorized uses on public lands. The Board of County Commissioners instructed staff to locate potential areas of public lands that would be acceptable to the OHV / ATV uses. At that time, Elko County began to identify several areas of public lands that could provide a specific location for motocross racing, ATV / OHV use and other motorized off road use. The county working directly with the BLM expended many staff hours identifying potential lands. Elko County and the BLM identified and studied several areas as to potential negative and positive impact. The West Elko site was the final choice due to its minimal negative impacts, indirect proximity to the City of Elko and direct access to adjacent Interstate 80. The proposed location is indirectly adjacent to an existing R&PP lease for recreation purposes, the Elko County Public Shooting Range. The two uses will complement each other and present no conflict. The shooting range has been in use for over twenty years and is currently in the Patent Lands Act process. The R&PP lease application for the West Elko Motocross site was filed with the BLM in June of 2004. To date action is still pending from the BLM due to a lack in Realty staff in the local office.

In 2009 the staffs of Senator Reid and Senator Ensign were made aware of the issue and contacted Elko County to provide assistance. Both staffs provided options to acquire the public lands and subsequently the West Elko site was included with the Te-Moak Tribe of the Western Shoshone Indians of Nevada public lands request. Senator Reid and Senator Ensign's staffs worked very diligently in assisting the Te-Moak Tribe and Elko County with these proposed actions.

The many user groups are awaiting the availability of the public lands and have committed to the development of the land for multiple users of OHV, ATV, Motocross, BMX / Mountain Bicycling, Oval Track Auto Racing, Four Wheel Drive Vehicles and many others. The development of this area will also provide positive economic impacts to the City of Elko and Elko County due to the close availability of a facility for sanctioned motocross and OHV / ATV events.

The local BLM has advised Elko County that the current R&PP Lease Application could require an additional five to seven years to process. The application was submitted to the BLM in 2004, six years ago, with little or no action to date. Should the application require an additional five to seven years it is quite possible the community will lose their interest in the site and revert back to other less attractive alternatives including potentially causing nuisances on public lands. The proposed multiple use OHV / ATV facility is very much desired by the public of Elko County to promote a central location for these specific uses and supported by BLM to reduce motorized degradation of public lands. The Elko County Board of Commissioners is in unanimous and strong support of the proposed S. 3185 and sincerely appreciates the involvement and hard work of Senators Reid and Ensign to make this a reality for its citizens.

○